

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

DECEMBER 2005 ISSUE

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RECENT PUBLICATIONS AND NEWS RELEASES

Political Activities: What Churches and Charities Can and Cannot Do

by Esther S.J. Oh and Terrance S. Carter in *Church Law Bulletin No. 15*, December 15, 2005.

The topic of political activities and the limitations imposed on charities by Canada Revenue Agency (“CRA”) under the *Income Tax Act* (Canada) and related CRA policies is an important and relevant area of concern, and is particularly timely for churches and religious charities that may be concerned with the outcome of the upcoming federal election. This *Church Law Bulletin* provides an overview of the general principles which are relevant to a discussion concerning political activities in order to assist readers in understanding the types of political activities that churches and other registered charities may or may not engage in, pursuant to the limitations prescribed by Canadian law.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2005/chchlb15.pdf>

Creating a Green Legacy: The Ecological Gifts Program

by Karen J. Cooper in *Charity Law Bulletin No.81*, December 14, 2005.

Private lands are becoming increasingly important to the protection of Canada’s environmental heritage and biodiversity. As an incentive for landowners to help protect the environment, the *Income Tax Act* provides favourable income-tax treatment for gifts of ecologically sensitive land and partial interests in land through the Ecological Gifts Program (EGP) administered by Environment Canada.

The EGP enables individual and corporate landowners to protect their ecologically sensitive land forever by donating it, or certain interests in the land, to eligible recipients and receiving enhanced income tax benefits in return. These tax benefits include the provision of tax credits or deductions, and a reduction in the taxable capital gain realized on the disposition of the property. Since the EGP’s inception in 1995, hundreds of Canadians have donated such ecological gifts valued at more than \$110 million. Nearly half of these gifts contain habitats designated as having national, provincial, or regional importance, and many include rare or threatened habitats that are home to species at risk. This *Charity Law Bulletin* provides an overview of the rules that apply to ecological gifts.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb81.pdf>

Knights of Columbus Decision and the Implications for Churches and Religious Charities that Rent Out their Facilities

by Anne-Marie Langan and Terrance S. Carter in *Church Law Bulletin No.16, December 15, 2005.*

At the height of the political debate concerning the legislative recognition of same-sex marriage, a same-sex couple in British Columbia brought a human rights complaint against the Knights of Columbus, a Catholic men's organization, when they were denied use of the Knights' facility for their same-sex wedding reception. In their 2004 complaint, the couple alleged the Knights, by denying them the use of a facility that was managed by the Knights and owned by the Archdiocese of Vancouver, had discriminated against them on the basis of their sexual orientation. In response to the human rights complaint, the Knights claimed they had a bona fide and reasonable justification for denying the couple the use of the hall: the guarantee of freedom of religion under the Charter protects religious groups from having their property used for a purpose contrary to their religious beliefs. This *Church Law Bulletin* summarizes the key aspects of the decision and provides comments on its application to churches and religious charities.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2005/chchlb16.pdf>

Withdrawal of Onus on Charities to Make Reasonable Inquiries of Donors

On November 22, 2005, the Department of Finance indicated that they "are prepared to recommend to the Minister of Finance that the proposed subsection 248(40) be withdrawn." This provision would have required charities to make reasonable inquiries with respect to all gifts in excess of \$5,000. In a letter to the Canadian Association of Gift Planners, Len Farber of the Department pointed out that they "recognize the difficulties that have been brought to light by this proposal" placing an administrative burden on charities. While this news should come as a relief to all charities, charities will still have to exercise due diligence when issuing charitable donation receipts to ensure that the information on the receipts is accurate. Charities are now required to indicate on the receipts the value of the donation received, the amount of advantage that is received in respect of the gift, and the eligible amount of the gift for donors. Therefore, it is important for charities to ensure that relevant information is sought from donors when determining the value of the donation and the advantage. Details regarding this issue will be explained in a future *Charity Law Bulletin*.

CRA Releases Amendments to the New Requirement for Official Donation Receipts

Registered charities are required to include the name Canada Revenue Agency and the website address www.cra-arc.gc.ca/charities on all official donation receipts. It is acceptable to include this information by means other than normally required printed (e.g., sticker, stamp, handwritten). Although CRA will continue to honour receipts issued in 2005 that do not contain the new information, CRA expects all registered charities to include the new information as of January 1, 2006. To read the notice posted by CRA on their website December 2, 2005, see <http://www.cra-arc.gc.ca/tax/charities/jrt-e.html>.

CRA Releases Important Advisory on Partisan Political Activities

In light of the recent election call, Canada Revenue Agency released a new advisory entitled "Important Advisory on Partisan Political Activities" dated December 14, 2005, in recognition that there continues to be uncertainty among charities and members of the general public concerning what activities would constitute a "partisan political activity."

The stated purpose of the advisory is to remind registered charities that there are limitations on certain types of political activities that can be undertaken by them. For further information on the topic of political activities, please see *Church Law Bulletin* No. 15 entitled "Political Activities: What Churches and Charities Can and Cannot Do" available at www.charitylaw.ca. The new advisory is available on CRA's website at <http://www.cra-arc.gc.ca/tax/charities/advisory-e.html>.

New Ontario Bill May See Transfer of Charitable Gifts between Health Service Providers

Ontario's Minister of Health and Long-Term Care, George Smitherman, introduced Bill 36, the *Local Health System Integration Act, 2005*, November 24, 2005, which will lead to the integration of local health systems known as local health integration networks. Of interest to charitable donors are provisions that enable the Minister and a local integration network to order a health service provider, which includes hospitals, psychiatric facilities, seniors and nursing homes, and mental health and addiction service providers, to transfer charitable property to another health service provider. This would include all gifts, trusts, bequests, devises and grants of property made before and after the provision comes into force. Gifts given for a specified purpose would still be required to be used for the specified purpose by the other health service provider. Bill 36's second reading carried on division on December 7 and was ordered referred to the Standing Committee on Social Policy. The text of the bill is available on the Legislative Assembly's website at http://www.ontla.on.ca/documents/Bills/38_Parliament/session2/index.htm.

Beware of Donation Tax Shelter Valuations

In the recent Federal Court of Appeal decision *A.G. (Canada) v. Caedmon Nash et al* (November 21, 2005) overturning the Tax Court of Canada, the Court has sent a signal that registered charities and donors should be wary of the valuations provided by promoters of donation tax shelters, particularly if the valuation is based on the "financial planner market." This decision, along with the recent decision of the Tax Court of Canada in *Corbett et al v. H.M.Q.* (November 23, 2005), relating to the donation of land to a charitable trust, provides important guidance when reviewing appraisal report. A *Charity Law Bulletin* discussing the implications of these decisions will be forthcoming.

See the case summaries at the links provided below:

[*A.G. (Canada) v. Caedmon Nash et al*] <http://www.canlii.org/ca/cas/fca/2005/2005fca386.html>

[*Corbett et al v. H.M.Q.*] <http://www.canlii.org/ca/cas/tcc/2005/2005tcc756.html>

Donald J. Bourgeois named Editor of *The Philanthropist* for three year term

We'd like to congratulate Donald J. Bourgeois, counsel to Carter & Associates, who will become the new Editor for the quarterly journal *The Philanthropist*, effective January 1, 2006. He will be succeeding David Stevens, who has served in this position for the last five years.

IN THE PRESS

CRA's New Guidelines Help Umbrella Organizations Qualify as Charities by *Jacqueline M. Connor and Terrance S. Carter.*

The Lawyers Weekly Vol.25 No.29, December 2, 2005.

[PDF] <http://www.carters.ca/news/2005/lawyerwkly/jmctsc1202.pdf>

Charitable Giving: Sweeping Amendments are in Place by *Theresa L.M. Man and Terrance S. Carter.*

The Bottom Line Vol.21 No.16, December 2005.

[PDF] http://www.carters.ca/news/2005/bottomline/tlmtsc_dec.pdf

Guiding the Urge to Give: Organizational Implications by *Karen Cooper and Terrance Carter* as part of the *STEP Study in the Society of Trust and Estate Practitioners Newsletter.*

STEP Inside, Vol.5 No.1, Fall 2005.

[WEB] <http://www.step.ca/pdf/stepInside/si2005.5.1.Fall.pdf>

Incorporation: Factors to Consider by *Don Bourgeois, Counsel to Carter & Associates*, in a semi-annual newsletter of the *Canadian Cancer Society.*

The Advisor, Vol. 4, Iss.1, Fall 2005.

[PDF] <http://www.cancer.ca/files/ontario/Advisor/AdvisorFall05.pdf>

International Journal of Civil Society Law included a link to *Charity Law Bulletin No. 78* in its electronic newsletter.

IJCSL Newsletter, Vol. 2 Iss.12, November 2005.

Discipline of Church Dissidents by *Terrance S. Carter* assisted by *Anne-Marie Langan and Nancy E. Claridge.*

www.christianity.ca, November 9, 2005.

[WEB] <http://www.christianity.ca/church/leadership/2005/11.000.html>

RECENT EVENTS AND PRESENTATION MATERIALS

The Institute of Chartered Accountants of Ontario hosted a workshop in Toronto, Ontario, on December 6, 2005; with Terrance S. Carter and Theresa L.M. Man presenting on “Director and Officer Liability and Beyond” and “Recent Changes to the *Income Tax Act* Affecting Charities.”

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc1206.pdf>

The Association of Fundraising Professionals Greater Toronto Chapter Congress 2005 included a presentation on “Recent Changes in the Law That You Need to Know” in Toronto, Ontario, on December 1, 2005; with M. Elena Hoffstein of Fasken Martineau DuMoulin LLP and Terrance S. Carter of Carter & Associates speaking.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/mehtsc1201.pdf>

The Foundation of Guelph General Hospital hosted a seminar that included a presentation by Terrance S. Carter on “Recent Amendments to the *Income Tax Act* Affecting Charities and Donors” in Guelph, Ontario, on November 24, 2005.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc1124.pdf>

[WEB] <http://www.carters.ca/pub/seminar/charity/2005/tsc1124.htm>

The Association of Fundraising Professionals (Newfoundland Chapter) hosted a lunch on November 18, 2005; with materials from Terrance S. Carter entitled “Recent Changes to the *Income Tax Act* Affecting Charities.”

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc1118.pdf>

[WEB] <http://www.carters.ca/pub/seminar/charity/2005/tsc1118.htm>

Legal Issues in Starting a Church was presented by Terrance S. Carter at the Mosaic 2005 Church Planting Canada National Congress held in Toronto, Ontario, on November 17, 2005.

Incorporation and Governance Issues in Starting a Church

[PDF] <http://www.carters.ca/pub/seminar/church/2005/tsc1117a.pdf>

[WEB] <http://www.carters.ca/pub/seminar/church/2005/tsc1117a.htm>

The Legal Duties of Directors of a Church

[PDF] <http://www.carters.ca/pub/seminar/church/2005/tsc1117b.pdf>

[WEB] <http://www.carters.ca/pub/seminar/church/2005/tsc1117b.htm>

Due Diligence in Avoiding Risks for Directors of a Church

[PDF] <http://www.carters.ca/pub/seminar/church/2005/tsc1117c.pdf>

[WEB] <http://www.carters.ca/pub/seminar/church/2005/tsc1117c.htm>

UPCOMING EVENTS AND PRESENTATIONS

The Institute of Chartered Accountants of Ontario will be hosting a workshop in Markham, Ontario, on January 10, 2006, with Karen J. Cooper presenting “Partnerships: From Soup to Nuts.”

See https://ebusiness.icaao.on.ca/eso/scriptcontent/cp_pdOnlineReg.cfm?PDRI=1 to register.

The Waterloo Regional Arts Council is hosting a Board School program entitled “Incorporation: The How’s and Why’s,” to be held on January 14, 2006. More details will be available on our website soon.

Register by email to wrac@golden.net.

Compliance Issues for Charities and Not-for-Profit Organizations is a one-day conference being hosted by The United Way/Centre for Social Services Windsor-Essex County at the Giovanni Caboto Club, Windsor, Ontario, January 19, 2006, with Terrance S. Carter presenting.

For more information, please contact mciampa@weareunited.com.

Privacy Essentials: Tips, Traps, and Hot Issues, hosted by The Ontario Bar Association Institute in Toronto, Ontario, on January 23, 2006, will include a panel discussion entitled “Tips from the Pros on Privacy” with Shen Goh from Carter & Associates participating along with other privacy law practitioners.

For more information, see <http://www.softconference.com/oba/eventdetails.aspx?code=06PRI0123C>.

Recent Tax Changes Affecting Charities That You Need to Know is being hosted by Canadian Fundraiser in Toronto, Ontario, on February 1, 2006, with Terrance S. Carter and Theresa L.M. Man of Carter & Associates presenting.

More information at http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_ID=105.

Nonprofit Performance Management Made Easy is being hosted by Canadian Fundraiser in Toronto, Ontario, on February 22, 2006, with a guest presentation by Mervyn White of Carter & Associates.

More information at http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_ID=100.

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 Butterworths.



Terrance S. Carter – 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 Charity Advisory Committee and Technical Issues Committee, past Chair of the National Charity and Not-for-Profit Section of the Canadian Bar Association, and has been recognized as one of the leading experts in the area of charity and not-for-profit law in Canada by *Lexpert*. Mr. Carter is also editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorism.ca, and a consulting editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2006).



Nancy E. Claridge – Articling with Carter & Associates, Ms. Claridge was a Senior Editor of the Osgoode Hall Law Journal and Editor-in-Chief of the *Obiter Dicta* newspaper. After obtaining her Masters degree in Political Science, she spent several years developing online Canadian legal databases for LexisNexis Canada, before attending Osgoode Hall Law School where she was awarded the Dean’s Gold Key Award for exceptional leadership, commitment and enthusiasm.



Jacqueline M. Connor – Practices 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 Lawyers Weekly* and *Charity Law Bulletin*. Ms. Connor is also a regular speaker at the annual *Church & Charity Law™ Seminar*.



Karen J. Cooper – Practicing charity and not-for-profit law at Carters’ Ottawa office, with an emphasis on tax issues, while on leave from her position as Senior Rulings Officer with the Income Tax Rulings Directorate of Canada Revenue Agency. Ms. Cooper also has experience as counsel for the Department of Justice in tax litigation, as well as considerable teaching experience, including currently as part-time professor at the University of Ottawa, Faculty of Common Law. In addition, Ms. Cooper has contributed articles to *The Lawyers Weekly* and *The Bottom Line*.



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 is also a consulting editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2006), as well as a frequent speaker on charitable and not-for-profit matters.



Anne-Marie Langan – Practices at Carter & Associates in the areas of human rights litigation and family law. Ms. Langan received her law degree from Queen’s University, where she was awarded the Legal Aid Ontario Award and the Community Commitment Award for her involvement in the Queen’s Legal Aid Clinic and the Family Law Project, and won an award for her paper entitled “Unrepresented Litigants in the Family Courts of Ontario” (*Queen’s Law Journal*, Spring 2005). Ms. Langan is a frequent contributor to the *Church Law Bulletin* at www.churchlaw.ca.



Theresa L.M. Man – Practices primarily in the area of charity and not-for-profit, with particular emphasis regarding tax issues. She is a member of the Taxation Section and the Charity and Not-for-Profit Section of the Ontario 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*, *Planned Giving Pulse*, *International Journal of Civil Society Law*, *The Bottom Line*, *Chinese Christian Herald Crusades*, and *Charity Law Bulletin*.



Esther S.J. Oh – Practices primarily in charity and not-for-profit law, including incorporation, corporate restructuring and governance matters, as well as in immigration law. Ms. Oh is a member of the Charity and Not-for-profit Section of the Ontario Bar Association, is a frequent contributor to www.charitylaw.ca and the *Charity Law Bulletin*, and has spoken at the annual *Church & Charity Law*TM Seminar as well as at the Canadian Bar Association/Ontario Bar Association's 2nd National Symposium on Charity Law.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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