

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

FEBRUARY 2005 ISSUE

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Main Office Location

211 Broadway, P.O. Box 440
Orangeville, ON, Canada, L9W 1K4
Tel: (519) 942-0001
Fax: (519) 942-0300

Toll Free: 1-877-942-0001

www.carters.ca

www.charitylaw.ca

National Meeting Locations

Toronto (416) 675-3766
Ottawa (613) 212-2213
London (519) 937-2333
Vancouver (877) 942-0001

RECENT PUBLICATIONS AND NEWS RELEASES

2004 Charity and Not-For-Profit Law Developments: The Year in Review

by Terrance S. Carter and M. Elena Hoffstein in *Charity Law Bulletin No.64, January 31, 2005.*

In 2004, there were numerous important legislative, regulatory and common law developments that significantly impact how charities operate in Canada and abroad. The following brief summary outlines some of the more important developments in this regard, including the new definition of gift for tax purposes, the new definition of charitable organization and public foundation, the new regulatory regime under the *Income Tax Act* (Canada), the new federal corporate legislation for non-share capital corporations, and proposed policy statements and publications from the Charities Directorate of Canada Revenue Agency, as well as a number of important court decisions.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2005/chylb64.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2005/chylb64.htm

Impact of Proposed Amendments to the *Ontario Heritage Act* on Charities and Not-For-Profit Organizations

by Terrance S. Carter and D. Ann Walters in *Charity Law Bulletin No.63, January 31, 2005.*

On November 2, 2004, *An Act to Amend the Ontario Heritage Act* (“Bill 60”) received second reading in the Ontario legislature. The amendments proposed in Bill 60 are part of a larger objective to strengthen and improve heritage protection in Ontario. If passed, Bill 60 will expand municipal powers and provide for new provincial powers to identify and designate properties that are of heritage significance, enhance the jurisdiction of the Ontario Municipal Board, and provide for enhanced demolition controls over designated properties. Owners of properties that may have cultural heritage value or interest (for example, older churches and cathedrals) which are not presently designated under the *Ontario Heritage Act* may become designated when Bill 60 comes into force. Given that Bill 60 will continue to impose minimum standards for maintenance and upkeep on designated property owners, complying with the standards, may become a financial burden for many. In addition, charitable and not-for profit organizations could find that designation will further restrict the development potential of their properties and therefore curtail the market for, as well as the market value of, these properties. This *Charity Law Bulletin* summarizes some of the proposed changes to Part IV of the Act, and the effects they will have on charities and not-for profit organizations that currently own designated property or own property that may be designated in the future.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2005/chylb63.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2005/chylb63.htm

Recent Changes to the *Income Tax Act* Affecting Charities in Canada

by Terrance S. Carter and Theresa L.M. Man in *The International Journal of Civil Society Law*, Vol. III Issue I. January 2005.

This paper is intended to provide an overview of recent extensive and complex legislative reform proposed under Canada's *Income Tax Act*, including provisions curtailing tax shelter donation schemes, as well as changes to enact the intermediate sanction rules, restrictions on trading charitable donations, a new appeals regime and revisions to the calculation of the disbursement quota that applies to gifts received by registered charities..

Read More:

[PDF] <http://www.law.cua.edu/Students/Orgs/IJCSL/>

National Do Not Call List : Impact on Charities and Not-For-Profit Organizations

by Terrance S. Carter and Anne-Marie Langan in *Charity Law Bulletin No.62*, January 30, 2005.

On December 13, 2004 the federal Minister of Industry, the Honourable David L. Emerson, introduced *An Act to Amend the Telecommunications Act* as Bill C-37, which, if passed, would have the effect of establishing a national Do Not Call List. This legislation would also give new powers to the Canadian Radio-television and Telecommunications Commission ("CRTC") to impose penalties on telemarketers who did not respect the list. This proposed list would be funded by the telemarketers themselves on a cost-recovery basis. In the event that Bill C-37 becomes law, the CRTC will entertain a consultation process and ask the Canadian public for their input about how to implement this new legislation. The purpose of this *Charity Law Bulletin* is to explore these proposed amendments to the *Telecommunications Act* and their possible impact on charities and not-for-profit organizations that engage in telemarketing.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2005/chylb62.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2005/chylb62.htm

Duties of Directors – Chapter Excerpt from Primer for Directors now Available

by Jane Burke-Robertson in *Primer for Directors of Not-for-Profit Corporations*. Industry Canada (2002).

The board of directors of a not-for-profit corporation is responsible for the management of the corporation. In general terms, this means that the board is responsible for supervising senior staff, providing strategic planning to the corporation, and developing and implementing corporate policy. Board members must be (or at least must become) knowledgeable about the business and financial affairs of the corporation. Where the corporation is a charity, the board has a heightened duty of care with respect to the protection of its charitable property. This excerpted chapter summarizing the duties of directors in respect of that role is now available on our website.

Read More:

[PDF] <http://www.carters.ca/pub/book/2002/dirprimch2.pdf>

Liability of Directors – Chapter Excerpt from Primer for Directors now Available

by Jane Burke-Robertson in Primer for Directors of Not-for-Profit Corporations. Industry Canada (2002).

As a general rule, directors are not personally liable for the contracts of, or the actions or omissions of, the corporation that they serve because a corporation is considered to be a separate legal person at law. The liability protection afforded to directors as a result of incorporation is often referred to as the “corporate veil”. However, there are exceptions to this general rule and there are many instances of directors’ liability at common law, under federal and provincial statutes, and under the Civil Code of Québec. Directors of non-for-profit corporations should be aware of these exceptions. This excerpted chapter explaining the liability exposure of directors is now available on our website.

Read More:

[PDF] <http://www.carters.ca/pub/book/2002/dirprimch3.pdf>

Legal Risk Management Checklists Updated – January 2005

The operations of not-for-profit organizations have become complex and the possibility of litigation occurring as a result of their operations is greater than ever before. Exposure of not-for-profit organizations to liability goes further than the loss of the assets themselves and/or the insolvency or winding up of the not-for-profit. Directors of not-for-profit organizations may also personally face legal actions against themselves by members, third parties and governmental authorities for breach of their fiduciary duties as directors. Given the increased risk to both not-for-profit organizations and their directors, there is an increasing need to protect their assets from lawsuits and creditors on a pro-active basis. Legal risk management checklists, both for charities and not-for-profit organizations, have been recently updated. The purpose of these checklists are to provide a brief outline of some of the more important issues that directors and/or executive staff of not-for-profit organizations, whether incorporated or not, may need to consider in ensuring due diligence in the organization’s operation, as well as an overview of liability exposure faced by not-for-profit organizations in Canada and some of the steps that should be taken to protect them against such risks.

Legal Risk Management Checklist for Not-for-Profit Organizations

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

Legal Risk Management Checklist for Charities

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

Proposed Act Extending Legal Capacity to Marry to Same Sex Couples

On February 1, 2005, *An Act Respecting Certain Aspects of Legal Capacity for Marriage for Civil Purposes* received first reading in the federal House of Commons. If passed this Act would have the effect of legalizing civil same sex marriage. See link below for full text of the proposed Act.

[LINK] http://www.parl.gc.ca/PDF/38/1/parlbus/chambus/house/bills/government/C-38_1.PDF

IN THE PRESS

Recent Changes to the *Income Tax Act* Affecting Charities in Canada, by Terrance S. Carter and Theresa L.M. Man.

The International Journal of Civil Society Law, Vol. III Issue I. January 2005.

[PDF] <http://www.law.cua.edu/Students/Orgs/IJCSL/>

Windsor Star and other media cover United Way Distinguished Speaker Luncheon with Terrance S. Carter speaking on “Director & Officer Liability & Beyond.”

Windsor Star, January 20, 2005.

[PDF] http://www.carters.ca/news/2005/local_news/tsc0119.PDF

RECENT EVENTS AND PRESENTATION MATERIALS

United Way Distinguished Speaker Luncheon (Windsor – Essex County), was held in Windsor, Ontario, January 19 2005, with Terrance S. Carter presenting the following:

“The Legal Duties of Directors of Charities and Not-for-Profits”

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119a.pdf>

[WEB] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119a.htm>

[Paper] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119aa.pdf>

“Good Governance in Meeting the Duties of Directors of Charities and Not-for-Profits”

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119b.pdf>

[WEB] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119b.htm>

[Paper] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119ab.pdf>

“Due Diligence in Avoiding Risks for Directors of Charities and Not-for-Profits”

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119c.pdf>

[WEB] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119c.htm>

[Paper] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119ac.pdf>

“How to Avoid Liability in Fundraising”

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119d.pdf>

[WEB] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119d.htm>

“Recent Changes to the *Income Tax Act* Affecting Charities”

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119e.pdf>

[WEB] <http://www.carters.ca/pub/seminar/charity/2005/tsc0119e.htm>

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

Legal Issues for Associations, a one-day conference hosted by the Canadian Society of Association Executives, was 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 for Associations,” by Terrance S. Carter;
[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0127a.pdf>
[WEB] <http://www.carters.ca/pub/seminar/charity/2005/tsc0127a.htm>

“Overview of Intellectual Property Issues for Associations,” by Terrance S. Carter; and
[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0127b.pdf>
[WEB] <http://www.carters.ca/pub/seminar/charity/2005/tsc0127b.htm>

“Avoidance of Risks by Directors of Charities and Non-Profits,” by Jane Burke-Robertson (Counsel);
[PDF] <http://www.carters.ca/pub/seminar/charity/2005/jbr0127.pdf>
[WEB] <http://www.carters.ca/pub/seminar/charity/2005/jbr0127.htm>

UPCOMING EVENTS AND PRESENTATIONS

Canadian Fundraiser Workshop is being 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.

[LINK] http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_id=32

Volunteer Action Centre “Governance Flavour of the Month” Legal Risk Management for Directors seminar is being 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.

[LINK] <http://www.k-wvolcentre.on.ca/>

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

[LINK] <http://www.softconference.com/oba/eventdetails.aspx?userID=23528222064787226113200523944&isCLE=yes&code=05RPR0303C>

Current Legal Issues in Health Research is being 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>

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,
- “Penalties, Sanctions and Regulatory Reform Affecting Charities” by M. Elena Hoffstein,
- “Privacy Legislation and its Impact on Charities” by Mark J. Wong,
- “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 Theresa L.M. Man, and
- “Recent Case Law of Importance to Health Care Charities” by Sarah Bradley.

[Brochure] <http://www.carters.ca/pub/seminar/notice/2005/health0310.pdf>

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

United Way of Peel Region – Employment Issues for Non-Profit Organizations seminar is being held in Mississauga, Ontario, on March 22, 2005, with Mark J. Wong presenting.

[LINK] http://www.unitedwaypeel.org/pics/workshop_march_employment_issues.pdf

12th 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-acpd.org/AnnCon2005Program.pdf>

CONTRIBUTORS



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.



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.



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*.



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.



D. Ann Walters – Articling with Carter & Associates, Anne received her law degree from Queen's University in 2004, where she also provided administrative support at the International Centre, worked as a caseworker in the Legal Aid Office and volunteered in the Ban Righ Women's Centre. Ann has extensive volunteer experience, including working with elderly and developmentally challenged people. During her articles, Ann has provided research and writing assistance on numerous articles and for the *Charity Law Bulletin*.



Anne-Marie Langan – Articling with Carter & Associates, Anne-Marie received her law degree from Queen's University in 2004, 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. Ms. Langan also won an award for a paper entitled "Unrepresented Litigants in the Family Courts of Ontario," which will be published in the Spring 2005 issue of the Queen's Law Journal.

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)	tcarter@carters.ca
Mervyn F. White B.A., LL.B.	mwhite@carters.ca
Jacqueline M. Connor B.A., LL.B.	jconnor@carters.ca
Theresa L.M. Man B.Sc., M.Mus., LL.B.	tman@carters.ca
Mark J. Wong B.A., LL.B.	mwong@carters.ca
Esther S.J. Oh B.A., LL.B.	estheroh@carters.ca
John M.C. Latham B.A., LL.B.	jlatham@carters.ca
R. Johanna Blom B.A., J.D.	jblom@carters.ca
Suzanne E. White B.A., LL.B.	swhite@carters.ca
U. Shen Goh LL.B., LL.M.	sgoh@carters.ca
COUNSEL:	
Bruce W. Long B.A., LL.B.	blong@carters.ca
Donald J. Bourgeois B.A., LL.B.	dbourgeois@carters.ca
Jane Burke-Robertson B.Soc.Sci., LL.B.	janebr@carters.ca

Main Office Location

211 Broadway, P.O. Box 440
Orangeville, Ontario, Canada, L9W 1K4
Tel: (519) 942-0001
Fax: (519) 942-0300
info@carters.ca

Toronto Meeting Location

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

Ottawa Meeting Location

(by appointment only)
70 Gloucester Street
Ottawa, Ontario, Canada
(613) 212-2213

Toll Free: 1-877-942-0001

www.carters.ca
www.charitylaw.ca
www.churchlaw.ca
www.antiterrorismlaw.ca

London Meeting Location

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

Vancouver Meeting Location

(by appointment only)
2100 - 1075 West Georgia Street
Vancouver, British Columbia
(877) 942-0001

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