

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

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**HIGHLIGHTS**

Upcoming Seminar (Feb 10) - "Healthcare Philanthropy: Challenges and Solutions" with keynote speaker Maureen Kidd, Director General of the CCRA Charities Directorate
Policy Based Governance - What Works and What Doesn't
Bill C-45 and its Effect on Criminal Liability and Insurance Coverage for Charities
CCRA Policy Statements Concerning Charitable Property

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## **NEW PUBLICATIONS**

### **Policy Based Governance - What Works and What Doesn't**

*by Donald J. Bourgeois in Charity Law Bulletin No.34, January 28, 2004.*

There is an ongoing discussion or debate about "policy governance" and "administrative governance" and which one is better than the other. This discussion sometimes misses the point; rather than deciding which is better, the focus should be on what will work or not work for a specific organization. This article will briefly define "policy governance" and "administrative governance", review standards of care for directors and officers, examine factors for boards of directors to take into account in determining governance approach that works for their organization and review policies that ought to be in place for most organizations.

#### **Read More:**

[PDF] [www.carters.ca/pub/bulletin/charity/2004/chylb34.pdf](http://www.carters.ca/pub/bulletin/charity/2004/chylb34.pdf)

[WEB] [www.carters.ca/pub/bulletin/charity/2004/chylb34.htm](http://www.carters.ca/pub/bulletin/charity/2004/chylb34.htm)

### **Bill C-45 and its Effect on Criminal Liability and Insurance Coverage for Charities**

*by Mervyn F. White, Bruce W. Long and Shen Goh in Charity Law Bulletin No.35 January 30, 2004.*

The Canadian Government has recently introduced amendments to the *Criminal Code of Canada*, R.S.C. 1985 c.C-46 (the "Criminal Code"), which will effect when organizations and their representatives will face criminal liability for negligent conduct. Bill C-45, "*An Act to Amend the Criminal Code (Criminal Liability of Organizations)*", received Royal Assent on November 7, 2003, but has not yet been proclaimed into force at the time of this article's publication. It is anticipated that the amendments will come into force and effect shortly.

When the amendments are proclaimed into force, Bill C-45 will impose a *Criminal Code* duty on organizations and their representatives to protect their workers and the public by creating a *Criminal Code* duty similar to the duty already found in the *Occupational Health and Safety Act* (Ontario), which requires that employers take every reasonable precaution to protect their employees.

#### **Read More:**

[PDF] [www.carters.ca/pub/bulletin/charity/2004/chylb35.pdf](http://www.carters.ca/pub/bulletin/charity/2004/chylb35.pdf)

[WEB] [www.carters.ca/pub/bulletin/charity/2004/chylb35.htm](http://www.carters.ca/pub/bulletin/charity/2004/chylb35.htm)

## CCRA Policy Statements Concerning Charitable Property

by Terrance S. Carter and Suzanne E. White in *Charity Law Bulletin No. 36, January 30, 2004.*

This *Charity Law Bulletin* ("Bulletin") provides a brief overview of three *Policy Statements* dealing with charitable property, entitled *Holding of Property for Charities* (Revised January 14, 2003), *Management of Investment Portfolio* (August 1, 2002), and *Third Party Fundraisers* (February 26, 2003) (collectively "Policy Statements"), that were recently posted on the Canada Customs and Revenue Agency ("CCRA") website. All three *Policy Statements* are applicable to charities in the way in which they can deal with charitable property, whether in the form of land, goods, or funds. Portions of this *Bulletin* were previously published in a paper prepared for the Sixth Annual Estates and Trusts Forum entitled, "Recent Changes under the *Income Tax Act* and Policies Related to Charities and Charitable Gifts", which can be accessed at [www.carters.ca/pub/article/charity/2003/tsc1119.pdf](http://www.carters.ca/pub/article/charity/2003/tsc1119.pdf)

### Read More:

[PDF] [www.carters.ca/pub/bulletin/charity/2004/chylb36.pdf](http://www.carters.ca/pub/bulletin/charity/2004/chylb36.pdf)

[WEB] [www.carters.ca/pub/bulletin/charity/2004/chylb36.htm](http://www.carters.ca/pub/bulletin/charity/2004/chylb36.htm)

## IN THE PRESS

**The Lawyers Weekly** coverage of the 2003 Annual Church & the Law Seminar in (January 30, 2004).

"Churches should establish their position on same-sex marriage - pro or con"

[Link] [www.carters.ca/news/2004/lawyerwkly/clss0130.pdf](http://www.carters.ca/news/2004/lawyerwkly/clss0130.pdf)

"Churches must adapt to changing times - and laws"

[Link] [www.carters.ca/news/2004/lawyerwkly/cl0130.pdf](http://www.carters.ca/news/2004/lawyerwkly/cl0130.pdf)

Charity Law Bulletin No. 25 by Terrance S. Carter was reproduced in **Charitable Thoughts** (Vol 7 No 2, January 2004) – "New CCRA Policy on Political Activities".

[PDF] [www.carters.ca/news/2004/charthts/TSCjan.pdf](http://www.carters.ca/news/2004/charthts/TSCjan.pdf)

"Impact of the Personal Information Protection and Electronic Documents Act (PIPEDA) on Charitable and Non-Profit Organizations" by Mark J. Wong and based on his remarks at the Ontario Bar Association meeting of the Charity and Not-for-Profit Law Section recently published in **Charitable Thoughts** (Vol 7 No 2, January 2004).

[PDF] [www.carters.ca/news/2004/charthts/mjwjjan.pdf](http://www.carters.ca/news/2004/charthts/mjwjjan.pdf)

Charity Law Bulletin No. 28 by Mark J. Wong was reproduced in **The Canadian Association Ezine** (January 2004). "Impact of the Personal Information Protection and Electronic Documents Act (PIPEDA) on Charitable and Non-Profit Organizations"

[Link] [www.axi.ca/tca/Jan2004/guestarticle\\_5.shtml](http://www.axi.ca/tca/Jan2004/guestarticle_5.shtml)

**The Canadian Association Ezine** included a link to *Charity Law Bulletin* No. 33 on the "New CCRA Policy on Gift Certificates" by Terrance S. Carter and Suzanne E. White.

[Link] [www.axi.ca/tca/Jan2004/accordingtotherules.shtml](http://www.axi.ca/tca/Jan2004/accordingtotherules.shtml)

## **RECENT EVENTS AND PRESENTATION MATERIALS**

New Lawyer - Carter & Associates is pleased to announce that R. Johanna Blom, B.A., J.D., has joined the firm's litigation group and will be practicing in the area of Charity and Not-for-Profit Law as well as Human Rights and Family Law. (January 2004)

[WEB] [www.carters.ca/lawyers/jblom.html](http://www.carters.ca/lawyers/jblom.html)

**How Should the Church Respond to Recent Legal Developments in Canada?** and presentations made by Carter & Associates lawyers at this legal seminar hosted by Grace Apostolic Church in association with Canadian Apostolic Ministries in Scarborough, Ontario (January 31, 2004):

"Same Sex Marriages: What Churches and Religious Charities Can Do in Response"

by Terrance S. Carter and Mervyn F. White,

[PDF] [www.carters.ca/pub/seminar/charity/2004/tscmfw0131.pdf](http://www.carters.ca/pub/seminar/charity/2004/tscmfw0131.pdf)

[WEB] [www.carters.ca/pub/seminar/charity/2004/tscmfw0131.htm](http://www.carters.ca/pub/seminar/charity/2004/tscmfw0131.htm)

"*Criminal Code* Amendments (Bill C-250- Hate Crimes)"

by Bruce W. Long,

[PDF] [www.carters.ca/pub/seminar/charity/2004/bwl0131.pdf](http://www.carters.ca/pub/seminar/charity/2004/bwl0131.pdf)

[WEB] [www.carters.ca/pub/seminar/charity/2004/bwl0131.htm](http://www.carters.ca/pub/seminar/charity/2004/bwl0131.htm)

"Recent Case Law Affecting Churches"

by Mervyn F. White, and

[PDF] [www.carters.ca/pub/seminar/charity/2004/mfw0131.pdf](http://www.carters.ca/pub/seminar/charity/2004/mfw0131.pdf)

[WEB] [www.carters.ca/pub/seminar/charity/2004/mfw0131.htm](http://www.carters.ca/pub/seminar/charity/2004/mfw0131.htm)

"Board Governance Issues for Church Boards and Trustees"

by Terrance S. Carter;

Legal Duties,

[PDF] [www.carters.ca/pub/seminar/charity/2004/tsc0131a.pdf](http://www.carters.ca/pub/seminar/charity/2004/tsc0131a.pdf)

[WEB] [www.carters.ca/pub/seminar/charity/2004/tsc0131a.htm](http://www.carters.ca/pub/seminar/charity/2004/tsc0131a.htm)

Good Governance,

[PDF] [www.carters.ca/pub/seminar/charity/2004/tsc0131b.pdf](http://www.carters.ca/pub/seminar/charity/2004/tsc0131b.pdf)

[WEB] [www.carters.ca/pub/seminar/charity/2004/tsc0131b.htm](http://www.carters.ca/pub/seminar/charity/2004/tsc0131b.htm)

Due Diligence

[PDF] [www.carters.ca/pub/seminar/charity/2004/tsc0131c.pdf](http://www.carters.ca/pub/seminar/charity/2004/tsc0131c.pdf)

[WEB] [www.carters.ca/pub/seminar/charity/2004/tsc0131c.htm](http://www.carters.ca/pub/seminar/charity/2004/tsc0131c.htm)

**Hospitals and Foundations Seminar Series** (Day 1 - January 22, 2004) "Hospitals and Foundations in Transition: Issues and Opportunities" with keynote speaker David A. Brown, Chair of the Ontario Securities Commission.

"Privacy Compliance: What Charities Need to Do" to be presented by Mark J. Wong to the **United Way of Peel Region** (January 20, 2004).

[PDF] [www.carters.ca/pub/seminar/charity/2004/mjw0120.pdf](http://www.carters.ca/pub/seminar/charity/2004/mjw0120.pdf)

[WEB] [www.carters.ca/pub/seminar/charity/2004/mjw0120.htm](http://www.carters.ca/pub/seminar/charity/2004/mjw0120.htm)

"Directors, Officers and Trustees - How to do your job and avoid liability at the same time" to be presented by Donald J. Bourgeois at **The Essential Curriculum in Charities course** from Osgoode Hall Law School. (January 15, 2004).

"Recent Changes to the Income Tax Act and Policies Relating to Charities and Charitable Gifts" was presented by Terrance S. Carter for the **Waterloo-Wellington Estate Planning Council**. (January 8, 2004)

[PDF] [www.carters.ca/pub/seminar/charity/2004/tsc0108.pdf](http://www.carters.ca/pub/seminar/charity/2004/tsc0108.pdf)

[WEB] [www.carters.ca/pub/seminar/charity/2004/tsc0108.htm](http://www.carters.ca/pub/seminar/charity/2004/tsc0108.htm)

"Director's Liabilities" was presented by Donald J. Bourgeois for the **Etobicoke District Chartered Accountants' Association**. (January 5, 2004)

## UPCOMING EVENTS AND PRESENTATIONS

**Hospitals and Foundations Seminar Series** (Day 2 - February 10, 2004) "Healthcare Philanthropy: Challenges and Solutions" with keynote speaker Maureen Kidd, Director General of the CCRA Charities Directorate, and talks on;

"Recent Changes to the Income Tax Act and Policies Affecting Charities"  
by Terrance S. Carter,

"Policy Based Board Governance: What Works & What Doesn't"  
by Donald J. Bourgeois, and

"How to Avoid Liability in Fundraising"  
by Terrance S. Carter.

[Link] <http://www.fasken.com/web/fmdwebsite.nsf/AllDoc/37E6A298DCAE34CD85256E160068128D?OpenDocument>

"Performance Expectations and Employment Law - Maintaining a Balance" to be presented by Mervyn F. White at the **Not-for-Profit Performance Management Made Easy** workshop sponsored by Canadian Fundraiser (February 18, 2004).

"Recent Changes to the Income Tax Act and Policies Relating to Charities and Charitable Gifts" to be presented by Terrance S. Carter for the **Society of Estate and Trust Practitioners (STEPS)** in Toronto (March 4, 2004).

**2nd National Symposium on Charity Law** (April 14, 2004) "What's New and What's Coming", being held in Toronto by the Canadian Bar Association (CBA), Ontario Bar Association (OBA) and the Canadian Association of Gift Planners (CAGP), is Co-Chaired by Terrance S. Carter with talks from Carter & Associates lawyers on;

"Extra Provincial Corporate and Fundraising Compliance for Charities"  
by Jacqueline M. Connor and Esther S.J. Oh,

"Board Governance - When Does It Become Director's Negligence"  
by Donald J. Bourgeois (counsel to Carter & Associates),

"Reform of the Canada Corporations Act"  
by Jane Burke-Roberston (counsel to Carter & Associates), and

"Avoiding Wasting Assets II - Intellectual Property Protection for Charities"  
by Terrance S. Carter.

**More details at the CBA website.**

[Link] [www.cba.org/CBA/CLE/cle00/charities.asp](http://www.cba.org/CBA/CLE/cle00/charities.asp)

"Looking a Gift Horse in the Mouth: Legal Liabilities in Fundraising" to be presented by Terrance S. Carter at the 11th National CAGP Conference in Toronto (April 15, 2004).

**More details at the CAGP website.**

[Link] [www.cagp-acpdp.org/ancon\\_frame.htm](http://www.cagp-acpdp.org/ancon_frame.htm)



## CONTRIBUTORS



**Terrance S. Carter** – Practices 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).



**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.



**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 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.



**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.



**Esther S.J. Oh** – Practices primarily in Charity and Not-for-Profit Law, as well as in Immigration Law. Ms. Oh is also a frequent contributor to [www.charitylaw.ca](http://www.charitylaw.ca) and the *Charity Law Bulletin*, and has spoken at the annual *Church & the Law™* Seminar as well as at the Canadian Bar Association/Ontario Bar Association's 2nd National Symposium on Charity Law.



**Suzanne E. White** – Articling with Carter & Associates, Ms. White has a Law degree from the University of Windsor and was also a Student Editor at the Canadian American Research Centre for Law & Policy. During that time, she has regularly assisted on articles posted to [www.charitylaw.ca](http://www.charitylaw.ca) and the *Charity Law Bulletin*. After being called to the Bar in August 2004, Ms. White will be returning to Carter & Associates to practice in the area of Charity & Not-for-Profit Law as well as General Litigation.



**U. Shen Goh** – Articling with Carter & Associates, Ms. Goh has a Master of Law degree from the University of San Diego School of Law and an LL.B. from Osgoode Hall Law School

## ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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