

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

JANUARY 2005 ISSUE

SECTIONS

Recent Publications and news Releases	2
In The Press	4
Recent Events and Presentation Materials	4
Upcoming Events and Presentations	5
Contributors	6
Acknowledgements, Errata and other Miscellaneous Items	8

HIGHLIGHTS

December 2004 Amendments to the <i>Income Tax Act</i> Affecting Charities
The Implications for Charities of Anti-Terrorism Initiatives on Humanitarian Assistance for Southeast Asia
<i>Canada Not-For-Profit Corporations Act</i> and Its Impact on Charitable and Non-Profit Corporations
Supreme Court Same Sex Marriage Reference : What are the Implications for Churches and Religious Officials?
Essential Recent Developments in Charity Law
Senate Banking Committee Report on Charitable Giving Adopted

Timing of the January Issue: As a result of the numerous developments in relation to charities at the end of 2004, and early in the new year, we felt it important to provide information regarding the same in a timely manner and have therefore delayed the release of this update.

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RECENT PUBLICATIONS AND NEWS RELEASES

December 2004 Amendments to the *Income Tax Act* Affecting Charities

by Theresa L.M. Man and Terrance S. Carter in *Charity Law Bulletin No.61*, January 12, 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, which received first reading on December 8, 2004, and, on December 14, 2004, was moved to be read a second time and referred to a committee. 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. This *Charity Law Bulletin* provides a summary of the proposals in the December 2004 Amendments that vary from the September 2004 Amendments.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2005/chylb61.pdf

The Implications for Charities of Anti-Terrorism Initiatives on Humanitarian Assistance for Southeast Asia

by Terrance S. Carter and Sean S. Carter in *Anti-Terrorism and Charity Law Alert No.6*, Jan. 11, 2005.

In the wake of the recent disastrous tsunami in Southeast Asia there is tremendous need for emergency aid and humanitarian assistance. To meet these needs, Canadian citizens and charities have responded with an unprecedented outpouring of donations in support of the humanitarian relief effort. However, what may not be initially evident to Canadian charities is the application of Canadian anti-terrorism legislation to the activities undertaken to provide humanitarian aid. Active compliance with the legislation is needed at all levels of a charity's operations as it responds to the disaster. Given the complexity of the compliance issues, this article can provide only a very brief overview of some of the issues and concerns that charities should consider while assisting with the tsunami humanitarian relief effort.

Read More:

[PDF] <http://www.carters.ca/pub/alert/atcla/atcla06.pdf>

Canada Not-For-Profit Corporations Act and Its Impact on Charitable and Non-Profit Corporations

by Jacqueline M. Connor and Terrance S. Carter in *Charity Law Bulletin No.60*, December 30, 2004.

The *Canada Not-for-profit Corporations Act* will replace Parts II and III of the *Canada Corporations Act*, a statute that was first enacted in 1917 and has not been substantively changed since that time. The purpose of the Act is to provide a "modern corporate governance framework" for regulating federally incorporated not-for-profit corporations. In order to bring the legislation up to date, the new Act was modelled on the provisions of the *Canada Business Corporations Act*. As well, it incorporates salient provisions from

provincial not-for-profit statutes and was benchmarked against similar legislation in the United States. This *Charity Law Bulletin* provides a summary of the proposed act, and its impact on charitable and not-for-profit organizations.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2004/chylb60.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2004/chylb60.htm

Supreme Court Same Sex Marriage Reference : What are the Implications for Churches and Religious Officials?

by Terrance S. Carter and Mervyn F. White in Church Law Bulletin No. 07, January 10, 2005.

The federal government has decided to introduce new legislation, currently entitled *Proposal for an Act Respecting Certain Aspects of Legal Capacity for Marriage for Civil Purposes*, which would have the effect of recognizing the right of same sex couples to marry across Canada. Rather than introducing this Act in Parliament, the Attorney General sent a reference to the Supreme Court of Canada asking several questions. This *Church Law Bulletin* summarizes the Supreme Court's decision in answer to these questions, handed down on December 9, 2004, and attempts to describe what consequences this decision and the proposed act might have on churches and religious officials who are opposed to same sex marriage.

Read More:

[PDF] www.carters.ca/pub/bulletin/church/2005/chchlb07.pdf

[WEB] www.carters.ca/pub/bulletin/church/2005/chchlb07.htm

Essential Recent Developments in Charity Law

by Terrance S. Carter, December 1, 2004.

A paper entitled "Essential Recent Developments in Charity Law" for the year 2004 was presented by Terrance S. Carter at the Seventh Annual Estates & Trusts Law Summit, hosted by the Law Society of Upper Canada, in Toronto, Ontario, on December 1, 2004.

Read More:

[PDF] www.carters.ca/pub/article/charity/2004/tsc1201.pdf

Senate Banking Committee Report on Charitable Giving Adopted

The Senate adopted the fourth report of the Standing Senate Committee on Banking, Trade and Commerce, entitled: *The Public Good and Private Funds: The Federal Tax Treatment of Charitable Giving by Individuals and Corporations*, on December 15, 2004.

[LINK] <http://www.parl.gc.ca/38/1/parlbus/commbus/senate/com-e/bank-e/rep-e/rep04dec04-e.htm>.

IN THE PRESS

A Review of Draft Amendments to the *Income Tax Act*, by Theresa L.M. Man and Terrance S. Carter.
The Bottom Line, January 2005.

[PDF] <http://www.carters.ca/news/2005/bottomline/tlmtsc01.PDF>

ChristianWeek coverage of the 2004 Annual *Church & Charity Law*[™] Seminar Highlights of the one day seminar were outlined in an article entitled "Churches encouraged to stay on top of legal issues."

ChristianWeek, Vol 18, No 19, December 17, 2004.

RECENT EVENTS AND PRESENTATION MATERIALS

"Recent Changes to the *Income Tax Act* Affecting Charities and Donations," was presented by Terrance S. Carter for the Toronto Estate Planning Council in Toronto, Ontario, on December 7, 2004.

[PDF] <http://www.carters.ca/pub/seminar/charity/2004/tsc1207.pdf>

Institute of Chartered Accountants - Directors & Officers Liabilities & Beyond was held in Ottawa, Ontario, on December 7, 2004, with Terrance S. Carter presenting on various topics.

Association of Fundraising Professionals (AFP) 2004 Congress - Current Legal Issues in Fundraising was 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.

Duties and Obligations of Directors: Basics for Foundations, was presented by Terrance S. Carter for the Philanthropic Foundation Canada in Toronto, Ontario, on December 1, 2004.

Essential Recent Developments in Charity Law, was presented by Terrance S. Carter at the Seventh Annual Estates & Trusts Law Summit, hosted by the Law Society of Upper Canada, in Toronto, Ontario, on December 1, 2004.

[PDF] <http://www.carters.ca/pub/article/charity/2004/tsc1201.pdf>

“Recent Developments on the *Personal Information Protection and Electronic Documents Act* and its Impact on Ontario Businesses” was presented by U. Shen Goh for the Greater Dufferin Area Chamber of Commerce in Orangeville, Ontario on December 17, 2004.

[PDF] <http://www.carters.ca/pub/seminar/business/2004/usg1217.pdf>

UPCOMING EVENTS AND PRESENTATIONS

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-Robertson (Counsel);

See link below for details.

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

Church Leadership & the Law hosted by **Christian Legal Fellowship** is being held in London, Ontario, on February 15, 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.

Contact ruth.ross@christianlegalfellowship.org by February 7 to register.

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>

Health/Privacy & Charities Seminars are being hosted by Fasken Martineau DuMoulin LLP and Carter & Associates at The Sunnybrook Estates in Toronto, Ontario, on March 3 and 10, 2005.

More details will follow.

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

CONTRIBUTORS



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.



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. Mr. White is a contributing author to *Charity Law Bulletin* and *Church Law Bulletin*, a regular speaker at the annual *Church & the Law™* Seminar, and an invited speaker for organizations such as the Association of Fundraising Professionals, and Canadian FundRaiser.



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.



U. Shen Goh – Ms. Goh practices in the area of intellectual property, focusing on trademarks, privacy and information protection, as well as general litigation. She has a Master of Law degree from the University of San Diego School of Law and an LL.B. from Osgoode Hall Law School. Ms. Goh has also been an invited speaker for the Greater Dufferin Area Chamber of Commerce and the Social Planning Council of Peel.



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.

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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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
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(519) 937-2333

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