

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

JULY / AUGUST 2005 ISSUE

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New Ottawa Office Opened July 1, 2005

See news for more information.

2005 Annual Church & Charity Law Seminar

Hosted by Carters & Associates in Toronto, Ontario.

Wednesday, November 9, 2005.

Will be held at the Young - Nak Korean Presbyterian Church of Toronto. More details will be available in the fall.

Get on Our Mailing List: To automatically receive the free monthly *Charity Law Update*, send an email to info@carters.ca with "Subscribe" in the subject line. Please feel free to forward this Update to anyone (internal or external to your organization) who may be interested in being put on our monthly mailing list.

RECENT PUBLICATIONS AND NEWS RELEASES

Proposed Changes to the *Income Tax Act* Affecting Charities

On July 18, 2005, the Department of Finance released legislative proposals to amend the *Income Tax Act*. Some of these changes affect charities and were first released in December 2002, then reissued with certain additional measures in a package of draft legislative proposals released on February 27, 2004. For more information on the December 2002 and February 2004 amendments, see *Charity Law Bulletin* Nos. 21 and 40, available at <http://www.charitylawbulletin.ca/A> *Charity Law Bulletin* outlining the changes relevant to charities will be published in the near future.

Read More:

[WEB] <http://www.fin.gc.ca/news05/05-049e.html>

A Comparison of the Three Categories of Registered Charities

by Theresa L.M. Man and Terrance S. Carter in *Charity Law Bulletin* No.73, July 21, 2005.

This *Charity Law Bulletin* provides an overview of the differences between charitable organizations, public foundations and private foundations and their requirements under the *Income Tax Act*. As a result of recent proposed amendments concerning the definitions of charitable organizations and public foundations, as well as the recently amended disbursement quota rules that apply to them, there will be little functional difference between charitable organizations and public foundations. To facilitate comparison, a table has been included which may serve as a useful tool in assisting the charitable sector and charity law practitioners to determine a registered charities appropriate designation.

Read More:

[PDF] <http://www.carters.ca/pub/article/charity/2005/tlm0705.pdf>

CRA's New T3010 Charity Information Return Now Available

The new T3010 Charity Information Return is now available on Canada Revenue Agency's website with the form and the accompanying guide. The new version (05) of Form T3010A, Registered Charity Information Return, is to be used by registered charities completing a return for a fiscal period that started after March 22, 2004 (e.g., April 1, 2004 to March 31, 2005 fiscal period). Please note that all charities will still have to use the old form for year-ends that are dated March 22, 2004 or prior.

Read More:

T3010A Registered Charity Information Return

<http://www.cra-arc.gc.ca/E/pbg/tf/t3010a/README.html>

T4033A Completing the Registered Charity Information Return

<http://www.cra-arc.gc.ca/E/pub/tg/t4033a/README.html>

Update On Bill C-45: Criminal Liability for Workplace Negligence Now In Force

by Mervyn F. White assisted by Derek Ross in Charity Law Bulletin No.72, July 20, 2005.

Charity Law Bulletin No 35 addressed Bill C-45, *An Act to Amend the Criminal Code (Criminal Liability of Organizations)*, and its effect on criminal liability and insurance coverage for charities. Since the publication of that Bulletin, Bill C-45 has come into force (March 31, 2004), and is now part of s. 22.1, 22.2, and 271.1 of the *Criminal Code of Canada*. Despite the relatively short period of time since the coming into force of the Bill, criminal charges have already been laid under these new provisions. This *Charity Law Bulletin* will summarize the content of the Bill and address these new developments.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb72.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2005/chylb72.htm>

Bill C-37 Committee Report Adds Exemption for Charities from “Do Not Call” List

On June 13, 2005, the Standing Committee on Industry, Natural Resources, Science and Technology released its report on Bill C-37, *An Act to amend the Telecommunications Act*. The Act proposes to create a national “do not call” list, a database where individuals can register their phone numbers to prevent calls from telemarketers and other organizations. The Standing Committee’s amendments create an exemption for registered charities from prohibitions and requirements imposed by such a list. The Bill must return to Parliament for second and third readings before coming into force.

Read More:

Bill C-37 (Reprinted as amended by Standing Committee)

http://www.parl.gc.ca/38/1/parlbus/chambus/house/bills/government/C-37/C-37_2/C-37-3E.html

Standing Committee’s Report

<http://www.parl.gc.ca/committee/CommitteePublication.aspx?SourceId=119669>

The Three Year Review Of C-36, *Anti-Terrorism Act*: The Ongoing Consequences and Impact for Canadian Charities

by Terrance S. Carter and Sean S. Carter in Anti Terrorism and Charity Alert No. 7, July 21, 2005.

Since the burgeoning of anti-terrorism initiatives and legislation in the fall of 2001, charities have been specifically singled out as a “weak point” in the ‘war on terrorism’. A significant portion of Canada’s particular manifestation of anti-terrorism legislation that directly relates to charities can be found in the Anti-terrorism Act, now Chapter 41 of the Statutes of Canada 2001, commonly referred to as C-36. The federal government’s substantial legislative and regulatory anti-terrorism initiatives have left many Canadian charities unsure of how to comply and implement their own due diligence procedures. With little guidance or examples to refer to, C-36 has become the lightning rod for much of the criticism surrounding the government’s anti-terrorism initiatives. Civil society organizations, as well as professional associations such as the Canadian Bar Association, have reiterated their ongoing concerns and objections to fundamental sections of the legislation

during the statutory review process of the Act described below. Among other important revelations that have surfaced during the review of C-36, Canada Revenue Agency has given important testimony concerning the role of security certificates, the increasing frequency of investigations and audits of charities and potential applicants and the circumstances around which charities are voluntarily giving up their charitable status or withdrawing their applications. The purpose of this Alert is to briefly explain why and how the statutory review of C-36 is proceeding, to highlight some of the more important submissions and testimony on C-36, and to explain why the review and the legislation itself is relevant to Canadian charities.

Read More:

[PDF] <http://www.carters.ca/pub/alert/ATCLA/atcla07.pdf>

Privacy Policy Not Enough, 3rd Party Privacy Contract Also Needed To Comply With PIPEDA

by U. Shen Goh, LL.B., LL.M. in *Charity Law Bulletin No. 71, July 14, 2005.*

The first principle of the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”) deals with accountability and states that an organization is responsible for any personal information under its control which it collects, uses or discloses in the course of commercial activities. Accordingly, many charities and non-profit organizations throughout Canada have already instituted privacy policies to demonstrate their commitment to protecting personal information entrusted to them. What many organizations do not realize, however, is that the first principle of accountability also states that an organization is responsible for any personal information that has been transferred to a third party for processing and should use contractual or other means to provide a comparable level of protection while such information is being processed by third parties. As such, organizations that outsource personal information to third parties should also enter into agreements to protect the personal information that is transferred as part of the outsourcing contract. This *Charity Law Bulletin* provides a brief discussion of what constitutes the “transfer” of personal information, and why “3rd party privacy contracts” are necessary.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb71.pdf>

[Web] <http://www.carters.ca/pub/bulletin/charity/2005/chylb71.htm>

Civil Marriage Act Provides Religious Exemptions.

Bill C-38, *Civil Marriage Act*, has been amended to include two new exemptions aimed at protecting individuals and organizations who are opposed to same-sex marriage on religious grounds from being sanctioned under law or losing their charitable status. The bill passed third reading in the House of Commons on June 28, 2005, and second reading in Senate on July 6, 2005, at which time it was referred to the Legal and Constitutional Affairs Committee for further review. A *Church Law Bulletin* on this issue will follow shortly.

Read More:

[PDF] http://www.parl.gc.ca/PDF/38/1/parlbus/chambus/house/bills/government/C-38_3.PDF

Carter & Associates is pleased to announce the opening of an Ottawa office where we are being joined by Jane Burke-Robertson and Karen J. Cooper.

We are expanding our charity and not-for-profit law practice through the opening of an Ottawa Office as of July 1, 2005. Jane Burke-Robertson, a leading expert in the field, will be continuing her charity and not-for-profit practice as part of our Ottawa office. Karen Cooper will also be joining our Ottawa office while on leave from her position as Senior Rulings Officer with the Income Tax Rulings Directorate of Canada Revenue Agency.

Read More:

[PDF] http://www.carters.ca/news/2005/local_news/Ottawa%20Office%20Announcement.pdf

IN THE PRESS

New Sanctions and Penalties for Charities by *Karen J. Cooper*

The Lawyers Weekly (Vol.25 No.12) July 22, 2005.

[PDF] http://www.carters.ca/news/2005/lawyerwkly/TLW_July22_KC.pdf

The Canadian Association eZine reproduced *Charity Law Bulletin No.70*, "Privacy Legislation Increasingly Applied to Charitable and Not-for-Profit organizations," by U. Shen Goh.

Canadian Association eZine (Summer 2005).

[LINK] <http://www.axi.ca/tca/Summer2005/index.shtml>

Canadian Fundraiser eNews included a link to "Proposed Amendments to the Ontario Heritage Act on Charities and Not-for-Profit organizations," by Terrance S. Carter and Ann Walters.

Canadian Fundraiser (Vol. 15, No. 13) July 15, 2005.

[LINK] http://www.canadianfundraiser.com/Newsletter/issue_viewer.asp?Issue_ID=115

Terrance S. Carter was quoted in the *Globe and Mail* concerning charities giving tax advice.

Globe and Mail, July 12, 2005.

[EXCERPT] <http://www.carters.ca/news/2005/Globe/jul1205.htm>

Terrance S. Carter was quoted in the *Globe and Mail* citing tax amendments have come a long way but, the process can still be improved.

Globe and Mail, July 12, 2005.

[EXCERPT] [http://www.carters.ca/news/2005/Globe/jul1205\(2\).htm](http://www.carters.ca/news/2005/Globe/jul1205(2).htm)

PIPEDA Applies to Some Charity Activities by *U. Shen Goh*

The Lawyers Weekly (Vol.25 No.9) July 1st, 2005.

[PDF] <http://www.carters.ca/news/2005/lawyerwkly/usg0701.pdf>

RECENT EVENTS AND PRESENTATION MATERIALS

“Recent Changes to the *Income Tax Act Affecting Charities*” was presented by Terrance S. Carter to the Association of Corporate Grantmakers in Toronto, Ontario on June 21, 2005.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0605.pdf>

[Web] http://www.carters.ca/pub/seminar/charity/2005/tsc0621_files/frame.htm

UPCOMING EVENTS AND PRESENTATIONS

“Recent Legal Developments Affecting Charities” will be hosted by The Ottawa Regional Cancer Foundation in Ottawa, Ontario, on September 15, 2005.

“The Impact of Anti-Terrorism Legislation on Christian Charities” will be presented by Terrance S. Carter to the Canadian Council of Christian Charities in Mississauga, Ontario on September 27, 2005.

“Employment Law” will be presented by Mervyn F. White and Anne-Marie Langan to the Canadian Fundraiser in Toronto on September 28, 2005.

“Advancing Religion as a Head of Charity – What are the Boundaries?” will be presented by Terrance S. Carter at the symposium hosted by the Canadian Council of Christian Charities (CCCC) and Christian Legal Fellowship at the Stage West Hotel in Mississauga, Ontario on September 29, 2005. Details are posted at: <http://www.christianlegalfellowship.org/conference2005/ccccclfpromo.pdf>

CONTRIBUTORS



Sean S. Carter – A J.D. candidate with a B.A. (Hons) from the joint specialist degree program in Political Science and Philosophy at the University of Toronto. Sean is a research assistant and author at Carters, with considerable 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*.



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



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 as adjunct professor at the University of Ottawa, Faculty of Common Law.



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, and has also written on privacy issues for *The Lawyers Weekly* and *Charity Law Bulletin*.



Theresa L.M. Man – Practices charity and not-for-profit law, with particular emphasis on tax issues. Mrs. Man is on the Ontario Bar Association Charity and Not-for-Profit Law Section Executive, has been an invited speaker at the Canadian Bar Association National Symposium on Charity Law, and the *Church & Charity Law*TM Seminar, and has written on taxation issues for charities and non-profits for *The Lawyers Weekly*, *Planned Giving Pulse*, *International Journal of Civil Society Law*, *The Bottom Line*, and *Charity Law Bulletin*.



D. Ann Walters – Called to the Bar in 2005, 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*.



Mervyn F. White – Practices litigation 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 *The Lawyers Weekly*, *Charity Law Bulletin* and *Church Law Bulletin*, and a regular speaker at the annual *Church & Charity Law*TM Seminar and guest speaker for organizations such as Canadian Fundraiser, the Association of Fundraising Professionals, and the Christian Legal Intervention Academy.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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