

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

JUNE 2005 ISSUE

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The Supreme Court of Canada Brings Clarity to Vicarious Liability of Churches in Canada.

Ontario's Same-Sex Marriage Related Legislation now in force.

Bill C-33 implementing 2004 Budget received Royal Assent.

New Ottawa Office Opening July 1, 2005

Details of the opening to follow

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 late summer.

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RECENT PUBLICATIONS AND NEWS RELEASES

New Disbursement Quota Rules Under Bill C-33

by Theresa L.M. Man B.Sc., M.Mus., LL.B. and Elena Hoffstein B.A., M.A., LL.B

The disbursement quota is the prescribed amount that registered charities must disburse each year in order to maintain their charitable registration. The purpose of the disbursement quota is “to ensure that most of a charity’s funds are used to further its charitable purposes and activities; to discourage charities from accumulating excessive funds; and to keep other expenses at a reasonable level.” A good understanding of the disbursement quota rules is important not only for charities, but also for donors and their advisors. On May 13, 2005, Bill C-33 *A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 23, 2004* was passed into law. Bill C-33 implemented significant changes brought by the federal budget announced on March 23, 2004 that affect charities, including, among other things, a complete revamp of the disbursement quota rule. The new disbursement quota rule is now in effect. This paper provides a detailed explanation of the new disbursement quota rules.

Read More:

[PDF] <http://www.carters.ca/pub/article/charity/2005/tlm%200506.pdf>

Advancing Religion as a Head of Charity: What Are the Boundaries?

by Terrance S. Carter, B.A., LL.B. assisted by Anne-Marie Langan

This paper examines the boundaries of advancing religion as a head of charity by reviewing the case law, both historical and recent, that has been influential in this respect. The paper explains what indicia the courts and the Canada Revenue Agency (“CRA”) use to determine whether a particular religious organization is advancing religion as its primary charitable purpose. As well, there is a discussion about how the Charter has influenced advancing religion as a head of charity and examines certain challenges that might be brought in the future to limit the influence of religious organizations. Finally, a brief explanation is given of developments in the UK and Australia concerning advancement of religion. The underlying theme of the paper is that the advancement of religion extends beyond worship in the narrow sense of the word, and includes related activities, such as addressing social, moral and ethical issues and that it is these “related activities” that are often the most beneficial to society. As a result, the author suggests that the CRA and the courts should recognize religious groups that engage in these related activities as being “charitable” as much as religious organizations that are focused on worship.

Read More:

[PDF] <http://www.carters.ca/pub/article/charity/2005/tsc0506.pdf>

Life After Bill C-21: "How Will It Affect Your Organization?"

by Jane Burke-Robertson, B.Soc.Sci., LL.B.

Currently charitable and not-for-profit corporations that wish to be incorporated and governed federally do so under Part II of the *Canada Corporations Act* (the "CCA"). On November 15, 2004, *An Act Respecting Not-for-profit Corporations and Other Corporations Without Share Capital* (Bill C-21) (the "Act" or the "*Canada Not-for-profit Corporations Act*") received first reading in the federal legislature. The Act proposes many changes over the current governance provisions for not-for-profit corporations under the CCA. In that regard, Bill C-21 provides a comprehensive and user friendly legislative scheme that is sufficiently flexible to respond to the individual needs and social reality of a variety of types of not-for-profit corporations.

It will be necessary for existing federal not-for-profit corporations to apply for continuance under the Act during the transition period, i.e. within three years of the Act coming into force, or risk being dissolved under the Act. For corporations that wish to continue under the new statute, the process will be a relatively straightforward and it appears that the forms to be prepared by the government for continuance, incorporation and other corporate actions will be simple to use.

While the anticipated progress of the Bill is an unknown in terms of its timing and other less predictable factors, it is to be hoped that the voluntary sector will be able to take advantage of this modern and flexible legislation within the earliest possible timeframe.

Read More:

[PDF] <http://www.carters.ca/pub/article/charity/2005/jbr0506.pdf>

The Supreme Court of Canada Brings Clarity to Vicarious Liability of Churches in Canada

by Mervyn F. White, B.A., LL.B.

In *John Doe v. Bennett*, the Supreme Court of Canada has tackled the thorny issue of when a church will be vicariously liable for the sexual misconduct of its employees. The case of *John Doe v. Bennett* involved abuse by a parish priest in a Roman Catholic diocese in Newfoundland against a number of young boys who were under his charge and care over a thirty-year span. Bennett ultimately admitted using various means, including money, alcohol and intimidation to abuse his victims. All of the abuse occurred during the time that the offender was employed as a parish priest. This *Charity Law Bulletin* discusses the implications of this decision for Churches, as well as other not-for profit organizations in Canada.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2005/chchlb11.pdf>

[Web] <http://www.carters.ca/pub/bulletin/church/2005/chchlb11.htm>

Bill C-38 Passed 2nd Reading and Has Been Referred To Committee.

On May 4, 2005, *An Act respecting certain aspects of legal capacity for marriage for civil purposes* (Bill C-38) concerning same-sex marriage passed 2nd Reading in Parliament and was referred to the Legislative Committee on Bill-C38. Committee meetings on May 18 and May 31 heard testimony from numerous delegations. A motion has also been put forward by members of the committee to allow for more representatives to make submissions. The future of the legislation remains uncertain.

Read More:

[LINK] <http://www.parl.gc.ca/LEGISINFO/index.asp?Lang=E&Chamber=N&StartList=A&EndList=Z&Session=13&Type=0&Scope=I&query=4381&List=stat>

Bill C-33, *A second Act to Implement Certain Provisions of the Budget Tabled in Parliament* on March 23, 2004, received Royal Assent on May 13, 2003, and is now in force.

Changes brought about by the budget implemented by this act have been the subject of several *Charity Law Bulletins*. For more information, refer to the Act and the bulletins listed below.

Bill C-33, *A Second Act to implement certain provisions of the budget*

[LINK] <http://www.parl.gc.ca/LEGISINFO/index.asp?Lang=E&Chamber=N&StartList=A&EndList=Z&Session=13&Type=0&Scope=I&query=4376&List=stat>

“Effect of Inter-Charity Transfers on Disbursement Quota Calculation under Bill C-33” *Charity Law Bulletin No. 69* by Theresa L.M. Man and Terrance S. Carter.

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb69.pdf>

“Disbursement Quota Formula Under Bill C-33 (March 2004 Federal Budget Enabling Legislation)” *Charity Law Bulletin No. 67* by Theresa L.M. Man and Terrance S. Carter.

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb67.pdf>

Spousal Relationship Statute Law Amendment Act, 2005 (Ontario) dealing with Same-Sex Marriage received Royal Assent on March 9, 2005 and is now in force.

Spousal Relationship Statute Law Amendment Act, 2005 (Ontario) provides exemptions for religious officials from performing same-sex marriages or renting “places of worship” contrary to their beliefs. For a discussion of the implications of this Ontario Act, formerly Bill 171, reference should be made to our *Church Law bulletin* No.8 and recent presentations listed below.

Spousal Relationship Statute Law Amendment Act, 2005

[LINK] http://www.e-laws.gov.on.ca/DBLaws/Source/Statutes/English/2005/S05005_e.htm

“Update Regarding Same-Sex Marriage Legislation (Bill C-38 And Bill 171)”

[PDF] <http://www.carters.ca/pub/bulletin/church/2005/chchlb08.pdf>

“Same Sex Marriages: Part I- The Legal Context, Including the Reference to the Supreme Court of Canada”

[PDF] [http://www.carters.ca/pub/seminar/church/2005/MFW\(b\)0511pp.pdf](http://www.carters.ca/pub/seminar/church/2005/MFW(b)0511pp.pdf)

[WEB] [http://www.carters.ca/pub/seminar/church/2005/MFW\(b\)0511_files/frame.htm](http://www.carters.ca/pub/seminar/church/2005/MFW(b)0511_files/frame.htm)

“Same Sex Marriages: Part II- What Churches Can Do In Response to Recent Legal Developments with Regards to Same Sex Marriage”

[PDF] [http://www.carters.ca/pub/seminar/church/2005/TSC\(b2\)0511pp.pdf](http://www.carters.ca/pub/seminar/church/2005/TSC(b2)0511pp.pdf)

[WEB] [http://www.carters.ca/pub/seminar/church/2005/TSC\(b2\)0511_files/frame.htm](http://www.carters.ca/pub/seminar/church/2005/TSC(b2)0511_files/frame.htm)

Visit www.antiterrorism.ca for the latest updates and resources.

Recent updates include:

- ◆ additions to Canada's listed entities on May 24, 2005, that charities and non-profits need to be aware of,
- ◆ submissions from the Canadian Bar Association, International Civil Liberties Monitoring Group, and the Canadian Association of University Teachers regarding the review of Canada's Anti-terrorism Act, and
- ◆ a link to the "Handbook on Counter-Terrorism Measures: What U.S. Non Profits and Grantmakers Need to Know " produced by Foundation Coalitions, one of the most important publications to come out of the U.S. on this topic in the last year.

Canadian Bar Association Submission on the Three Year Review of the *Anti-terrorism Act*

Terrance Carter is a member of the CBA Anti terrorism Committee and contributed to the section of the CBA report dealing with the impact of this legislation on charities. The full text of the report can be found at:

[LINK] http://www.cba.org/CBA/submissions/2005eng/05_28.asp

IN THE PRESS

Guide to Charitable Giving and Estate Planning from Leave a Legacy in the Globe & Mail.

This invaluable booklet was included as an insert in the Globe & Mail, with articles by Terrance S. Carter of Carter & Associates and M. Elena Hoffstein of our affiliated firm Fasken Martineau DuMoulin LLP, among others.

[PDF] <http://www.carters.ca/news/2005/lal/magazine.pdf>

Christianity.ca included a link to *Church Law Bulletin No. 10*, "Recent Ontario Decision Revisits Prayer in Government Proceedings" by Mervyn F. White in its e-newsletter

[LINK] <http://www.christianitytoday.com/lyris/housenews/archives/05-13-2005.html>

Charitable Thoughts reproduced *Charity Law Bulletin No.69*, "Effect of Inter-Charity Transfers on Disbursement Quota Calculation under Bill C-33" by Theresa L.M. Man and Terrance S. Carter.

Charitable Thoughts Vol. 8 No.5, May 2005.

Threatening the Balance of the Scales of Justice: Unrepresented Litigants in the Family Courts of Ontario

by Anne-Marie Langan in *Queen's Law Journal*, Spring 2005 Volume 30(2)

The prize-winning paper from the Queen's University Law School 2004 Paths Less Travelled Conference by Anne-Marie Langan

Read More:

[PDF] <http://www.carters.ca/news/2005/QueensLJ/langan.pdf>

RECENT EVENTS AND PRESENTATION MATERIALS

3rd National Symposium on Charity Law was hosted by the National Charities and Not-for-Profit Law Section of the Ontario Bar Association and the Continuing Legal Education Committee of the Canadian Bar Association on May 6, 2005, in Toronto, Ontario, with presentations by Carter & Associates lawyers on the following topics.

“Advancing Religion as a Head of Charity: What Are the Boundaries?” by Terrance S. Carter;

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0506pp.pdf>

[WEB] http://www.carters.ca/pub/seminar/charity/2005/TSC0506_files/frame.htm

[PAPER] <http://www.carters.ca/pub/article/charity/2005/tsc0506.pdf>

“Life After Bill C-21: "How Will It Affect Your Organization?"” by Jane Burke-Robertson;

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/jbr0506pp.pdf>

[WEB] http://www.carters.ca/pub/seminar/charity/2005/JBR0506_files/frame.htm

[PAPER] <http://www.carters.ca/pub/article/charity/2005/jbr0506.pdf>

“New Disbursement Quota Rules Under Bill C-33,” by M. Elena Hoffstein & Theresa L.M. Man.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/eh0506pp.pdf>

[WEB] http://www.carters.ca/pub/seminar/charity/2005/EH0506_files/frame.htm

[PAPER] <http://www.carters.ca/pub/article/charity/2005/tlm%200506.pdf>

Church Leadership & the Law was hosted by Christian Legal Fellowship on May 11, 2005, in London, Ontario, with presentations by Carter & Associates lawyers on the following topics.

“Hate Propaganda Under Bill C-250: What Churches Can Do in Response,”
by Bruce Long;

[PDF] [http://www.carters.ca/pub/seminar/church/2005/BWL\(a\)0511pp.pdf](http://www.carters.ca/pub/seminar/church/2005/BWL(a)0511pp.pdf)

[WEB] [http://www.carters.ca/pub/seminar/church/2005/PPBWL\(a\)0511_files/frame.htm](http://www.carters.ca/pub/seminar/church/2005/PPBWL(a)0511_files/frame.htm)

“Same Sex Marriages: Part I - The Legal Context, Including the Reference to the Supreme Court of Canada,” by Mervyn F. White;

[PDF] [http://www.carters.ca/pub/seminar/church/2005/MFW\(b\)0511pp.pdf](http://www.carters.ca/pub/seminar/church/2005/MFW(b)0511pp.pdf)

[WEB] [http://www.carters.ca/pub/seminar/church/2005/MFW\(b\)0511_files/frame.htm](http://www.carters.ca/pub/seminar/church/2005/MFW(b)0511_files/frame.htm)

“Same Sex Marriages: Part II - What Churches Can Do in Response to Recent Legal Developments with Regards to Same Sex Marriage,” by Terrance S. Carter.

[PDF] [http://www.carters.ca/pub/seminar/church/2005/TSC\(b2\)0511pp.pdf](http://www.carters.ca/pub/seminar/church/2005/TSC(b2)0511pp.pdf)

[WEB] [http://www.carters.ca/pub/seminar/church/2005/TSC\(b2\)0511_files/frame.htm](http://www.carters.ca/pub/seminar/church/2005/TSC(b2)0511_files/frame.htm)

"Investigating Criminal Activities Including Sexual Abuse - How to Respond and Protect the Church," by Bruce Long;

[PDF] [http://www.carters.ca/pub/seminar/church/2005/BWL\(c\)0511pp.pdf](http://www.carters.ca/pub/seminar/church/2005/BWL(c)0511pp.pdf)

[WEB] [http://www.carters.ca/pub/seminar/church/2005/BWL\(c\)0511_files/frame.htm](http://www.carters.ca/pub/seminar/church/2005/BWL(c)0511_files/frame.htm)

"Political Activities: What Churches Can and Can't Do," by Terrance S. Carter.

[PDF] [http://www.carters.ca/pub/seminar/church/2005/TSC\(d\)0511pp.pdf](http://www.carters.ca/pub/seminar/church/2005/TSC(d)0511pp.pdf)

[WEB] [http://www.carters.ca/pub/seminar/church/2005/TSC\(d\)0511_files/frame.htm](http://www.carters.ca/pub/seminar/church/2005/TSC(d)0511_files/frame.htm)

UPCOMING EVENTS AND PRESENTATIONS

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

“**Recent Changes to the *Income Tax Act* Affecting Religious Organizations**,” will be presented by Terrance S. Carter to the Association of Treasurers of Religious Institutions in Edmonton, Alberta on October 2, 2005.

Continuing Legal Education Program of the Ontario Bar Association with a presentation on “Risk Management for Directors,” by Terrance S. Carter will be held on October 26, 2005.

“**Comparative Analysis: The Global Perspective**,” will be presented by Terrance S. Carter at the National Center on Philanthropy & the Law 17th Annual Conference at New York University on October 28, 2005.

2005 Annual Church & Charity Law Seminar will be held on Wednesday, November 9, 2005 at the Young-Nak Korean Presbyterian Church of Toronto. More details and registration information available in late summer.

CONTRIBUTORS



Jane Burke-Robertson – Counsel to Carter & Associates in the area of charity and not-for-profit law, Ms. Burke-Robertson was ranked by Lexpert as a consistently recommended practitioner for 2004 in the area of charities and not-for-profits and is advisor 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, a contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*, and an adjunct professor at the University of Ottawa, Faculty of Law.



Terrance S. Carter – Practices at Carter & Associates, primarily in the area of charity and not-for-profit law, and is recognized as one of the leading experts in the area of charity and not-for-profit law in Canada by Lexpert. Mr. Carter is a 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.antiterrorismlaw.ca.



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*.



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.



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 her paper entitled "Unrepresented Litigants in the Family Courts of Ontario," published in the Spring 2005 issue of the Queen's Law Journal.



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.



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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*.



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 *The Lawyers Weekly*, *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.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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