

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

MARCH 2005 ISSUE

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RECENT PUBLICATIONS AND NEWS RELEASES

Employment Advertising by Charities and Not-For-Profits: Issues in Human Rights Law

by Suzanne E. White and Mervyn F. White in Charity Law Bulletin No.65, February 25, 2005.

Many charitable and not-for-profit organizations are actively involved in employment advertising to attract key personnel to carry out the organization's programs and activities. Since these organizations often serve persons who fall into protected groups under human rights legislation, such as persons who have historically experienced discrimination due to age, sex, race, gender, religious beliefs, and creed, there is a tendency to hire persons having similar backgrounds and/or experiences to the groups that they aim to serve. However, charities and not-for-profit organizations must take care to avoid infringing human rights legislation and exposing themselves to human rights complaints in their efforts to hire appropriate employees.

The various federal, provincial and territorial human rights statutes across Canada operate generally in the same manner, in effect prohibiting the dissemination of discriminatory material including by way of employment advertising. Notwithstanding the prohibition of discriminatory employment advertising, each statute provides exemptions that would allow charities and not-for-profit organizations to engage in what would otherwise be considered discriminatory hiring practices, but which practices are reasonably necessary for the organization to further its mandate. This *Charity Law Bulletin* summarizes federal and provincial human rights legislation that affects employment advertising for charities and not-for-profit organizations, and the resulting responsibilities and implications for these groups.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2005/chylb65.pdf

Update Regarding Same-Sex Marriage Legislation (Bill C-38 and Bill 171)

by Terrance S. Carter and Mervyn F. White, assisted by Anne-Marie Langan, in Church Law Bulletin No.8, February 28, 2005.

Justice Minister Irwin Cotler introduced *An Act Respecting Certain Aspects of Legal Capacity for Marriage for Civil Purposes* (Bill C-38) for a first reading in Parliament on February 1, 2005 and debate followed in the House of Commons on February 16, 18 and 21st 2005, at which time Bill C-38 was referred to an ad-hoc legislative committee. The Justice Minister expressed his desire to see this bill become law by June, 2005. The purpose of Bill C-38 is to define civil marriage as "the lawful union of two persons to the exclusion of all others," and thereby extend the legal capacity to marry to same-sex couples. Subsequently, the Attorney General for Ontario introduced *An Act to amend various statutes in respect of spousal relationships* (Bill

171), which, as of February 24th, 2005, had already received third reading. Bill 171, when enacted, will have the effect of amending over seventy Ontario statutes to include or incorporate a definition of spouse that is inclusive of same-sex couples, and also includes some protective provisions for religious officials who are opposed to performing same sex marriages. This bulletin reviews the content of Bill C-38, as well as the content of, and debates that took place in the legislature regarding, Bill 171 in Ontario.

Read More:

[PDF] www.carters.ca/pub/bulletin/church/2005/chchlb08.pdf

The Protection of Confidential Commercial Information in the American and Canadian Contexts (*EF Cultural Travel v. Explorica*)

by Suzanne E. White in the *Canadian Journal of Law and Technology*, July 2004 (available February 2005).

Commercial information, once relegated to paper files stored in cabinets, is now more likely to be in digital form, allowing a myriad of people to access its contents. These electronic storehouses can subsequently be stored on the Internet, providing a handy but some-what risky means of archiving valuable information. The United States Court of Appeals judgment *EF Cultural Travel v. Explorica* is a clear indicator of the way in which the advent of the Internet has completely changed the constructive meaning of the traditional “office file.” This paper attempts to provide an understanding of the scope and potential impact on policy relating to confidential information and the use of Internet robots. In addition, this paper will provide an assessment of whether or not the same — or similar — facts of the Explorica decision could be successfully argued under Canadian law relating to the protection of confidential commercial information.

Read More:

[PDF] <http://www.carters.ca/pub/article/ip/sew0704.pdf>

C.D. Howe Institute Advocates Putting Private and Public Foundations on Level Ground

In February 2005, the institute’s publication *Backgrounder* featured an article titled “Firm Foundations: Putting Private and Public Foundations on Level Ground.” This article argues that private foundations exist so Canadian donors may pursue charitable activities through long-lived institutions organized to achieve those goals. Public policy should encourage Canadians to pursue their visions.

[LINK] http://www.cdhowe.org/pdf/backgrounder_88.pdf

Federal Minister of Justice Provides Insight on new Anti-terrorism Act

The honourable Irwin Cotler, Minister of Justice and Attorney General of Canada appeared before the special committee of the senate on the anti-terrorism act on Monday, February 21, 2005, and outlined the foundational principles that underpin our anti-terrorism law. See the full speech at the link below.

[LINK] http://canada.justice.gc.ca/en/news/sp/2005/doc_31398.html

IN THE PRESS

Charities and Compliance with Anti-Terrorism Legislation: A Due Diligence Response, by Terrance S. Carter in *The Philanthropist* (Vol. 19 No. 2).

Article will soon be available at www.charitylaw.ca.

Canadian Fundraiser eNews included a link to *Charity Law Bulletin* No. 62, "National Do Not Call List: Impact on Charities and Not-For-Profit Organizations " by Terrance S. Carter and Anne-Marie Langan.

Canadian Fundraiser Vol. 15 No. 4, February 28, 2005.

[PDF] http://www.canadianfundraiser.com/newsletter/issue_viewer.asp?Issue_ID=106

Canadian Fundraiser eNews included a link to *Charity Law Bulletin* No. 64, "2004 Charity and Not-For-Profit Law Developments: The Year in Review" by Terrance S. Carter and M. Elena Hoffstein.

Canadian Fundraiser Vol. 15 No. 3, February 15, 2005.

[PDF] http://www.canadianfundraiser.com/newsletter/issue_viewer.asp?Issue_ID=105

Recent Proposed Policies from Canada Revenue Agency (CRA) that Refer to Advancement of Religion, by Jacqueline M. Connor and Terrance S. Carter.

Christian Legal Journal, January 2005.

[PDF] <http://www.christianlegalfellowship.org/Articles.htm>

The Canadian Association e-Zine reproduced *Charity Law Bulletin* No. 60, "New Canada Not-For-Profit Corporations Act and Its Impact on Charitable and Non-profit Corporations" by Jacqueline M. Connor and Terrance S. Carter.

Canadian Association e-Zine, January 2005.

[PDF] http://www.axi.ca/tca/Jan2005/guestarticle_3.shtml

Christian Legal Fellowship included a link to *Church Law Bulletin* No. 7, "Supreme Court Same Sex Marriage Reference: What Are The Implications For Churches And Religious Officials?" by Terrance S. Carter and Mervyn F. White.

[LINK] <http://www.christianlegalfellowship.org/marriage/index.htm>

RECENT EVENTS AND PRESENTATION MATERIALS

Canadian Fundraiser Workshop was 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.

For more information on Canadian Fundraiser Workshops, go to <http://www.canadianfundraiser.com>.

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

Materials will soon be available at www.charitylaw.ca.

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

Materials will soon be available at www.charitylaw.ca.

Current Legal Issues in Health Research was 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>

UPCOMING EVENTS AND PRESENTATIONS

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

Association of Fundraising Professionals International Conference on Fundraising is being held in Baltimore from April 2 to 6, 2005, with Terrance S. Carter speaking on “Recent Changes to the *Income Tax Act* (Canada) Affecting Charities.”

[LINK] http://www.afpnet.org/international_conference

Ontario Bar Association Program on Charity and Not-for-Profit Law is being held in Toronto on April 7, 2005, with Terrance S. Carter and John M. Latham of Carter & Associates presenting “Religious and Institutional Properties: Practical Issues for Charities and Not-for-Profit Practitioners.”

[LINK] <http://www.softconference.com/oba/eventdetails.aspx?code=05CHA0407T>

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>

Church Leadership & the Law hosted by Christian Legal Fellowship is being held in London, Ontario, on May 11, 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.

[LINK] <http://www.christianlegalfellowship.org/lawchurchleadership/index.htm>

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.antiterrorismlaw.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*.



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 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.



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 & Charity Law Seminar* and guest speaker for organizations such as the Association of Fundraising Professionals, and the Christian Legal Intervention Academy.



Suzanne E. White – Ms. White practices at Carter & Associates in the areas of charity and not-for-profit law and human rights, as well as General Litigation. Ms. White graduated from the Faculty of Law at the University of Windsor in 2003 where she was a Student Editor at the Canadian American Research Centre for Law and Policy. She is a regular contributor to www.charitylaw.ca and has been published in the Canadian Journal of Law and Technology.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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