

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

### MAY 2004 ISSUE

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#### HIGHLIGHTS

- Charities Directorate Provides Guidance on Gifts In Kind
- Incorporating a Charitable or Not-for-Profit Organization
- Trade-Mark and Domain Name Protection Primer for Charities
- Legal Risk Management Checklist For Charities Updated
- Materials presented at the Tax Update for Charities Seminar on;
  - Proposed Changes to the *Income Tax Act* and New Policies Affecting Charities, and
  - Budget Proposals – March 23, 2004.

**Get on Our Mailing List:** To automatically receive the free monthly *Charity Law Update*, send an email to [info@carters.ca](mailto: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.

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## NEW PUBLICATIONS

### Charities Directorate Provides Guidance on Gifts In Kind

by Terrance S. Carter, assisted by Nancy E. Claridge, in *Charity Law Bulletin No.44* May 31, 2004.

The “*Registered Charities Newsletter, No. 18*” (“*Newsletter*”), dated March 29, 2004, from the Canada Revenue Agency (formerly Canada Customs and Revenue Agency) (“CRA”) focuses on receipting issues concerning gifts in kind, as well as a commentary on charitable donation tax shelter arrangements. Issuing receipts for gifts in kind requires that a charity be knowledgeable in valuation procedures and standards, as well as the impact of gifts on the overall disbursement quota of a charity. This issue requires careful consideration by a charity and its board of directors, as failure to properly assess and consider the tax consequences of a gift in kind may lead to penalties, including possible revocation of a charity’s status as a registered charity. This *Charity Law Bulletin* (“*Bulletin*”) provides a brief review of the directives given by CRA on gifts in kind as provided in the *Newsletter*, which is available at [www.cca-adrc.gc.ca/E/pub/tg/charitiesnews-18/news18-e.html](http://www.cca-adrc.gc.ca/E/pub/tg/charitiesnews-18/news18-e.html).

#### Read More:

[PDF] [www.carters.ca/pub/bulletin/charity/2004/chylb44.pdf](http://www.carters.ca/pub/bulletin/charity/2004/chylb44.pdf)

[WEB] [www.carters.ca/pub/bulletin/charity/2004/chylb44.htm](http://www.carters.ca/pub/bulletin/charity/2004/chylb44.htm)

### Incorporating a Charitable or Not-for-Profit Organization

Chapter 3 of *The Law of Charitable and Not-for-Profit Organizations: Third Edition* by Donald J. Bourgeois, is now available on our site. May 2004.

The corporate form is a useful and common method for an organization to carry on charitable and not-for-profit activities. It provides limited liability for the members and is often the legal structure required by governments for an organization to be eligible for funding or to carry out certain activities. There are three major types of corporate forms available to charitable and not-for-profit organizations: corporations without share capital incorporated under the *Ontario Corporations Act*; corporations without share capital incorporated under the *Canada Corporations Act*; and co-operative corporations without share capital incorporated under the *Ontario Co-operative Corporations Act*.

#### Read More:

[PDF] [www.carters.ca/pub/book/2002/LCNPOch3.pdf](http://www.carters.ca/pub/book/2002/LCNPOch3.pdf)

## **Trade-Mark and Domain Name Protection Primer for Charities**

*by Terrance S. Carter, assisted by Nancy E. Claridge, in Charity Law Bulletin No.43 May 28, 2004.*

The Charities Directorate of the Canada Revenue Agency (“CRA”) reported that as of January 2004, there were over 80,500 charitable organizations in Canada. With the increasing competition for the finite pool of available donations, there is an increasing reliance placed on the goodwill associated with a charity’s name. As such, the protection of a charity’s trade-mark(s) and related domain name(s) is a significant issue for charities and their boards of directors. This *Charity Law Bulletin* (“Bulletin”) provides a primer on trade-mark and domain name protection to assist charities in preserving and advancing the goodwill they have built.

### **Read More:**

[PDF] [www.carters.ca/pub/bulletin/charity/2004/chylb43.pdf](http://www.carters.ca/pub/bulletin/charity/2004/chylb43.pdf)

[WEB] [www.carters.ca/pub/bulletin/charity/2004/chylb43.htm](http://www.carters.ca/pub/bulletin/charity/2004/chylb43.htm)

## **Legal Risk Management Checklist For Charities Updated**

*by Terrance S. Carter and Jacqueline M. Connor, May 2004.*

[PDF] [www.carters.ca/pub/checklst/charity.pdf](http://www.carters.ca/pub/checklst/charity.pdf)

## **Checklist and Reference Guide: Avoiding Wasting Assets II– Trade-Mark and Domain Name Protection for Charities**

*by Terrance S. Carter, May 2004.*

[PDF] [www.carters.ca/pub/checklst/trdmrk.pdf](http://www.carters.ca/pub/checklst/trdmrk.pdf)

## **NEW SERVICES FROM CARTER & ASSOCIATES**

### **Corporate Services for Charities and Non-Profit Corporations**

New Corporate Service Packages for filings, annual corporate services and extra-provincial registrations. April 2004.

[PDF] [www.carters.ca/charity/corpserv.pdf](http://www.carters.ca/charity/corpserv.pdf)

## ADDITIONS TO [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca)

**BILL C-7 (As assented to May 6, 2004):** *An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety*

[PDF] [www.parl.gc.ca/PDF/37/3/parlbus/chambus/house/bills/government/C-7\\_4.pdf](http://www.parl.gc.ca/PDF/37/3/parlbus/chambus/house/bills/government/C-7_4.pdf)

[WEB] [www.parl.gc.ca/37/3/parlbus/chambus/house/bills/government/C-7/C-7\\_4/C-7\\_cover-E.html](http://www.parl.gc.ca/37/3/parlbus/chambus/house/bills/government/C-7/C-7_4/C-7_cover-E.html)

**Recent Addition to "Listed Entities" as of May 17, 2004:** 35. Ansar al-Islam (AI) (also known as the Partisans of Islam, Helpers of Islam, Supporters of Islam, Soldiers of God, Kurdistan Taliban, Soldiers of Islam, Kurdistan Supporters of Islam, Supporters of Islam in Kurdistan, Followers of Islam in Kurdistan)

Complete list at [www.psepc-sppcc.gc.ca/national\\_security/counter-terrorism/Entities\\_e.asp](http://www.psepc-sppcc.gc.ca/national_security/counter-terrorism/Entities_e.asp)

**Canada's National Security Policy** - April 2004

View the document at [www.pco-bcp.gc.ca/docs/Publications/NatSecurnat/natsecurnat\\_e.pdf](http://www.pco-bcp.gc.ca/docs/Publications/NatSecurnat/natsecurnat_e.pdf)

**CBA Says Bill C-7 Threatens Fundamental Rights, Calls For Review Of Anti-Terrorism Measures** - March, 18th, 2004

View the news release at [www.cba.org/CBA/News/2004\\_Releases/PrintHtml.asp?DocId=56301](http://www.cba.org/CBA/News/2004_Releases/PrintHtml.asp?DocId=56301)

**Anti-Terrorism and The Security Agenda: Impact on Rights, Freedoms and Democracy** - Report and Recommendations for Policy Direction of a Public Forum organized by the International Civil Liberties Monitoring Group - February 17, 2004

View the document at [www.antiterrorismlaw.ca/PublicForum-ICLMG.pdf](http://www.antiterrorismlaw.ca/PublicForum-ICLMG.pdf)

**Coalition of Muslim Associations Submission on Bill C-17** (February 27, 2003)

View the document at [www.muslimlaw.org/COMO.C17.final.pdf](http://www.muslimlaw.org/COMO.C17.final.pdf)

## RECENT EVENTS AND PRESENTATION MATERIALS

“Documenting Policies for Same Sex Marriage and Religious Facility Use” was presented by Mervyn F. White at the **Christian Legal Intervention Academy** meeting in Ottawa (May 31, 2004).

[PDF] [www.carters.ca/pub/seminar/church/2004/mfw0531.pdf](http://www.carters.ca/pub/seminar/church/2004/mfw0531.pdf)

[WEB] [www.carters.ca/pub/seminar/church/2004/mfw0531.htm](http://www.carters.ca/pub/seminar/church/2004/mfw0531.htm)

"Fabulous Fun with Financial Fundamentals" A.K.A. “Looking a Gift Horse in the Mouth –Legal Liabilities in Fundraising” was presented by Terrance S. Carter at the **Association of Fundraising Professionals Fundraising Day 2004** in Toronto (May 26, 2004).

[PDF] [www.carters.ca/pub/seminar/charity/2004/tsc0526.pdf](http://www.carters.ca/pub/seminar/charity/2004/tsc0526.pdf)

[WEB] [www.carters.ca/pub/seminar/charity/2004/tsc0526.htm](http://www.carters.ca/pub/seminar/charity/2004/tsc0526.htm)

**Law & Church Leadership Seminar** (May 14, 2004) was held in Moncton, NB, by the Evangelical Fellowship of Canada and Christian Legal Fellowship with talks from Carter & Associates lawyers on;

“An Explanation of Bill C-250 (Hate Propaganda)”

by Bruce W. Long,

“Bill C-45 – An Explanation of the Civil Law Consequences Including Availability of Insurance”

by Mervyn F. White and Bruce W. Long,

“Same Sex Marriages – Legal Context, Including Human Rights Issues and What Churches Can Do in Response” by Terrance S. Carter and Mervyn F. White,

“The Impact on Christian Counselling & Church Discipline Arising from the Recent Jehovah Witness Case” by Mervyn F. White and Bruce W. Long,

“Investigating Criminal Activities Including Sexual Abuse in the Church – How to Respond and How to Protect the Church” by Bruce W. Long,

“Important Recent Changes to the Income Tax Act & CRA Policies Affecting Churches”

by Terrance S. Carter, and

“New Privacy Legislation & the Church – What Churches Need to Do in Response”

by Mervyn F. White.

[PDF] [www.carters.ca/pub/seminar/church/2004/LCL0514.pdf](http://www.carters.ca/pub/seminar/church/2004/LCL0514.pdf)

**Tax Update for Charities** (May 5, 2004), a morning seminar hosted by Carter & Associates and Fasken Martineau in Toronto, presentation materials now available:

“Proposed Changes to the *Income Tax Act* and New Policies Affecting Charities”

by Terrance Carter, and

[PDF] [www.carters.ca/pub/seminar/charity/2004/tsc0505.pdf](http://www.carters.ca/pub/seminar/charity/2004/tsc0505.pdf)

[WEB] [www.carters.ca/pub/seminar/charity/2004/tsc0505.htm](http://www.carters.ca/pub/seminar/charity/2004/tsc0505.htm)

“Budget Proposals – March 23, 2004”

by Elena Hoffstein.

[PDF] [www.carters.ca/pub/seminar/charity/2004/meh0505.pdf](http://www.carters.ca/pub/seminar/charity/2004/meh0505.pdf)

[WEB] [www.carters.ca/pub/seminar/charity/2004/meh0505.htm](http://www.carters.ca/pub/seminar/charity/2004/meh0505.htm)

## UPCOMING EVENTS AND PRESENTATIONS

**Investment Management Consultants Association** meeting in Toronto on June 7, 2004, with Terrance S. Carter presenting “Recent Changes to the Income Tax Act and Policies Relating to Charities and Charitable Gifts”.

For more details see the brochure at [www.carters.ca/pub/seminar/notice/2004/IMCA0607.pdf](http://www.carters.ca/pub/seminar/notice/2004/IMCA0607.pdf).

**Baptist Convention of Ontario and Quebec Assembly Workshop** to be held in Etobicoke on June 10, 2004, with Carter & Associates lawyers presenting on the following topics;

- “Privacy Legislation” by Mark J. Wong,
- “Bill C-250 (Hate Propaganda)” by Bruce W. Long,
- “Same Sex Marriage” by Terrance S. Carter and Mervyn F. White,

**Schulich Passport to Excellence Breakfast Series** in Toronto on June 24, 2004, features Terrance S. Carter speaking on “Looking a Gift Horse in the Mouth, Legal Liability Issues for Directors in Charitable Fundraising”.

Schulich website for details [www.schulich.yorku.ca/ssb-extra/alumni.nsf/allwebdocuments/alumni](http://www.schulich.yorku.ca/ssb-extra/alumni.nsf/allwebdocuments/alumni)

**Congregational Christian Churches in Canada Workshop** is being held in Brantford, Ontario, on July 8, 2004, with presentations by Carter & Associates lawyers for the on the following topics;

- “Bill C-250 (Hate Propaganda)” by Bruce W. Long, and
- “Same Sex Marriage” by Terrance S. Carter and Mervyn F. White.

**2004 Annual Church & Charity Law Seminar** will be held on November 10, 2004, at the Young-Nak Korean Presbyterian Church of Toronto to include a presentation by Maureen Kidd, Director General, Charities Directorate of the Canada Revenue Agency. Registration information to follow.

## 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.



**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



**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.



**Jacqueline M. Connor** – Practices 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 & the Law™* Seminar.



## ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

**Errata:** *Charity Law Bulletin* No. 40, dated March 29, 2004, and the paper entitled "Recent Changes to the Income Tax Act and Policies Relating to Charities and Charitable Gifts" by Terrance S. Carter and Theresa L.M. Man, dated March 4, 2004, were both amended May 11, 2004, to change wording from "intention to make a gift" to "expectation to make a gift" in accordance with the specific wording of the draft proposed legislation amended on February 27, 2004.

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