

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

MAY 2005 ISSUE

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Recent Ontario Decision Revisits Prayer in Government Proceedings
Becoming a Recognized Religious Denomination In Ontario

Church Leadership & the Law

Hosted by Christian Legal Fellowship in London, Ontario.

May 11, 2005.

Church leaders, and directors and officers of Christian charities, as well as legal practitioners who advise them, should attend this event concerning recent legal developments affecting churches and religious organizations, including same-sex marriage legislation. See Upcoming Events for registration details.

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Vancouver (877) 942-0001

RECENT PUBLICATIONS AND NEWS RELEASES

Carter & Associates lawyers Jane Burke-Robertson and Terrance S. Carter recognized as leading experts in the area of Charities/Not-for-Profit Law by LEXPERT.

Terrance S. Carter also co-authored the section summary for the charity practice area with M. Elena Hoffstein of our affiliated firm Fasken Martineau DuMoulin LLP, who was also recognized along with Howard M. Carr and Edgar A. Frechette of Fasken Martineau DuMoulin LLP as leading experts in charity law, totaling five lawyers between the affiliated firms out of 22 charities lawyers recognized across Canada.

Read More:

[LINK] <http://www.lexpert.ca/directory/>

Privacy Legislation Increasingly Applied to Charitable and Non-Profit Organizations

by U. Shen Goh in Charity Law Bulletin, No. 70, April 29, 2005.

As of January 1, 2004, the federal *Personal Information Protection and Electronic Documents Act* ("PIPEDA") applied to every organization in Canada that collects, uses and discloses personal information in the course of commercial activities. Since then, the Federal Privacy Commissioner and an Ontario court have shed light on the definition of "commercial activities" and the issue of whether charitable and non-profit organizations are subject to PIPEDA. However, PIPEDA also provides that an organization may be exempted from PIPEDA if the province that the organization is located in has enacted privacy legislation that is substantially similar. Since PIPEDA has come into force, the Federal Privacy Commissioner has declared provincial privacy legislation in Alberta, B.C. and Quebec to be substantially similar to PIPEDA. Also on January 1, 2004, Alberta and B.C.'s own respective *Personal Information Protection Acts* came into force, which apply to every organization that collects, uses and discloses personal information, regardless of whether or not it is for commercial purposes. This *Charity Law Bulletin* discusses the implications for charities and non-profit organizations of these developments and anticipated privacy legislation in other provinces.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb70.pdf>

[Web] <http://www.carters.ca/pub/bulletin/charity/2005/chylb70.htm>

Effect of Inter-Charity Transfers on Disbursement Quota Calculation under Bill C-33

by Theresa L.M. Man and Terrance S. Carter in *Charity Law Bulletin*, No. 69 April 12, 2005.

The Federal 2004 Budget released by the Department of Finance on March 23, 2004, included proposed amendments to the *Income Tax Act* in relation to the calculation of disbursement quota by charities. Draft amendments to the Act implementing the March 2004 Federal Budget were released on September 16, 2004, and were further amended and consolidated on December 6, 2004. Bill C-33, *A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 23, 2004* was passed by Parliament on February 25, 2005 and received first reading in the Senate on March 7, 2005. This *Charity Law Bulletin* provides a review of implications of the disbursement quota on both the transferor and the transferee charity as a result of transfers of property between charities under the new rules.

Read More:

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

B.C. Court Upholds CRA Guidelines on Split-Receipting

by Suzanne E. White and Terrance S. Carter in *Charity Law Bulletin*, No. 68 April 7, 2005.

The *Richert v. Stewards' Charitable Foundation* decision represents a novel civil action brought by a donor against a registered charity concerning the reduced amount reflected on a donation receipt. The Richert case is of importance, as it appears that it is the first time that a court has upheld Canada Revenue Agency's Technical News No. 26 concerning proposed new rules for split-receipting, notwithstanding that the underlying legislation authorizing these rules is not yet law in Canada. This *Charity Law Bulletin* discusses the findings of the Richert case and the resulting implications in relation to a registered charity's right to issue "split-receipts."

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb68.pdf>

[Web] <http://www.carters.ca/pub/bulletin/charity/2005/chylb68.htm>

Recent Ontario Decision Revisits Prayer in Government Proceedings

by Mervyn F. White in *Church Law Bulletin* No.10, April 30, 2005.

In *Allen v. Corporation of the County of Renfrew*, the Honourable Justice Hackland of the Superior Court of Justice (Ontario) had occasion to determine whether Council for the Corporation of the County of Renfrew had violated the freedoms of a local resident who occasionally attended Council meetings by opening its meetings with a "non-denominational" prayer that conveyed a religious, though not specifically Christian, message. This *Charity Law Bulletin* discusses this important ruling which affirms the fundamental connection

that presently exists between the recognition of the supremacy of God and the freedoms and rights espoused by the *Canadian Charter of Rights and Freedoms*.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2005/chchlb10.pdf>

[Web] <http://www.carters.ca/pub/bulletin/church/2005/chchlb10.htm>

Becoming a Recognized Religious Denomination In Ontario

by *Suzanne E. White and Terrence S. Carter in Church Law Bulletin No.9, April 29, 2005.*

Many church congregations are governed by an umbrella organization commonly known as a religious denomination. A denomination normally provides the structure by which new churches of that particular faith are founded, through church planting, administrative support, financial support and, most importantly, interpretation of the religious doctrine adhered to by the various member congregations. Most denominations wish to have their clergy solemnize marriages. There are approximately 100 standard classifications of religious denominations recognized in Canada. This *Church Law Bulletin* summarizes the procedure in Ontario for religious denominations to apply for the privilege to have their ordained ministers solemnize marriage. In addition, this Bulletin discusses the implications of receiving status as a recognized denomination in Ontario and, in particular, the obligations that a recognized denomination must comply with.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2005/chchlb09.pdf>

[Web] <http://www.carters.ca/pub/bulletin/church/2005/chchlb09.htm>

Bill 60, Ontario Heritage Amendment Act, 2005, Passed 3rd Reading

This proposed legislation passed 3rd reading in the legislature on April 19, 2005, but is yet to receive Royal Assent. For more information on the impact of proposed changes, refer to *Charity Law Bulletin* No. 63.

Read More:

[LINK] <http://www.ontla.on.ca/library/bills/381/60381.htm>

IN THE PRESS

Canadian Fundraiser eNews reference Carter & Associates lawyers in relation to the definition of charity and budget provisions, *Canadian Fundraiser* (Vol. 15 No. 8) April 30, 2005

[LINK] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1656>.

How does the same-sex marriage Reference affect those opposed? by Terrance S. and Mervyn F. White, assisted by Anne-Marie Langan.

The Lawyers Weekly, (Vol.24 No.46) April 15, 2005.

[PDF] <http://www.carters.ca/news/2005/lawyerwkly/tscmfw0415.pdf>

Canadian Fundraiser eNews coverage of the Imagine Canada Symposium at which Terrance Carter was a panellist discussing the impact on philanthropy of the Tsunami disaster.

Canadian Fundraiser (Vol. 15 No.7) April 15, 2005.

[PDF] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1633>

Income Tax Amendments Affect Charities, by Terrance S. Carter and Theresa Man.

The Lawyers Weekly, (Vol.24 No.45) April 8, 2005.

[PDF] <http://www.carters.ca/news/2005/lawyerwkly/tsctlm0408.pdf>

RECENT EVENTS AND PRESENTATION MATERIALS

3rd National Symposium on Charity Law was presented by the National Charities and Non-for-Profit Law Section of the Ontario Bar Association and the Continuing Legal Education Committee of the Canadian Bar Association in Toronto, Ontario.

[LINK] http://www.oba.org/en/cle_pdf/05CHA0506J.pdf

Papers and presentations will soon be available at www.charitylaw.ca.

Recent Income Tax Amendments Affecting Charities and Gift Planning was presented by Terrance S. Carter of Carter & Associates at the 12th National CAGP*ACPD Conference held in Quebec City.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0414.pdf>

[Web] http://www.carters.ca/pub/seminar/charity/2005/tsc0414_files/frame.htm

[Paper] <http://www.carters.ca/pub/article/charity/2005/tsctlm0414.pdf>

Ontario Bar Association Program on Charity and Not-for-Profit Law was held in Toronto, Ontario, 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.”

[Web] <http://www.carters.ca/pub/seminar/charity/2005/tscjml0407.htm>

[Paper] <http://www.carters.ca/pub/seminar/charity/2005/tscjml0407.pdf>

Association of Fundraising Professionals International Conference on Fundraising was held in Baltimore, Maryland, with Terrance S. Carter speaking on “Recent Changes to the Income Tax Act Affecting Charities and Fundraising in Canada.”

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0405.pdf>

[Web] http://www.carters.ca/pub/seminar/charity/2005/tsc0405_files/frame.htm

UPCOMING EVENTS AND PRESENTATIONS

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



Jane Burke-Robertson – Counsel to Carter & Associates in the area of charity and not-for-profit law, Ms. Burke-Robertson 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, 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.



U. Shen Goh – Ms. Goh practices in the area of intellectual property, focusing on trademarks, privacy and information protection, as well as employment law and general litigation. She has obtained a Master of Law degree from the University of San Diego School of Law, and has been an invited speaker for the United Way of Peel Region, 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.



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.



John M.C. Latham – Practicing at Carter & Associates with a focus in charity and not-for-profit law, corporate and commercial law, leasing, franchising and real estate, Mr. Latham previously worked at a not-for-profit legal clinic in Brantford, Ontario, served as Legal Assistance Windsor during law school, was awarded the Harold G. Fox bursary for excellence in Business Associations, and has been involved in a variety of charitable works, from refugee resettlement to local church programs.



Theresa L.M. Man – Practices in charity and not-for-profit, with particular emphasis surrounding tax issues. Mrs. Man has been an invited speaker at the Canadian Bar Association National Symposium on Charity Law, the annual *Church & Charity Law™* Seminar, and has also written on taxation issues for charities and non-profits for *The Lawyers Weekly*, *Chinese Christian Herald Crusades*, *Charity Law Bulletin* and www.charitylaw.ca.



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 Canadian Fundraiser.



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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