

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

NOVEMBER 2005 ISSUE

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See the Recent Events section of this Update for a report and materials from the
2005 Annual Church & Charity Law Seminar
hosted by Carter & Associates in Toronto, Ontario, on Wednesday, November 9, 2005.

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RECENT PUBLICATIONS AND NEWS RELEASES

Quick List of New Tax Rules for Charities

by Theresa L.M. Man and Terrance S. Carter in *Charity Law Bulletin No. 80*, November 7, 2005.

Over the past six months, there have been a number of complicated changes to tax rules affecting many aspects of operations of charities in Canada. Firstly, sweeping amendments to *the Income Tax Act* (Canada) were enacted by Bill C-33, which came into force on May 13, 2005. These changes include a reduced disbursement quota rate and calculation formula, the ability to encroach on realized capital gains of enduring property, complicated rules regarding inter-charity transfers, and new intermediate sanctions and penalties for minor non-compliance of requirements on charities under the Act, among others. Secondly, on July 18, 2005, the Department of Finance released revised legislative proposals to amend the Act. The July 2005 proposal constitutes a package of changes that consolidates and further amends previously proposed amendments introduced in 2002, 2003 and 2004. These changes include split-receipting, designation of charitable organizations and public foundations, and revocation of charitable registrations, to name a few. Given the complexity of these changes, this bulletin is intended to provide a quick summary of the more important changes as an easy to use resource tool, as opposed to providing a detailed discussion or analysis.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb80.pdf>

Charities Legislation & Commentary, 2006 Edition (Butterworths)

This one-stop resource for researching key Federal and Ontario statutes governing charitable organizations, co-edited by Elena Hoffstein, Terrance S. Carter, and Adam M. Parachin, and endorsed by Imagine Canada, is now available through Butterworths online catalogue at <http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=605>. The full text of the preface outlining the legislation is available for free at the link below.

Read the Preface: <http://www.carters.ca/pub/book/2005/CL06preface.pdf>

Advising the Charitable Client: Risk Management Strategies

by Terrance S. Carter for the *Ontario Bar Association*, October 26, 2005.

Advising the charitable client extends beyond simply “doing good” by assisting individuals who wish to benefit the community. It requires the provision of professional advice on complicated areas of the law, rendered in a manner that reflects an increasing reliance by clients on counsel to identify legal risks and provide recommendations on how those risks can be avoided. To that end, the paper suggests a more active professional mindset is required to deal with charities, and lawyers should assist charities in identifying areas of risk by utilizing tools such as a charity legal risk management checklist, a sample of which is attached to this paper as an appendix. The paper also explains a number of problems that lawyers may encounter from

time to time in advising charities, and concludes by emphasizing the importance of communicating with the charitable client and providing informational reports to both assist the client and establish clear evidence of the advice rendered by the lawyer. Although not a technical discussion of legal issues, the paper attempts to provide a practical guide for practitioners who wish to develop a proactive approach in advising charitable clients.

Read More:

[PDF] <http://www.carters.ca/pub/article/charity/2005/tsc1026.pdf>

Dissension in the Ranks: The Relationship Between Law, Politics and Church Discipline

by Terrance S. Carter and Anne-Marie Langan in Church Law Bulletin No.14, November 15, 2005.

Recent news reports concerning the contemplated excommunication of Roman Catholic politicians, including Canada's own Prime Minister Paul Martin, for publicly promoting the legalization of same-sex marriage have placed a spotlight on church discipline, an often misunderstood, and controversial area of religious life. Not unexpectedly, the current debate surrounding the possible excommunication of high profile politicians resurrects the long-standing debate over the separation of church and state. While many reports have questioned the wisdom of denying the rite of Holy Communion for Roman Catholic politicians as a means of discipline, the real question concerns the boundary between religious law and civil law. This *Church Law Bulletin* briefly examines the standards that the Canadian courts have set out for the recognition of a religious institution's right to discipline its members.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2005/chchlb14.pdf>

New United Kingdom Terrorism Bill and its Implications for Canada

by Terrance S. Carter, assisted by Nancy E. Claridge in Anti-Terrorism and Charity Law Alert No.8.

On October 12, 2005, Tony Blair's government followed through on its promises to crack down on Islamic extremism, introducing its new Terrorism Bill 2005 in the House of Commons. The controversial anti-terror measures, which build upon various measures put in place since September 11, 2001, came at a critical juncture in the development of measures to counter the worldwide threat of terrorism, and on the heels of a resolution of the United Nations Security Council calling on all governments to adopt laws that prohibit people from "inciting" others to commit terrorist acts, and to deny safe haven to anyone seriously considered guilty of such conduct. While the Bill has since been withdrawn, developments in counterterrorism measures in the U.K. raise questions with respect to the future of similar measures in Canada and other democratic states. This alert examines the Bill (which is expected to be reintroduced) and the events leading up to its introduction, and considers the implications for Canada.

Read More:

[PDF] <http://www.carters.ca/pub/alert/ATCLA/ATCLA08.pdf>

CRA Releases Fall Charities Newsletter

CRA released *Registered Charities Newsletter No. 25* on November 9, 2005. This issue contains a brief explanation of the application process through which organizations are considered for registered charity status, promotion of volunteerism as a charitable activity, and various issues involving volunteers, such as when a person is considered to have been remunerated by a charity, and when such remuneration constitutes a taxable benefit.

See the Newsletter at:

[PDF] <http://www.cra-arc.gc.ca/E/pub/tg/charitiesnews-25/README.html>

Supreme Court Denies Charitable Immunity in Sex-Abuse Case

The Supreme Court of Canada released its decision in *Blackwater v. Plint* on October 21, 2005, denying the United Church charitable immunity from liability arising from sexual abuse in a residential school, and held that a "class-based exemption finds support neither in principle nor in the jurisprudence." A *Church Law Bulletin* discussing the decision will be forthcoming.

Full-Text of the Case:

[PDF] <http://www.canlii.org/ca/cas/scc/2005/2005scc58.html>

CRA Provides Sample Donation Receipts

On October 19, 2005, CRA released 4 sample official donation receipts as a guide to charities. Although receipts issued by charities do not need to appear exactly as presented in the samples, the receipts must contain all relevant information set out in the sample receipts. The 4 samples are for (1) cash gift with no advantage, (2) cash gift with advantage, (3) non-cash gift with no advantage and (4) non-cash gift with advantage.

See the Sample Receipts at:

[PDF] <http://www.cra-arc.gc.ca/tax/charities/pubs/receipts-e.html>

IN THE PRESS

Charity Law and Income Tax Changes Covered in a Recent Interview with Theresa Man

Theresa Man of Carter & Associates was recently interviewed concerning changes to the *Income Tax Act* affecting charities enacted by Bill C-33, as well as common pitfalls faced in the operation of charities for an article that appeared in a Toronto daily newspaper.

Ming Pao Daily News, September 6, 2005

Creating a charitable green gifts program by Karen J. Cooper.

The Lawyers Weekly Vol.25 No.22, October 14, 2005.

[PDF] <http://www.carters.ca/news/2005/lawyerwkly/kjc1014.pdf>

The Age Old Question of the Division of Church & State is in the Spotlight Again by Terrance S. Carter.

Christian Legal Journal, Fall 2005.

[WEB] <http://www.christianlegalfellowship.org/Journal/journalhome.htm>

Amendments Imply Sweeping Changes for Charity by Theresa Man.

The Bottom Line, Vol.21 No. 13, Mid-October 2005.

[PDF] <http://www.carters.ca/news/2005/bottomline/tlm1015.pdf>

Canada's 2005 National Symposium on Charity Law: An Executive Review by Terrance S. Carter.

International Journal of Civil Society Law, V.3 I.4, October 2005.

[PDF] <http://law.cua.edu/Students/Orgs/IJCSL/3.4.IJCSL.pdf>

Time to Act on Fundraising Laws by Terrance S. Carter & Nancy E. Claridge.

Law Times Vol. 16 No. 32, October 24, 2005.

[WEB] <http://www.carters.ca/news/2005/lawtimes/tsc1024.htm>

Regulatory Regime - New rules seen as consistent with recommendations of VSI by Karen J. Cooper.

Canadian Fundraiser Vol. 15 No. 20, October 31, 2005.

[WEB] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1792>

Church can discipline its members, including politicians by Terrance S. Carter in The Catholic Register, a Toronto-based weekly newspaper distributed across Canada.

The Catholic Register, November 3, 2005.

[WEB] http://www.catholicregister.org/modules.php?op=modload&name=PagEd&file=index&topic_id=10&page_id=1372

RECENT EVENTS AND PRESENTATION MATERIALS

The **2005 Annual Church & Charity Law Seminar** hosted by Carter & Associates was held on November 9, 2005, in Toronto, Ontario, and was attended by more than 525 members of the sector, including directors of charities, church leaders, government officials, accountants and lawyers. The seminar was designed to provide practical information to assist churches and charities in understanding and complying with recent developments in the law and has been held annually since 1994. Presentation materials are now available.

Seminar and Speaker Details and Acknowledgements

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

Seminar Presentation Materials

“Update on Recent Employment Issues Including Duty to Accommodate” by Anne-Marie Langan,

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2005/aml1109.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2005/aml1109.htm>

“Political Activities – What Churches and Charities Can and Cannot Do” by Esther S. Oh,

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2005/eso1109.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2005/eso1109.htm>

“What Does Freedom of Religion Really Mean?” by Mervyn F. White,

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2005/mfw1109.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2005/mfw1109.htm>

“The Legal Impact of Same-Sex Marriage on Religious Organizations” by Terrance S. Carter,

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2005/tsc1109a.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2005/tsc1109a.htm>

“What Do the New Disbursement Quota Rules Mean for Your Church or Charity?” by M. Elena Hoffstein & Theresa L.M. Man,

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2005/eh1m1109.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2005/eh1m1109.htm>

“Split-receipting: Ask Questions Before Issuing Receipts” by Theresa L.M. Man,

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2005/t1m1109.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2005/t1m1109.htm>

“CRA Audits: How to Avoid New Penalties and Sanctions” by Karen J. Cooper,

[PDF] <http://www.carters.ca/pub/seminar/chrchl/2005/kjc1109.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl/2005/kjc1109.htm>

“What do Churches and Charities Need to Know About Canada’s Anti-terrorism Legislation?” by Terrance S. Carter,

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2005/tsc1109b.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2005/tsc1109b.htm>

“Effective Asset Protection Through Multiple Corporate Structures” by Jacqueline M. Connor,

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2005/jmc1109.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2005/jmc1109.htm>

[Paper] http://www.carters.ca/pub/seminar/chrchl原因/2005/jmc_paper.pdf

“Fundraising Law in Ontario: The Changing Legal Landscape” by Kenneth Goodman,

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2005/krg1109.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2005/krg1109.htm>

“Charity Reform and Policy Update, including Advancement of Religion” by Terry deMarch & Holly Soloman.

[PDF] <http://www.carters.ca/pub/seminar/chrchl原因/2005/CRA1109.pdf>

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2005/tdm1109.htm>

[WEB] <http://www.carters.ca/pub/seminar/chrchl原因/2005/hs1109.htm>

Returning a Gift- What are the Options? was presented by Karen J. Cooper and Jane Burke-Robertson at the Advanced Gift Planning Symposium hosted by the Canadian Association of Gift Planners in Ottawa, Ontario on November 3, 2005.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/kjcjbr1103.pdf>

[WEB] <http://www.carters.ca/pub/seminar/charity/2005/kjcjbr1103.htm>

“**Comparative Analysis: The Global Perspective**” the National Center on Philanthropy & the Law 17th Annual Conference was held at New York University, and included a presentation by Terrance S. Carter on “Donor Restricted Charitable Gifts,” October 28, 2005.

Advising the Charitable Client: Risk Management Strategies was presented by Terrance S. Carter for the Ontario Bar Association session entitled “A Danger to Dabble: Charity Law Hotspots” in Toronto, Ontario, on October 26, 2005.

[Handouts -PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc1026.pdf>

[Presentation] <http://www.carters.ca/pub/seminar/charity/2005/tsc1026.htm>

[Paper] <http://www.carters.ca/pub/article/charity/2005/tsc1026.pdf>

“**How to Pack your Risk Management Parachute**” was presented by Karen Cooper for the Big Brothers Big Sisters Ontario Regional Workshops in Ottawa, Ontario, on October 22, 2005.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/kjc1022.pdf>

[WEB] <http://www.carters.ca/pub/seminar/charity/2005/kjc1022.htm>

“Planning for Tomorrow” A workshop for accountants, lawyers, financial and insurance professionals, hosted by The Grey Bruce Regional Health Centre Foundation, will include a presentation by Terrance S. Carter on “Recent Amendments to the *Income Tax Act* Affecting Charities and Donors” in Owen Sound, Ontario, on October 20, 2005.

Board School, hosted by The Waterloo Regional Arts Council and Carter & Associates, presented a workshop on “Financial Statements” as part of a series with Donald J. Bourgeois in Kitchener, Ontario on November 12, 2005.

UPCOMING EVENTS AND PRESENTATIONS

Legal Issues in Starting a Church will be presented by Terrance S. Carter at the Mosaic 2005 Church Planting Canada National Congress being held in Toronto, Ontario on November 17, 2005.

See <http://www.paoc.org/mosaic/> for more information or to register.

The Association of Fundraising Professionals (Newfoundland Chapter) will be hosting a lunch on November 18, 2005; with materials from Terrance S. Carter entitled “Recent Changes to the *Income Tax Act* Affecting Charities.”

Contact [709-777-7590](tel:709-777-7590) or lhillier@nctrf.nf.ca for more information or to register.

The Foundation of Guelph General Hospital is hosting a seminar that will include a presentation by Terrance S. Carter on “Recent Amendments to the *Income Tax Act* Affecting Charities and Donors” in Guelph, Ontario, on November 24, 2005.

Contact esluga@gghorg.ca for more information or to register.

The Association of Fundraising Professionals Greater Toronto Chapter Congress 2005 will include a presentation on “Recent Changes in the Law That You Need to Know” in Toronto, Ontario, on December 1, 2005; with M. Elena Hoffstein of Fasken Martineau DuMoulin LLP and Terrance S. Carter of Carter & Associates speaking.

See http://www.afptoronto.org/events_frame/index.htm for more information or to register.

The Institute of Chartered Accountants of Ontario will be hosting a workshop in Toronto, Ontario, on December 6, 2005; with Terrance S. Carter and Theresa L.M. Man presenting on “Director and Officer Liability and Beyond” and “Recent Changes to the *Income Tax Act* Affecting Charities.”

See https://ebusiness.icaoo.on.ca/eso/scriptcontent/cp_pdOnlineReg.cfm?PDRI=1 to register.

CONTRIBUTORS



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 Butterworths.



Terrance S. Carter – Practices primarily in the area of charity and not-for-profit law and is counsel to Fasken Martineau DuMoulin LLP. Mr. Carter is a member of Canada Revenue Agency's Charity Advisory Committee and Technical Issues Committee, past Chair of the National Charity and Not-for-Profit Section of the Canadian Bar Association, and has been recognized as one of the leading experts in the area of charity and not-for-profit law in Canada by *Lexpert*. Mr. Carter is also editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorism.ca, and a consulting editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2006).



Nancy E. Claridge – Articling with Carter & Associates, Ms. Claridge was a Senior Editor of the *Osgoode Hall Law Journal* and Editor-in-Chief of the *Obiter Dicta* newspaper. After obtaining her Masters degree in Political Science, she spent several years developing online Canadian legal databases for LexisNexis Canada, before attending Osgoode Hall Law School where she was awarded the Dean's Gold Key Award for exceptional leadership, commitment and enthusiasm.



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 Lawyers Weekly* and *Charity Law Bulletin*. Ms. Connor is also a regular speaker at the annual *Church & Charity Law™ Seminar*.



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 currently as part-time professor at the University of Ottawa, Faculty of Common Law. In addition, Ms. Cooper has contributed articles to *The Lawyers Weekly* and *The Bottom Line*.



Terry deMarch – Director of the Policy, Planning & Legislation Division, Charities Directorate, Canada Revenue Agency. Mr. deMarch has worked broadly in the policy, legislation and regulatory reform area in both his current and previous positions. As Director, Legislation Development, Income Security Programs, Human Resources Development Canada, he worked extensively on the reform of the Canada Pension Plan. As Director of Innovations, Analysis and Integration, Programs Branch, Justice Canada, he managed innovative and pilot programs for non-traditional solutions to Justice-related problems.



Kenneth Goodman –Deputy Director, Legal Services Branch at the Office of the Public Guardian and Trustee, Ontario Ministry of the Attorney General, Mr. Goodman received his B.A. from York University, his LL.B. from the University of Windsor Law School, and was called to the Ontario Bar in 1982. He was in private practice before joining the Ministry in 1990 and the Office of the Public Guardian and Trustee in 1998. While in private practice Mr. Goodman was actively involved as a director and officer of several charities. He is a member of the Ontario Bar Association Charity and Not-For-Profit Law Section Executive, and has written and lectured on family law, charity and trust law matters.



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 is also a consulting editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2006), as well as a frequent speaker on charitable and not-for-profit matters.



Anne-Marie Langan –Practices at Carter & Associates in the areas of human rights litigation and family law. Ms. Langan received her law degree from Queen’s University, 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, and won an award for her paper entitled “Unrepresented Litigants in the Family Courts of Ontario” (*Queen’s Law Journal*, Spring 2005). Ms. Langan is a frequent contributor to the *Charity Law Bulletin* at www.charitylaw.ca.



Theresa L.M. Man – Practices primarily in the area of charity and not-for-profit, with particular emphasis regarding tax issues. She is a member of the Taxation Section and the Charity and Not-for-Profit Section of the Ontario Bar Association, and is currently pursuing her LL.M. in Tax Law. In addition to being a regular speaker at the annual *Church & Charity Law™* Seminar, Mrs. Man has also written articles for *The Lawyers Weekly*, *Planned Giving Pulse*, *International Journal of Civil Society Law*, *The Bottom Line*, *Chinese Christian Herald Crusades*, and *Charity Law Bulletin*.



Esther S.J. Oh – Practices primarily in charity and not-for-profit law, including incorporation, corporate restructuring and governance matters, as well as in immigration law. Ms. Oh is a member of the Charity and Not-for-profit Section of the Ontario Bar Association, is a frequent contributor to www.charitylaw.ca and the *Charity Law Bulletin*, and has spoken at the annual *Church & Charity Law™* Seminar as well as at the Canadian Bar Association/Ontario Bar Association’s 2nd National Symposium on Charity Law.

Holly Solomon – Senior Policy Advisor of the Policy, Planning & Legislation Division, Charities Directorate, Canada Revenue Agency, Ms. Solomon joined the Directorate in 2001, as part of a government/voluntary sector initiative committed to policy development in the area of charity law. Ms. Solomon specializes in the research and development of key policy documents in charity law and has been instrumental in the development of a new policy development framework for the Directorate. Before arriving at the Directorate, Ms. Solomon was Commission Secretary to the Commission of Inquiry into Charitable Gaming and the Regulation of Societies in Vancouver.



Mervyn F. White –Practices 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 & Charity Law*™ 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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