

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

OCTOBER 2004 ISSUE

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The 2004 Annual Church & Charity LawTM Seminar

Hosted by Carter & Associates in Toronto, Ontario, **November 10, 2004.**

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Will include presentations by the Director General and the Director of Policy and Communications, Charities Directorate, Canada Revenue Agency. See Upcoming Events for registration details.

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National Meeting Locations

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Vancouver (877) 942-0001

RECENT PUBLICATIONS AND NEWS RELEASES

Federal Government Releases Draft Budget Legislation that Impacts Charities

On September 16, 2004, the Federal Government released draft legislation to implement income tax measures proposed in the March 2004 Budget that will have a significant impact upon charities. A summary of the proposals in the March 2004 Budget as they relate to charities was set out in *Charity Law Bulletin* No. 41 available at www.charitylaw.ca. The draft legislation includes detailed provisions implementing the many penalties and taxes proposed in the March 2004 Budget reflecting the recommendations of the Joint Regulatory Table. In addition, the September 16, 2004 draft legislation contains numerous and complex changes to the disbursement quota that will be of interest to the charitable sector, particularly new provisions dealing with 10 year gifts which have now been included as part of a newly defined term of “enduring property.” Details concerning the draft September 16, 2004 legislation will be set out in future *Charity Law Bulletins* to be posted at www.charitylaw.ca.

Emerging International Information Collection and Sharing Regimes: the Consequences for Canadian Charities

by Terrance S. Carter and Sean S. Carter in *Anti-Terrorism and Charity Law Alert No. 04, September 28, 2004*.

“Information sharing and centralized databases of personal information are fundamental mechanisms of anti-terrorism initiatives worldwide. Such sharing and collection of information has increased exponentially in recent years, not only between domestic government agencies, but also between security agencies of different states. A manifestation of these data collection and sharing initiatives in Canada of interest to charities are the Advance Passenger Information/Passenger Name Record (“API”/“PNR”) programs, which have been gradually implemented since the fall of 2002. The API/PNR programs involve the Canadian Border Services Agency maintaining a database of airline passenger information that will be collected and subjected to ongoing analysis. As part of the federal government’s anti-terrorism initiative, these programs were introduced under a purported concern for public safety and security, but may have much broader implications. Charities with representatives who travel internationally need to be aware of the potential risks that the charity and the individual may consequently be subject to as a result of these programs.”

Read More:

[PDF] <http://www.carters.ca/pub/alert/atcla/atcla04.pdf>

New CRTC Decision Stays Telemarketing Rules

The Canadian Radio-Television and Telecommunications Commission (“CRTC”) has suspended the application of the new telemarketing rules from its May 2004 decision (“Decision 2004-35”). Decision 2004-35 is now under review as a result of the Canadian Marketing Association’s application to review and vary that decision. However, the requirement that telecommunications service providers track and report complaint statistics is still valid, effective January 1, 2005.

As a result of the new CRTC decision, effective September 28, 2004, *Charity Law Bulletin* No. 46, dated June 30, 2004, entitled “New Telemarketing Rules Will Have Onerous Impact on Charities”, may no longer be relevant, pending the outcome of the decision’s review.

Please see the links below for more detailed information:

<http://www.crtc.gc.ca/archive/ENG/Decisions/2004/dt2004-63.htm>

http://www.crtc.gc.ca/eng/INFO_SHT/t1022.htm

Charities and the GST / HST

by Terrance S. Carter and Nancy E. Claridge in *Charity Law Bulletin* No.52 September 22, 2004.

Every recipient of a taxable supply in Canada must pay tax to the federal government in respect of the taxable supply. This tax is referred to as the Goods and Services Tax (“GST”) and is 7 percent of the total value of the consideration for the supply. Three Atlantic provinces – Nova Scotia, New Brunswick and Newfoundland and Labrador – pay an amount equivalent to the provincial sales tax in addition to the GST on the value of the consideration for the supply, referred to collectively as the Harmonized Sales Tax (“HST”) and is 15 percent. Generally, organizations involved in commercial activities in Canada are obliged to collect and remit the tax, although they can claim input tax credits to recover the tax paid or owed on purchases and operating expenses used, consumed, or supplied in their commercial activities. Charities are an exception to this general rule, with exemptions on most of their supply of goods and services. This *Charity Law Bulletin* discusses the nature of exemptions for charities concerning the GST/HST.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2004/chylb52.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2004/chylb52.htm

Cy Pres Granted to Enable Charitable Trust to Meet Disbursement Quota

by Terrance S. Carter and assisted by Nancy E. Claridge in *Charity Law Bulletin No.53, September 28, 2004.*

In the case of *Toronto Aged Men's and Women's Homes v. Loyal True Blue and Orange Home* (2003), the Ontario Superior Court of Justice exercised its inherent *cy pres* jurisdiction to alter the terms of a charitable trust to address its inability to meet the disbursement quota due to the rate of return on its capital assets. "Cy pres" is the equitable doctrine under which a court changes a written instrument, such as a trust, with a gift to charity "as closely to the donor's intention as possible," so that the gift does not fail. The court held that its jurisdiction would permit the authorization of encroachments on capital to the extent required to satisfy the trust's disbursement quota. This *Charity Law Bulletin* discusses the findings of the court and explains the implications of the case, particularly as it relates to charities that are unable to meet their disbursement quota.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2004/chylb53.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2004/chylb53.htm

IN THE PRESS

Legal Liabilities in Fundraising VIII: Self-Insured Gift Annuities are Rarely Used - With Reason, by Terrance S. Carter - The eight in a series of articles providing a practical overview of legal risks associated with charitable fundraising in Canada. *Canadian Fundraiser Vol. 14 No. 18*. September 30, 2004.

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1481>

The Lawyers Weekly recently published "SCC Decides on Religious Freedom" by Terrance S. Carter and Nancy E. Claridge (Vol. 24 No. 19, September 24, 2004).

[Link] <http://www.carters.ca/news/2004/lawyerwkly/SCC0924.pdf>

The Lawyers Weekly recently published "Directorate Announces Reforms to Charitable Regs" by Terrance S. Carter and Nancy E. Claridge (Vol. 24 No. 19, September 24, 2004).

[Link] <http://www.carters.ca/news/2004/lawyerwkly/CRA0924.pdf>

Canadian Fundraiser eNews included a quote from *Charity Law Bulletin 51*, "Supreme Court of Canada Adopts Broad View of Religious Freedom" by Terrance S. Carter (September 15, 2004).

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1473>

Legal Liabilities in Fundraising VII: Gifts of Shares or Interest in Business and Real Property, by Terrance S. Carter - The seventh in a series of articles providing a practical overview of the legal risks associated with charitable fundraising in Canada. *Canadian Fundraiser Vol. 14 No. 17*. September 15, 2004.

[Link] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1466>

RECENT EVENTS AND PRESENTATION MATERIALS

Volunteer Lawyers Service and the Law Society of Upper Canada - Continuing Legal Education Workshop - Charitable and Nonprofit Primer was held on September 27, 2004 in Toronto, Ontario with presentations by Terrance S. Carter on the following topics; "Advising the Charitable Client" and "Lawyers' Due Diligence".

Christian Legal Fellowship and the Evangelical Fellowship of Canada "Law & Church Leadership" conference was held on September 30, 2004, in Vancouver, BC, with presentations by Carter & Associates lawyers on the following topics;

"Same Sex Marriage" by Terrance S. Carter and Mervyn F. White,
"Bill C-45" by Mervyn F. White,
"Changes under the Income Tax Act" by Terrance S. Carter,
"The Impact of Recent Jehovah Witness Case" by Mervyn F. White,
"Bill C-250 (Hate Propaganda)" by Bruce W. Long, and
"Investigating Criminal Activities" by Bruce W. Long.

[Link] <http://www.carters.ca/pub/seminar/church/2004/LCL0930.pdf>

Trent Valley Association hosted a seminar in Uxbridge, Ontario, on September 25, 2004, with presentations by Carter & Associates lawyers on the following topics;

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

Association of Treasurers of Religious Institutes (ATRI) 17th Annual Conference was held on September 25, 2004, in Toronto, Ontario with Mark J. Wong presenting on "Privacy Compliance: What Charities Need to Do."

Canadian Fundraiser "Key-to-the-Sector Workshop" - Directors' and Officers' Liability: The Essentials and Beyond - was held on September 22, 2004 in Toronto, Ontario with Terrance S. Carter presenting.

UPCOMING EVENTS AND PRESENTATIONS

Hospice Association of Ontario 15th Annual Conference will be held in Alliston, Ontario on October 16, 2004 with Donald J. Bourgeois presenting "Policy Based Board Governance".

[Link] www.hospice.on.ca/Conference-2004/conference2004.htm

Senior Estates & Trusts Practitioners' Forum is being hosted by Fasken Martineau DuMoulin LLP on October 18, 2004 in Cambridge, Ontario with presentations by Terrance S. Carter and Elena Hoffstein of our affiliated firm Fasken Martineau DuMoulin LLP.

Institute of Chartered Accountants of Ontario (Toronto Branch) - Director & Officer Liability & Beyond to be held in Toronto, Ontario, on October 22, 2004, with Terrance S. Carter presenting on the following topics;

"The Legal Duties of Directors of Charities and Not-for-Profits",

"Good Governance in Meeting the Duties of Directors of Charities and Not-for-Profits",

"Due Diligence in Avoiding Risks for Directors of Charities and Not-for-Profits",

"How to Avoid Liability in Fundraising", and

"Recent Changes to the Income Tax Act and Policies Relating to Charities and Charitable Gifts".

See link below for details.

<https://ebusiness.icao.on.ca/eso/source/Calendar/Index.cfm?CFID=356928&CFTOKEN=65230381#21301015>

Ontario Bar Association Charity & Not-for-Profit Seminar "Apples, Oranges or Lemons? – Legal Issues Arising in Form, Function and Fundraising of Charitable and Not-for-Profit Organizations" to be held in Toronto, Ontario, October 27, 2004, with Terrance S. Carter and Theresa L.M. Man presenting on Share Capital Social Clubs as NPOs.

See link below for details.

<http://www.softconference.com/oba/eventdetails.aspx?userId=53342402064787226107200433333&iscle=yess&code=04CHA1027C>

New York University School of Law, National Center on Philanthropy and the Law has invited Terrance S. Carter to present on recent developments in Anti-terrorism law at their Annual Conference, "Diversions of Charitable Assets: Misuse, Sanctions & Enforcements" - October 28-29, 2004.

[Link] www.law.nyu.edu/ncpl/evntframe.html

The 2004 Annual Church & Charity Law Seminar hosted by Carter & Associates will be held on November 10, 2004, in Toronto, Ontario, and will include presentations by the both the Director General, Elizabeth Tromp, and the Director of Policy and Communications, Terry DeMarch, from the Charities Directorate, Canada Revenue Agency, among others. The seminar is 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. Last year more than 550 people were in attendance.

[PDF] Brochure and Registration form - www.carters.ca/pub/seminar/notice/2004/brochure-web.pdf

[Web] Brochure - <http://www.carters.ca/pub/seminar/chrchl/2004/brochure.htm>

[PDF] Registration form - <http://www.carters.ca/pub/seminar/chrchl/2004/register.htm>

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, www.charitylaw.ca and www.antiterrorism.ca.



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.

Nancy E. Claridge – A third year student at Osgoode Hall Law School, Ms. Claridge is a Senior Editor of the Law Journal and Co-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, and continues to publish in the areas of legal research and personal injury law. Nancy was a summer student at Carter and Associates and will return for her articles.

Sean S. Carter – A final year student at the University of Toronto completing a joint specialist degree program in Political Science and Philosophy. Sean is a research assistant and author at Carters, with experience writing on anti-terrorism law, including publications in *The International Journal of Not-for-Profit Law*, *The Lawyers Weekly*, and the *Anti-Terrorism and Charity Law Alert*.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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