

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

OCTOBER 2005 ISSUE

SECTIONS

Recent Publications and News Releases	2
In the Press	4
Recent Events and Presentation Materials	4
Upcoming Events and Presentations	6
Contributors	7
Acknowledgements, Errata and other Miscellaneous Items	9

HIGHLIGHTS

ULCC Recommends that Provinces Enact Charitable Fundraising Legislation

New CRA Policy on Umbrella Organizations

The Employer's Duty to Accommodate: Religious Observances and Beliefs

Advancing Religion as a Head of Charity - What are the Boundaries? (Revised)

The Impact of Anti-Terrorism Legislation on Charities: The Shadow of the Law (Revised)

See the Upcoming Events section of this Update for details on the

2005 Annual Church & Charity Law Seminar

Hosted by Carter & Associates.

Toronto, Ontario, Wednesday, November 9, 2005.

Get on Our Mailing List: To automatically receive the free monthly *Charity Law Update*, send an email to 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.

RECENT PUBLICATIONS AND NEWS RELEASES

ULCC Recommends that Provinces Enact Charitable Fundraising Legislation

by Terrance S. Carter, assisted by Nancy E. Claridge in Charity Law Bulletin No. 79, October 14, 2005.

The past five years have in some respects been a difficult time for charitable organizations in Canada as a result of a series of print and television news reports detailing various abuses by a number of charities and fundraising businesses, and two egregious cases in 2001 and 2002 where Ontario's Public Guardian and Trustee was forced to step in and obtain a court order for the "charitable" organizations to pass accounts. Although the fundraising practices of "the overwhelming majority of charities and charitable fundraisers are ethical and beyond reproach," the unsavoury practices of the minority was prejudicing the reputation of the vast number of legitimate charitable organizations in Canada. It was within this context that the Uniform Law Conference of Canada ("ULCC") stepped in to help move the sector forward. At their 2005 meeting in St. John's, Newfoundland, the ULCC passed a resolution adopting a *Uniform Charitable Fundraising Act*, and recommended that it be enacted by both the provincial and territorial governments. This *Charity Law Bulletin* reviews the legislation and compares it to similar initiatives in other jurisdictions.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb79.pdf>

New CRA Policy on Umbrella Organizations

by Jacqueline M. Connor and Terrance S. Carter in Charity Law Bulletin No. 78, October 12, 2005.

This *Charity Law Bulletin* provides a brief overview of the draft policy entitled *Guidelines for the Registration of Umbrella Organizations* that was released by Canada Revenue Agency ("CRA") on July 29, 2005. The initiative CRA has taken in its initial draft of the Guidelines is a positive development that will be of assistance in facilitating the establishment of umbrella organizations to assist other registered charities and for the protection of charitable assets. However, there are aspects of the draft policy that will require further consideration by CRA.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb78.pdf>

The Employer's Duty to Accommodate: Religious Observances and Beliefs

by Anne-Marie Langan and Mervyn F. White in Church Law Bulletin No.13, September 27, 2005.

In Ontario, employers are prohibited from discriminating either directly or indirectly in employment on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status and handicap. Employers have a duty to accommodate their employees, who are members of one of the identified groups, to the point of "undue hardship." This *Church Law Bulletin* explores in detail the scope of an Ontario employer's duty to accommodate employees who have religious beliefs that have come into conflict with one of the employer's policies, providing recommendations to employers on how to avoid liability by making appropriate accommodations for these employees.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2005/chchlb13.pdf>

Advancing Religion as a Head of Charity - What are the Boundaries? (Revised)

by Terrance S. Carter, September 29, 2005.

This paper is a significantly updated version of a paper that was originally presented for the CBA/OBA 3rd National Symposium on Charity Law on May 6, 2005, that takes into account recent legal developments, as well as provides additional commentary. It provides an explanation of the historical perspective concerning advancement of religion as a head of charity by examining the case law that has been most influential in defining the scope of advancement of religion. A discussion then follows regarding how the Charter has impacted the definition of religion and may impact advancing religion as ahead of charity in the future. Finally, an analysis is provided of recent developments in Canada concerning advancement of religion compared with parallel developments in other jurisdictions, some of which have attempted to provide, or are currently in the process of providing a legislative definition of advancement of religion..

Read More:

[PDF] <http://www.carters.ca/pub/article/church/2005/tsc0929.pdf>

The Impact of Anti-Terrorism Legislation on Charities: The Shadow of the Law (Revised)

by Terrance S. Carter, September 27, 2005.

This paper is an update of an earlier version that was presented at the New York University School of Law in October 2004, and takes recent legal developments into account, as well as provides additional commentary. It examines Canada's recent legislative initiatives to combat terrorism and their impact on Canadian charities and those who advise them. Charitable activities that were until recently thought to be commonplace and uneventful may now lead to a charity becoming susceptible to criminal charges for having facilitated "terrorist activities" or for supporting "terrorist groups." This, in turn, could result in the charity losing its charitable

status and its directors being exposed to personal liability. In addition, financial transactions involving charities may lead to allegations of terrorist financing or to the surveillance and monitoring of a charity's financial activities. While it is difficult to say what the long-term impact of Canada's anti-terrorism legislation will be, it is clear that it will have a profound impact upon the charitable sector and Canadian society in general.

Read More:

[PDF] <http://www.carters.ca/pub/article/charity/2005/tsc0927.pdf>

IN THE PRESS

ITA Amendments: Consolidates Proposals from Variety of Sources by *Theresa L.M. Man.*

Canadian Fundraiser Vol.25 No.16, September 30, 2005.

[WEB] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1772>

New Appeals Regime Intends to be More Accessible and Affordable for Charities by *Karen J. Cooper.*

The Lawyers Weekly Vol.25 No.17, September 9, 2005.

[WEB] <http://www.carters.ca/news/2005/lawyerwkly/kjc0909.pdf>

Wills, Living Wills – What You Need and Why by *Jacqueline M. Connor* for the newly launched *Canadian version of Lawyers.com* in the 'Legal Topics' section.

[PDF] <http://canada.lawyers.com/lawyers/A~1022872~CND/WILLS+LIVING+WILLS.html>

RECENT EVENTS AND PRESENTATION MATERIALS

"Recent Changes to the *Income Tax Act* Affecting Religious Organizations" was presented by Terrance S. Carter for the Association of Treasurers of Religious Institutions in Edmonton, Alberta, on October 2, 2005.

[PDF] <http://www.carters.ca/pub/seminar/church/2005/tsc1002.pdf>

[WEB] <http://www.carters.ca/pub/seminar/church/2005/tsc1002.htm>

“Governance 101: The Foundation Seminar” was presented by Donald J. Bourgeois as the first of a series of seminars and workshops for Board School hosted by the Waterloo Regional Arts Council and Carter & Associates in Waterloo, Ontario. October 1, 2005.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/djb1001.pdf>

[WEB] <http://www.carters.ca/pub/seminar/charity/2005/djb1001.htm>

“Advancing Religion as a Head of Charity – What are the Boundaries?” was presented by Terrance S. Carter at the symposium hosted by the Canadian Council of Christian Charities (CCCC) and Christian Legal Fellowship in Mississauga, Ontario, on September 29, 2005.

[Handouts -PDF] <http://www.carters.ca/pub/seminar/church/2005/tsc0929.pdf>

[Presentation] <http://www.carters.ca/pub/seminar/church/2005/tsc0929.htm>

[Paper] <http://www.carters.ca/pub/article/church/2005/tsc0929.pdf>

“Employment Law” was presented by Mervyn F. White and Anne-Marie Langan as part of Canadian FundRaiser’s workshop series in Toronto on September 28, 2005. Details are available at http://www.canadianfundraiser.com/workshop_viewer.asp?workshop_ID=72.

"The Impact of Anti-Terrorism Legislation on Christian Charities" was presented by Terrance S. Carter for the Canadian Council of Christian Charities in Mississauga, Ontario on September 27, 2005.

[Handouts -PDF] <http://www.carters.ca/pub/seminar/charity/2005/tsc0927.pdf>

[Presentation] <http://www.carters.ca/pub/seminar/charity/2005/tsc0927.htm>

[Paper] <http://www.carters.ca/pub/article/charity/2005/tsc0927.pdf>

“Charity and Not-for-Profit Law: The Mysteries of the New Disbursement Rules Revealed?” was presented by Terrance S. Carter, Robert B. Hayhoe, and David Stevens at the Ontario Bar Association (OBA) – The Lawyers Edge Program in Toronto, Ontario on September 22, 2005.

“Recent Legal Developments Affecting Charities” was hosted by the Ottawa Chapter of the Association of Fundraising Professionals in Ottawa, Ontario, on September 15, 2005.

How to Reduce Liability for Directors and Officers, Jane Burke-Robertson and Karen J. Cooper;

Branding and Sponsorship Issues for Charities, Terrance S. Carter;

Highlights of Recent Tax Changes Affecting Charities, Karen J. Cooper;

Key Aspects of the New Federal Not-for-Profit Corporations Act, Jane Burke-Robertson; and

Avoiding Liability in Charitable Fundraising, Terrance S. Carter.

[PDF] <http://www.carters.ca/pub/seminar/charity/2005/AFP0915.pdf>

UPCOMING EVENTS AND PRESENTATIONS

“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. *Some space is still available.*

Contact the Foundation office at 372-3925 for more information and to register.

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

Continuing Legal Education Program of the Ontario Bar Association called “A Danger to Dabble” will include a presentation on “Risk Management for Directors,” by Terrance S. Carter in Toronto, Ontario, on October 26, 2005.

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

Advanced Gift Planning Symposium hosted by the Canadian Association of Gift Planners at the Marriott Hotel in Ottawa, Ontario, will include a presentation by Karen J. Cooper and Jane Burke-Robertson entitled “Returning a Gift- What are the Options” on November 3, 2005.

Visit the CAGP site for more information and to register.

http://www.cagp-acpdp.org/symp_descript.htm

2005 Annual Church & Charity Law Seminar will be held on Wednesday, November 9, 2005 at the Young-Nak Korean Presbyterian Church of Toronto.

REGISTER NOW – Space is Limited.

Color Brochure and Registration form [PDF] available at

<http://www.carters.ca/pub/seminar/chrchlaw/2005/brochure.pdf>

Web Brochure <http://www.carters.ca/pub/seminar/chrchlaw/2005/brochure.htm>

Web Registration Form <http://www.carters.ca/pub/seminar/chrchlaw/2005/register.htm>

Board School, hosted by The Waterloo Regional Arts Council and Carter & Associates, is presenting “Financial Statements” as the next workshop in the series by Donald J. Bourgeois in Waterloo, Ontario on November 12, 2005.

Contact wrac@golden.net for more information or to register.

The Association of Fundraising Professionals (Newfoundland Chapter) will be hosting a seminar on November 18, 2005; with a presentation by 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.

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 Butterworth.



Jane Burke-Robertson – Practicing with Carter & Associates’ Ottawa office in the area of charity and not-for-profit law, Ms. Burke-Robertson is agent of the Attorney General of Canada and outside counsel to the Corporate Law Policy Directorate of Industry Canada to provide legal advice on the reform of the *Canada Corporations Act*, as well as co-author of *Non-Share Capital Corporations* published by Carswell and contributing author to Industry Canada’s *Primer for Directors of Not-For-Profit Corporations*.



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, www.churchlaw.ca and www.antiterrorism.ca.



Nancy E. Claridge – Articling with Carter & Associates, Ms. Claridge was a Senior Editor of the Osgoode Hall 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.



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 & Charity Law*TM 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 as adjunct professor at the University of Ottawa, Faculty of Common Law.



U. Shen Goh – Ms. Goh practices in the area of intellectual property, focusing on trademarks, privacy and information protection. She has a Master of Law degree from the University of San Diego School of Law and an LL.B. from Osgoode Hall Law School. Ms. Goh has also been an invited speaker for the Greater Dufferin Area Chamber of Commerce and the Social Planning Council of Peel, and has written on privacy issues for *The Lawyers Weekly* and *Charity Law Bulletin*.



Anne-Marie Langan – Ms. Langan practices at Carter & Associates in the areas of family law and human rights litigation. 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).



Theresa L.M. Man – Practices charity and not-for-profit law, with particular emphasis on tax issues. Mrs. Man is on the Ontario Bar Association Charity and Not-for-Profit Law Section Executive, has been an invited speaker at the Canadian Bar Association National Symposium on Charity Law, and the *Church & Charity Law*TM Seminar, and has written on taxation issues for charities and non-profits for *The Lawyers Weekly*, *Planned Giving Pulse*, *International Journal of Civil Society Law*, *The Bottom Line*, and *Charity Law Bulletin*.



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*TM 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

Links not Working: If the above links do not work from your mail program, simply copy the link text and paste it into the address field of your internet browser.

Get on Our E-Mailing List: If you would like to be added to our electronic mailing list and receive regular updates when new materials are added to our site, send an email to info@carters.ca with "Subscribe" in the subject line. Feel free to forward this email to anyone (internal or external to your organization) who might be interested.

To be Removed: If you wish to be removed from our mailing list, please reply to this message with Remove in the subject line.

Privacy: We at Carter & Associates know how important your privacy is to you. Our relationship with you is founded on trust and we are committed to maintaining that trust. Personal information is collected solely for the purposes of establishing and maintaining client lists; representing our clients; and to establish and maintain mailing lists for the distribution of publications as an information service. Your personal information will never be sold to or shared with another party or organization. For more information, please refer to our Privacy Policy at www.carters.ca/privacy.pdf.

Copyright: All materials from Carter & Associates are copyrighted and all rights are reserved. Please contact us for permission to reproduce any of our materials. All rights reserved.

Disclaimer: This is a summary of current legal issues provided as an information service by Carter & Associates. It is current only as of the date of the summary and does not reflect subsequent changes in the law. The summary is distributed with the understanding that it does not constitute legal advice or establish the solicitor/client relationship by way of any information contained herein. The contents are intended for general information purposes only and under no circumstances can be relied upon for legal decision-making. Readers are advised to consult with a qualified lawyer and obtain a written opinion concerning the specifics of their particular situation.

CARTER & ASSOCIATES PROFESSIONAL CORPORATION

Affiliated With Fasken Martineau DuMoulin LLP

Terrance S. Carter B.A., LL.B.
(Counsel to Fasken Martineau DuMoulin LLP)

tcarter@carters.ca

Jane Burke-Robertson B.Soc.Sci., LL.B.

janebr@carters.ca

Mervyn F. White B.A., LL.B.

mwhite@carters.ca

Karen Cooper, B.A., LL.B.

kcooper@carters.ca

Theresa L.M. Man B.Sc., M.Mus., LL.B.

tman@carters.ca

Jacqueline M. Connor B.A., LL.B.

jconnor@carters.ca

Esther S.J. Oh B.A., LL.B.

estheroh@carters.ca

Suzanne E. White B.A., LL.B.

swhite@carters.ca

U. Shen Goh LL.B., LL.M.

sgoh@carters.ca

Anne-Marie Langan B.A., B.S.W., LL.B.

sgoh@carters.ca

D. Ann Walters B.A., LL.B.

sgoh@carters.ca

COUNSEL:

Bruce W. Long B.A., LL.B.

blong@carters.ca

Donald J. Bourgeois B.A., LL.B.

dbourgeois@carters.ca

Main Office

211 Broadway, P.O. Box 440
Orangeville, Ontario, Canada, L9W 1K4
Tel: (519) 942-0001
Fax: (519) 942-0300
info@carters.ca

Ottawa Office

70 Gloucester Street
Ottawa, Ontario, Canada
Tel: (613) 235-4774
Fax: (613) 233-3774

Toronto Meeting Location

(by appointment)
Toronto Dominion Bank Tower, Suite 4200
Toronto, Ontario, Canada
(416) 675-3766

London Meeting Location

(by appointment)
100 Fullarton Street
London, Ontario, Canada
(519) 937-2333

Vancouver Meeting Location

(by appointment)
2100 - 1075 West Georgia Street
Vancouver, British Columbia
(877) 942-0001

Toll Free: 1-877-942-0001

www.carters.ca
www.charitylaw.ca
www.churchlaw.ca
www.antiterrorism.ca