

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

SEPTEMBER 2005 ISSUE

SECTIONS

Recent Publications and news Releases	2
In the Press	5
Recent Events and Presentation Materials	5
Upcoming Events and Presentations	6
Contributors	7
Acknowledgements, Errata and other Miscellaneous Items	9

HIGHLIGHTS

July 18, 2005 Draft Amendments to the *Income Tax Act* Affecting Charities

New CRA Policy on Applicants Assisting Ethnocultural Communities

Recent Federal Court of Appeal Decisions Revoking Charitable Status of Charities

Implications of Recent Amendments to *Civil Marriage Act* for Religious Groups and Officials

New Uniform Charitable Fundraising Act is Adopted by the Uniform Law Conference of Canada

“Recent Legal Developments Affecting Charities”

Hosted by the Ottawa Chapter of the Association of Fundraising Professionals.

Ottawa, Ontario, Thursday, September 15, 2005, at 4 p.m.

2005 Annual Church & Charity Law Seminar

Hosted by Carters & Associates.

Toronto, Ontario, Wednesday, November 9, 2005.

See the Upcoming Events section of this Update for details on both of the above.

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RECENT PUBLICATIONS AND NEWS RELEASES

July 18, 2005 Draft Amendments to the Income Tax Act Affecting Charities

Part I – Definition Of Gift & Split-Receipting

Part II – Other Changes

by Theresa L.M. Man in Charity Law Bulletin Nos. 76 and 77, September 8, 2005.

On July 18, 2005, the Department of Finance (the "Department") again released legislative proposals (the "July 2005 Amendments") to amend the *Income Tax Act* (Canada). The July 2005 proposal is a package of changes that consolidates and further amends previously proposed amendments introduced by the Department on December 20, 2002, December 5, 2003 at 6 p.m. (Eastern Standard Time), and February 27, 2004, as well as amending provisions enacted by Bill C-33, *A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 23, 2004* that came into force on May 13, 2005.

A number of the proposed changes will impact the operations of registered charities in Canada in a substantial way, including split-receipting, designation of charitable organizations and public foundations, revocation of charitable registrations, etc. These changes are summarized in a series of two *Charity Law Bulletins*.

Part I of the series summarizes the following changes concerning the definition of "gift" and split-receipting which are contained in subsections 248(30) to (41):

- Intention to give and "eligible amount" of gift
- Amount of advantage
- Cost of property acquired by donor
- Repayment of limited-recourse debt
- Deemed fair market value and non arm's transaction
- Anti-avoidance
- Substantive gifts
- Reasonable inquiry and information from donor

Part II of the series summarizes the following changes:

- New definitions of charitable organizations and public foundations
- Enduring property
- Revocation of charitable registrations

- New qualified donees
- Expanded public information

The Department's news release indicates that comments regarding the July 2005 Amendments can be forwarded to the Tax Legislation Division of the Department by September 15, 2005.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb76.pdf>

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb77.pdf>

Recent Federal Court of Appeal Decisions Revoking Charitable Status of Charities

by Theresa L.M. Man and Terrance S. Carter in Charity Law Bulletin No. 75, September 7, 2005.

In 2004 and 2005, there were two cases decided by the Federal Court of Appeal that registered charities should be aware of in relation to maintaining their charitable status. Both these cases were appeals by charitable organizations of the decision of the Minister of National Revenue to revoke their charitable status. This *Charity Law Bulletin* reviews those decisions, summarizes their content and discusses their implications for registered charities in Canada.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb75.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2005/chylb75.htm>

New CRA Policy on Applicants Assisting Ethnocultural Communities

by Terrance S. Carter, assisted by Derek B.M. Ross in Charity Law Bulletin 74, September 7, 2005.

In June 2005, Canada Revenue Agency ("CRA") released a policy statement entitled "Applicants Assisting Ethnocultural Communities" (the "Policy"). The Policy sets out detailed guidelines on attaining charitable status for community organizations that assist ethnocultural communities in Canada. This policy will be of significance to both current registered charities and potential applicants, as it outlines CRA's requirements for attaining registered charitable status under the *Income Tax Act*, and indicates which activities it will accept as charitable for that purpose. This *Charity Law Bulletin* summarizes the content of the Policy and comments on some its more important aspects. The Policy is available on CRA's website at <http://www.cra-arc.gc.ca/tax/charities/policy/ethno-e.html>.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/charity/2005/chylb74.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/charity/2005/chylb74.htm>

Implications of Recent Amendments to *Civil Marriage Act* for Religious Groups and Officials *by Terrance S. Carter and Anne-Marie Langan in Church Law Bulletin 12, September 6, 2005.*

Bill C-38, now entitled the *Civil Marriage Act*, S.C. 2005, c. 33, received Royal Assent on July 20, 2005, and is now in full force. The current version of the *Civil Marriage Act* contains two amendments aimed at protecting individuals and organizations opposed to same-sex marriage on religious grounds from being sanctioned under law or losing their charitable status. In this *Church Law Bulletin*, we explore the possible implications of these new amendments for religious groups and religious officials.

Read More:

[PDF] <http://www.carters.ca/pub/bulletin/church/2005/chchlb12.pdf>

[WEB] <http://www.carters.ca/pub/bulletin/church/2005/chchlb12.htm>

New Uniform Charitable Fundraising Act is Adopted by the ULCC

The Uniform Law Conference of Canada passed a resolution at their conference in St. John's during the last week of August, 2005, adopting a draft Uniform Charitable Fundraising Act, together with a recommendation that it be enacted by the provincial and territorial governments. A *Charity Law Bulletin* outlining the specifics of the draft Act will be forthcoming.

Read More:

[WEB] See the ULCC Report and draft Act at:

<http://www.ulcc.ca/en/poam2/index.cfm?sec=2005&sub=2005g>

CRA Announces Consultation on Proposed Guidelines for the Registration of Umbrella Organizations

The Canada Revenue Agency released a draft policy to clarify their position on the eligibility of Umbrella Organizations, as described within the policy, for registration as charities under the *Income Tax Act*, and are asking those affected for input. All comments received by October 31, 2005, will be considered.

Read More:

[WEB] See the draft policy at: <http://www.cra-arc.gc.ca/tax/charities/consultations/umbrella-e.html>

IN THE PRESS

How do Charitable Organizations and Foundations Differ under Income Tax? by *Theresa L.M. Man and Terrance S. Carter.*

The Lawyers Weekly Vol.25 No.16, September 2, 2005.

Charities in Canada now Have Access to Tax Court by *Karen J. Cooper.*

The Bottom Line, Vol.21 No. 9, August, 2005.

[PDF] <http://www.carters.ca/news/2005/bottomline/KJC0805.pdf>

Civil Marriage Act Designed to Protect those Opposed to Same-Sex Marriage by *Terrance S. Carter and Anne-Marie Langan.*

The Lawyers Weekly Vol.25 No.15, August 26, 2005.

International Journal of Civil Society Law Newsletter reproduced Charity Law Bulletin No. 73, "A Comparison of the Three Categories of Registered Charities" by *Theresa L.M. Man and Terrance S. Carter.*

IJCSL Newsletter Vol.2 Issue 9 August 2005.

A Comparison of the Three Types of Registered Charities by *Theresa L.M. Man and Terrance S. Carter.*

Canadian Fundraiser Vol. 15 No. 15 Aug. 15, 2005.

[PDF] <http://www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1735>

RECENT EVENTS AND PRESENTATION MATERIALS

We're pleased to announce the addition of four new lawyers and the opening of our Ottawa office.

Jane Burke-Robertson - Ms. Burke-Robertson has been counsel to Carters on charity and not-for-profit matters since 2003, and joined the firm's new Ottawa office effective July 1, 2005. Advisor to the Corporate Law Policy Directorate of Industry Canada on reform of the *Canada Corporations Act*, Jane is also co-author of *Non-Share Capital Corporations* published by Carswell, contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*, part-time professor at the University of Ottawa, Faculty of Law, and has been recognized by Lexpert to be one of the leading practitioners in the area of charities and not-for-profits in Canada. Ms. Burke-Robertson also serves as honorary legal counsel to a number of prominent national not-for-profit organizations. Ms. Burke-Robertson can be reached at our Ottawa office.

Karen J. Cooper - On leave from her position as Senior Rulings Officer with the Income Tax Rulings Directorate of Canada Revenue Agency, Ms. Cooper will be practicing primarily from our Ottawa office with a focus on personal and corporate tax planning, and tax litigation, as well as charity and not-for-profit law. Called to the Ontario Bar in 1995, Ms. Cooper became counsel for the Department of Justice in tax litigation before moving to Lang Michener and finally on to Canada Revenue Agency. Ms. Cooper also has extensive teaching experience, including as adjunct professor at the University of Ottawa, Faculty of Common Law. Ms. Cooper can be reached at our Ottawa office.

Anne-Marie Langan - Called to the Ontario Bar in 2005, Ms. Langan will be practicing in our Orangeville office, primarily in the area of family law and developing a Collaborative Family Law practice, as well as in the areas of human rights and general litigation. Ms. Langan 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 her paper entitled "Unrepresented Litigants in the Family Courts of Ontario," published in the Spring 2005 issue of the Queen's Law Journal. Ms. Langan can be reached at our Orangeville office.

D. Ann Walters - Called to the Ontario Bar in 2005, Ms. Walters will be practicing in our Orangeville office, in the areas of general litigation and operational risk management, with an emphasis on insurance law and due diligence policies. Ms. Walters gained considerable experience in the insurance industry before embarking on her legal career. She received her law degree in 2004 from Queen's University, where she also worked as a caseworker in the Legal Aid Office, provided administrative support at the International Centre and volunteered in the Ban Righ Women's Centre. Ann gained extensive litigation experience during her articles with the firm in 2004/2005. Ms. Walters can be reached at our Orangeville office.

UPCOMING EVENTS AND PRESENTATIONS

“Recent Legal Developments Affecting Charities” is being hosted by the Ottawa Chapter of the Association of Fundraising Professionals in Ottawa, Ontario, on September 15, 2005. Details are available at <http://www.afpottawa.ca/education>.

“Charity and Not-for-Profit Law: The Mysteries of the New Disbursement Rules Revealed?” will be 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. Details are available at <http://www.softconference.com/oba/eventdetails.aspx?userID=28956252064787226972005102525&isCLE=yes&code=05CHA1026C>.

"The Impact of Anti-Terrorism Legislation on Christian Charities" will be presented by Terrance S. Carter for the Canadian Council of Christian Charities in Mississauga, Ontario on September 27, 2005. Details are available at <http://www.cccc.org/contents.php?area=y&id=4001>.

"Employment Law" will be 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.

"Advancing Religion as a Head of Charity – What are the Boundaries?" will be presented by Terrance S. Carter at the symposium hosted by the Canadian Council of Christian Charities (CCCC) and Christian Legal Fellowship at the Stage West Hotel, Mississauga, Ontario, on September 29, 2005. Details are available at <http://www.christianlegalfellowship.org/conference2005/ccccclfpromo.pdf>.

"Governance 101" will be presented by Donald J. Bourgeois in Kitchener, Ontario, on October 1, 2005. This event is hosted by the Waterloo Regional Arts Council and Carter & Associates.

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

"How to Pack your Risk Management Parachute" will be presented by Karen Cooper to the Big Brothers Big Sisters Ontario Regional Workshops in Ottawa, Ontario (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 (October 26, 2005).

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

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>

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



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.



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*™ 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*.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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