

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

SEPTEMBER 2004 ISSUE

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HIGHLIGHTS

- 2004 Annual Church & Charity Law Seminar. November 10, 2004. Register Now.
- Supreme Court of Canada Adopts Broad View of Religious Freedom
- Federal Court of Appeal Weighs in on Definition of Advancing Religion
- Ontario Court of Appeal Affirms Unenforceability of Pledges
- Legal Liability in Fundraising: A New Approach in Risk Management
- Directorate Announces Reforms to the Charitable Regulatory Environment

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New Issue Date: This newsletter has previously been dated according to the month preceding publication to reflect the time period being covered but will from now on be dated according to the month in which it is published. We feel this format is an improvement.

NEW PUBLICATIONS

Supreme Court of Canada Adopts Broad View of Religious Freedom

by Terrance S. Carter and assisted by Nancy E. Claridge in Charity Law Bulletin No.51 and Church Law Bulletin No. 05. August 23, 2004.

Following on the heels of the Federal Court of Appeal's decision in *Fuaran Foundation v. Canada Customs and Revenue Agency*, 2004 FCA 181, which narrowly construed the practices constituting "advancing religion" for charitable purposes, the Supreme Court of Canada, in a landmark 5-4 ruling in *Syndicat Northcrest v. Amselem*, [2004] S.C.J. No. 46, 2004 SCC 47 (the "Amselem decision"), has said the State cannot regulate personal religious beliefs. In the *Amselem* decision, the Court held that when courts undertake to analyze religious doctrine in order to determine the truth or falsity of a contentious matter of religious law, or when courts attempt to define the very concept of religious obligation, "they enter forbidden domain." This *Charity Law Bulletin* reviews the Court's decision and discuss some of the implications of this case on religious freedom in Canada.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2004/chylb51.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2004/chylb51.htm

Federal Court of Appeal Weighs in on Definition of Advancing Religion

by Terrance S. Carter and assisted by Nancy E. Claridge in Charity Law Bulletin No.50 and Church Law Bulletin No. 04. August 20, 2004.

The Federal Court of Appeal recently dismissed an appeal of Canada Revenue Agency's ("CRA") decision not to register the Fuaran Foundation as a charity under the *Income Tax Act*, finding the Appellant's resources were not devoted to charitable activities. This decision may make it more difficult for religious organizations to obtain charitable status based upon the charitable grounds of advancing religion, particularly those using secondary activities not directly related to the narrow confines of doctrine and practice of a religion. While a subsequent Supreme Court of Canada decision discussed in *Charity Law Bulletin 51* may limit the effect of this decision, religious charities should be aware of the possible implications of this Federal Court decision, which are outlined in this *Bulletin*.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2004/chylb50.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2004/chylb50.htm

Ontario Court of Appeal Affirms Unenforceability of Pledges

by Terrance S. Carter and assisted by Nancy E. Claridge in *Charity Law Bulletin No.49 July 30, 2004.*

The Ontario Court of Appeal recently dismissed an application for leave to appeal from the decision of Justice Milanetti in the case of *Brantford General Hospital Foundation v. Marquis Estate*. This case does not establish new law, but rather reinforces the common law principle that a pledge is unenforceable for lack of consideration. Further, the doctrines of part performance and estoppel will only allow enforcement of a pledge in cases where there is a pre-existing legal or contractual relationship between the parties.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2004/chylb49.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2004/chylb49.htm

Legal Liability in Fundraising: A New Approach in Risk Management

by Terrance S. Carter and assisted by Nancy E. Claridge in *Charity Law Bulletin No.48 July 29, 2004.*

There are a number of practical steps that can be taken to avoid legal liability resulting from fundraising programs. *Charity Law Bulletin 48* discusses the need for charities to employ a proactive risk management approach and is directed to fundraisers and senior managers who either work for or on behalf of charities, as well as to lawyers who advise charities or who themselves serve on the boards of charitable organizations.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2004/chylb48.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2004/chylb48.htm

Directorate Announces Reforms to the Charitable Regulatory Environment

by Terrance S. Carter and assisted by Nancy E. Claridge in *Charity Law Bulletin No.47 July 22, 2004.*

Responding to initiatives announced in the 2004 Federal Budget which outline the most significant reform of the charities regulatory framework in more than 20 years, the Charities Directorate of Canada Revenue Agency, released *Registered Charities Newsletter No. 19* (available at <http://www.cra-arc.gc.ca/E/pub/tg/charitiesnews-19/README.html>). The initiatives brought forward in the 2004 Federal Budget described in the Newsletter are intended to benefit the charitable sector by continuing to build public trust and confidence in charities and the CRA as a regulator. *Charity Law Bulletin 47* reviews the reforms outlined in the Newsletter.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2004/chylb47.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2004/chylb47.htm

IN THE PRESS

Legal Liabilities in Fundraising V: Avoiding Liability Involving Donor-Restricted Gifts by Terrance S. Carter - The fifth instalment in a series of articles providing a practical overview of the legal risks associated with charitable fundraising in Canada. *Canadian Fundraiser Vol. 14 No. 15*. August 15, 2004.

[Link] www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1444

Canadian Fundraiser eNews included a link to *Charity Law Bulletin 49*, "Ontario Court of Appeal Affirms Unenforceability of Pledges" by Terrance S. Carter (August 15, 2004).

[Link] www.canadianfundraiser.com/Newsletter/issue_viewer.asp?Issue_ID=93

Philanthropic Foundations Canada listed www.charitylaw.ca as a resource in their publication, "Starting a Foundation: A Guide for Philanthropists." The publication also references "The Law of Charitable and Not-for-Profit Organizations: Third Edition, Chapter 3" by Carter and Associates counsel, Donald J. Bourgeois. August, 2004.

The International Journal of Civil Society Law - a publication of the Catholic University of America, Columbus School of Law - reproduced *Charity Law Bulletin No. 46*, titled "New Telemarketing Rules will have Onerous Impact on Charities", by Terrance S. Carter. July Issue, Volume II Issue 3

[Link] <http://law.cua.edu/Students/2.3%20IJCSL%20-%20July%202004.pdf>

Legal Liabilities in Fundraising IV: Avoiding Liability Arising from Testamentary Gifts by Terrance S. Carter - The fourth instalment in a series of articles providing a practical overview of the legal risks associated with charitable fundraising in Canada. *Canadian Fundraiser Vol. 14 No. 14*. July 31, 2004.

[Link] www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1439

Legal Liabilities in Fundraising III: Looking at the Donor's Rights and Remedies by Terrance S. Carter - The third instalment in a series of articles providing a practical overview of the legal risks associated with charitable fundraising in Canada. *Canadian Fundraiser Vol. 14 No. 13*. July 15, 2004.

[Link] www.canadianfundraiser.com/newsletter/article.asp?ArticleID=1426

NEW SERVICES FROM CARTER & ASSOCIATES

Anti-terrorism Due Diligence Search Service for Charities and Non-Profit Corporations

Carter & Associates is now providing a due diligence search service for individuals and organizations that are wanting to ensure lack of association with, facilitation of, or funding of, “identified entities” under Canada’s anti-terrorism legislation (July 2004).

For more information please contact tcarter@carters.ca

Corporate Services for Charities and Non-Profit Corporations

New Corporate Service Packages for filings, annual corporate services and extra-provincial registrations (April 2004).

[PDF] www.carters.ca/charity/corpserv.pdf

RECENT EVENTS AND PRESENTATION MATERIALS

Bruce W. Long volunteers with International Justice Mission (IJM)

Bruce W. Long, sponsored by Carter and Associates, was part of a volunteer legal team working in India to help release children from bondage in quarries and child brothels. For more information on the IJM, visit their website at www.ijm.org

Congregational Christian Churches in Canada Workshop was held in Brantford, Ontario, on July 8, 2004, with presentations by Carter & Associates lawyers on the following topics;

“An Explanation of Bill C-250 (Hate Crimes)” by Bruce W. Long, and
“Same Sex Marriages –Legal Context, Including Human Rights Issues and What Churches Can Do in Response” by Terrance S. Carter and Mervyn F. White.

[PDF] www.carters.ca/pub/seminar/church/2004/Cong0708.pdf

[WEB] www.carters.ca/pub/seminar/church/2004/Cong0708.htm

UPCOMING EVENTS AND PRESENTATIONS

The 2004 Annual Church & Charity Law™ Seminar, hosted by Carter & Associates, to be held on November 10, 2004 in Toronto, Ontario, is designed to provide practical information on current legal issues to assist churches and charities understand developing trends in the law and avoid unnecessary exposure to legal liability. Although the topics presented are directed at churches and charities, many aspects of the presentations will also be of interest to not-for-profit organizations. The seminar will include presentations by Elizabeth Tromp, Director General, Charities Directorate, Canada Revenue Agency, and Terry DeMarch, Director of Policy and Communications, Charities Directorate, Canada Revenue Agency.

[PDF] www.carters.ca/pub/seminar/chrchlaw/2004/brochure-web.pdf

[WEB] Brochure - www.carters.ca/pub/seminar/chrchlaw/2004/brochure.htm

Registration Form - www.carters.ca/pub/seminar/chrchlaw/2004/register.htm

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

[Link] www.canadianfundraiser.com/workshop_Viewer.asp?workshop_ID=16

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

[Link] www.atri.on.ca/page5.html

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

"An Explanation of Bill C-250 (Hate Propaganda) by Bruce W. Long,

"Same Sex Marriages – Legal Context, Including Human Rights Issues" by Mervyn F. White, and

"Same Sex Marriages – What Churches Can Do in Response" by Terrance S. Carter

[Link] www.baptist.ca/events/details.php?id=65

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

[Link] <http://ecom.lsuc.on.ca/index.html?/html/cle/2004/CLE04-0090801.html>

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

- “New Privacy Legislation & the Church” by Mervyn F. White
- “An Explanation of Bill C-250 (Hate Propaganda) by Bruce W. Long
- “Same Sex Marriages” by Terrance S. Carter and Mervyn F. White
- “Important Recent Changes to the *Income Tax Act* and CRA” by Terrance S. Carter
- “Investigating Criminal Activities Including Sexual Abuse in the Church” by Bruce W. Long, and
- “Bill C-45” by Mervyn F. White and Bruce W. Long
- ”The Impact on Christian Counseling & Church Discipline Arising from the Recent Jehovah Witness Case” by Mervyn F. White and Bruce W. Long

[Link] www.christianlegalfellowship.org/Conference2004/lawandchurch.htm

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 – What Works, What Doesn't".

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

Ontario Bar Association Continuing Legal Education Workshop – Special Demands for Special Use Lands – is being held October 18, 2004, in Toronto, Ontario, with a joint presentation by Terrance S. Carter and John C. Latham regarding the topic of “Religious and Institutional Properties”.

Institute of Chartered Accountants (Toronto Branch) - Directors & Officers Liabilities & 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".

New York University School of Law, National Center on Philanthropy and the Law

Terrance S. Carter will present a paper recent developments in Anti-terrorism law in Canada and sanctions involving diversions of charitable assets in Canada at the New York University School of Law’s Annual Conference on Philanthropy and the Law, "Diversions of Charitable Assets: Misuse, Sanctions & Enforcements” ” in New York City - October 28-29, 2004.

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

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 Claridge – Nancy E. Claridge is a Third Year student at Osgoode Hall Law School, where she 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.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

Errata: The July 2004 *Charity Law Update* and the Carters.ca, Charitylaw.ca, and Churchlaw.ca homepages were all amended on July 28, 2004. The Trent Valley Association posting under Upcoming Events and Presentations section mistakenly reported that the Uxbridge United Church was sponsoring the seminar. The event's actual sponsor is the Baptist Convention of Ontario and Quebec.

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.

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