

# CHURCH & THE LAW UPDATE - No. 7

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Updating Churches on recent legal developments and risk management considerations.

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## 1. INTRODUCTION

This is the seventh issue of Church & the Law Update. It is intended to provide an update for churches and charities on current legal developments as well as providing recommendations on matters of legal risk management where appropriate. The Church and the Law Update is prepared as a service to churches and charities and is published approximately three to four times a year as legal developments occur.

This issue of the Church & the Law Update includes a brief commentary on a recent Supreme Court Canada decision that affects the ownership of land by churches in Ontario, as well as a Legal Risk Management Checklist of key points for identifying and avoiding legal risks for charities and churches.

## 2. CHURCH & THE LAW SEMINAR - 1996

The 1996 Annual "Church & the Law" Seminar will be held on Wednesday, February 7th, 1996 in Toronto at Queensway Cathedral in Etobicoke, Ontario. Full details of the program and how to register for the seminars are set out on the back page of this Update.

## 3. REVISED PRECEDENT AVAILABLE FOR INCORPORATION OF CHURCHES

An updated precedent is now available as a supplement to the recently published book on *Incorporation of Churches in Ontario* by Terrance S. Carter. The revised precedent contains revisions to make it a more effective model Bylaw for the incorporation of churches based on a federal incorporation. The precedent may also be of interest to churches in other provinces other than Ontario. The revised precedent is available with the order of the book, *Incorporation of Churches in Ontario* for an additional fee of \$5.00 to cover the cost of photocopying (\$15.00 for the book, \$5.00 for the updated precedent, for a total of \$20.00). For those churches that have already acquired a copy of the book on the *Incorporation of Churches in Ontario*, the updated precedent can be obtained by payment of \$5.00.

## 4. RECENT S.C.C. DECISION EFFECTS OWNERSHIP OF CHURCH LANDS IN ONTARIO

On October 19, 1995, the Supreme Court of Canada in an unanimous decision dismissed an appeal of a decision of the Court of Appeal of Ontario known as *Fire vs. Longtin*, 17 O.R. (3d) p.418, which has serious implications for churches and charities that own property in the Province of Ontario under the Registry system that may have not dealt with their landholdings in recent years.

The facts involving the decision in the *Fire vs. Longtin* involved one party obtaining title to property in 1983 that included a strip of land from the adjoining property owner where the adjoining property owner had not dealt with his property since 1941. The Supreme Court of Canada upheld the Ontario Court of Appeal decision that stated that the effect of the *Registry Amendment Act, 1981* (Ontario) precluded the owner of adjoining land who had not dealt with his property since 1941 from asserting ownership over the piece of land in dispute. The Court confirmed that in accordance with revisions to the *Registry Act*, it is not necessary to go back to a "root of title" beyond the statutory 40 year search period.

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The Court went on to state that the application of the *Registry Act* may result from time to time in apparent injustices to persons with claims to property that are older than 40 years. However, the Court found that the Ontario Legislature had weighed that possibility against the expectations of persons more recently dealing with land and found that certainty of title in only having to search back 40 years took precedent over interest in property that had not been dealt with for more than 40 years. The conclusion drawn by Canadian Bar Association - Ontario in a news release on October 19, 1995 stated as follows:

"The Supreme Court has made it clear that the public, in particular those owners whose land is registered under the Land Registry system [should be] aware of the need to "deal" with land at least once every forty years."

For most land owners in Ontario this issue seldom arises, as normally persons and companies buy and sell land more frequently than every 40 years. However, a number of churches as well as charities may own the same buildings and/or land for more than 40 years. The effect of the Supreme Court of Canada decision in interpreting the *Registry Act* (Ontario) means that churches and charities in Ontario that have owned the same building and/or land for more than 40 years under the Registry system could conceivably lose title to all or a portion of their land through errors in conveyancing of the adjoining property in relation to boundary descriptions, easements, rights of ways and/or encroachments, as well as even the possibility of fraudulent conveyances by unscrupulous individuals. As a result, churches and charities with property registered under the Registry system in Ontario that have not dealt with their buildings and/or land for more than 40 years should speak with legal counsel to ensure that such property is dealt with by registering either a confirming deed or a statutory notice of claim within the 40 year statutory period.

More details concerning the effect of the Supreme Court of Canada decision will be presented at the 1996 Annual Church & the Law Seminar in February 1996.

## 5. LEGAL RISK MANAGEMENT CHECKLIST

The Legal Risk Management Checklist that follows has been prepared to provide a Checklist of key points for identifying and avoiding legal risks for charities and churches. The Checklist should be used as a reference tool in developing and implementing risk management policies and procedures as necessary. However, the Legal Risk Management Checklist is intended only to be a brief highlight of some of the more important issues that need to be addressed. Where more detailed commentary's are available on issues raised, references are highlighted in the Checklist for ease of reference and can be obtained by contacting the Canadian Council of the Christian Charities office.

Before dealing with any of the legal issues discussed in the Checklist, the church or charity in question should first seek legal advice. Any reference to statutes in the Checklist refer to Ontario statutes. As such, some of the comments or issues identified may vary in provinces other than Ontario depending upon applicable provincial legislation.

**DISCLAIMER:** This *Church & the Law Update* is a summary of current legal issues provided as an information service. It is current only as of the date of the Update and does not reflect changes in the law that have occurred subsequent to the date of the Update. The Church & the Law Update 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 written opinion concerning the specifics of their particular situation.

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