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## **2005 CHARITY AND NOT-FOR-PROFIT LAW DEVELOPMENTS: THE YEAR IN REVIEW**

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### **A. INTRODUCTION**

In 2005, the charitable and not-for-profit sector in Canada saw a number of important legislative, regulatory and common law developments that will significantly impact how they operate in Canada and abroad. The following *Charity Law Bulletin* is a brief summary of the changes relating to new policy statements from the Charities Directorate of Canada Revenue Agency (“CRA”); new legislation from the federal and provincial governments affecting charities; new model charitable fundraising legislation from the Uniform Law Conference of Canada (“ULCC”); and a number of important court decisions affecting charities. Most issues discussed in this *Charity Law Bulletin* are covered in greater detail in other publications by the authors and other lawyers at Carters, all of which are available at [www.charitylaw.ca](http://www.charitylaw.ca).

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\* During 2005, the authors and other lawyers at Carter and Associates (Theresa Man, Suzanne White, Mervyn White, Anne-Marie Langan, Esther Oh, D. Ann Walters and Karen Cooper) published numerous articles in *Charity Law Bulletin* ([www.charitylaw.ca](http://www.charitylaw.ca)), *Lawyers Weekly*, *Law Times*, *Bottomline*, *Canadian Fundraiser*, and the *International Journal of Civil Society Law*, and conference papers for the Law Society of Upper Canada and the Ontario and Canadian Bar Associations on the topics covered in this *Charity Law Bulletin*. Some portions of those previous articles have been incorporated into this piece.

**B. TAX ISSUES**1. Bill C-33 Amendments to *Income Tax Act*<sup>1</sup>

Bill C-33,<sup>2</sup> the *Budget Implementation Act, 2004, No. 2*, received Royal Assent on May 13, 2005, and is now in force. The resulting amendments to the *Income Tax Act* (“ITA”)<sup>3</sup> represent a new regulatory regime for registered charities as outlined in the March 23, 2004 budget tabled in Parliament (“2004 Federal Budget”), which includes a more accessible appeals regime, new intermediate sanctions, improved transparency and more accessible information, as well as new disbursement quota rules for charities, as outlined below.

## a) New disbursement quota rules

Bill C-33 reduced the 4.5% disbursement quota (“DQ”) for public and private foundations to 3.5% for taxation years beginning after March 22, 2004. Removing a key difference between charitable organizations and foundations, the 3.5% DQ will now also apply to charitable organizations, if the value of their investment assets exceeds \$25,000, which *de minimis* threshold also applies to foundations. The application of the 3.5% DQ will apply to new charitable organizations registered after March 22, 2004, and to existing charitable organizations after 2008.

A new concept of “enduring property” was introduced and includes: gifts by way of bequest or inheritance; ten-year gifts; inter-charity gifts of the aforementioned two categories; and inter-charity gifts received by an arm’s length charitable organization generally to be expended within five years. Enduring property is generally exempt from the 80% DQ until the year in which it is disbursed.

A new concept of a “capital gains pool” was also introduced, which is a notional account to keep track of capital gains realized by a charity in the disposition of “enduring property.” Charities are now able to encroach on the capital gains from enduring property, provided the terms of the gift

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<sup>1</sup> For more information, please see the following *Charity Law Bulletins*: Theresa L.M. Man and Terrance S. Carter, “Quick List of New Tax Rules for Charities” in *Charity Law Bulletin* No. 80 (7 November 2005); Theresa L.M. Man, “July 18, 2005 Draft Amendments to the *Income Tax Act* Affecting Charities: Part I – Definition of Gift & Split-Receipting” in *Charity Law Bulletin* No. 76 (8 September 2005); Theresa L.M. Man, “July 18, 2005 Draft Amendments to the *Income Tax Act* Affecting Charities: Part II – Other Changes” in *Charity Law Bulletin* No. 77 (8 September 2005); Theresa L.M. Man and Terrance S. Carter, “A Comparison of the Three Categories of Registered Charities” in *Charity Law Bulletin* No. 73 (21 July 2005); Theresa L.M. Man and Terrance S. Carter, “Effect of Inter-Charity Transfers on Disbursement Quota Calculation under Bill C-33” in *Charity Law Bulletin* No. 69 (12 April 2005); Theresa L.M. Man and Terrance S. Carter, “Disbursement Quota Formula under Bill C-33 (March 2004 Federal Budget Enabling Legislation)” in *Charity Law Bulletin* No. 67 (31 March 2005).

<sup>2</sup> S.C. 2005, c. 19.

<sup>3</sup> R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.) as amended.

permit, but only up to the lesser of the amount of the 3.5% DQ and the amount in the “capital gains pool.” Anything above the permitted encroachment limit will be added back into the 80% DQ for the charity and therefore will have limited benefit in meeting the 3.5% DQ.

Finally, transfers to charitable organizations, previously exempt from the 80% disbursement quota, will now be subject to the 80% disbursement requirement, except those involving specified gifts and enduring property.

b) Intermediate sanctions and penalties<sup>4</sup>

Prior to the 2004 Federal Budget, the only sanction available to CRA was that of revocation of a charity’s registration, limiting its use to situations of serious non-compliance and only after a lengthy audit process. New intermediate sanctions and penalties have been introduced for minor or unintended infractions, which include taxation of gross revenue derived from prohibited business activities, suspension of tax-receipting privileges, monetary penalties, and taxation of gifts and transfers to other registered charities. Some sanctions are progressive, increasing in severity for repeat infractions within a five-year period. A chart of all the intermediate sanctions and penalties is available online at <http://www.cra-arc.gc.ca/tax/charities/policy/csp/penalties-e.html>. CRA may also now release to the public additional information, including grounds for revocation or annulment; identification of charities which are subject to a sanction, the type of sanction imposed, and grounds for the sanction; and reasons for denying the registration of organizations.

c) Centralized internal appeals regime

In an attempt to make the appeal process more accessible and affordable, Bill C-33 extended CRA’s existing internal objection review process. This applies to CRA decisions regarding the revocation or annulment of a charity’s registration, the designation of a charity as a private or public foundation or a charitable organization, the denial of applications for charitable status, suspension of tax-receipting privileges, and the imposition of monetary penalties or revocation tax against a registered charity. The internal review process is now a required step before an appeal may be brought to the courts.

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<sup>4</sup> For more information, see Karen J. Cooper, “Changes to Sanctions, Penalties and Appeals Process for Charities” in *Charity Law Bulletin* No. 82 (11 January 2006).

## d) Tax court

While appeals concerning refusals to grant registered charitable status and revocation of registered charitable status will continue to be made to the Federal Court of Appeal, charities can now appeal the imposition of monetary penalties and/or the revocation tax or suspension of its tax receipting privileges to the Tax Court of Canada. This provides both a formal and informal appeal process, which generally will be more accessible and affordable for charities.

2. July 18, 2005 Proposed Amendments<sup>5</sup>

On July 18, 2005, the Department of Finance released legislative proposals to amend the ITA (“July 2005 Amendments”) that consist of a package of changes to consolidate and further amend previously proposed amendments introduced in 2002, 2003 and 2004. These changes include split-receipting, designation of charitable organizations and public foundations, and revocation of charitable registrations, to name a few.

## a) New definition of gift and split-receipting rules

At common law, in order to qualify as a gift, property must be transferred voluntarily with an intention to make a gift. Where the transferor has received any form of consideration or benefit, it is generally presumed that such an intention is not present. However, the July 2005 Amendments create a new concept of “gift” for tax purposes which permits a donor or someone else to receive an “advantage,” provided that the value of the property donated exceeds the advantage received. The July 2005 Amendments provide that the eligible amount of a gift is the amount by which the fair market value of the property transferred exceeds the amount of the advantage in respect of the gift. This is referred to as “split-receipting.”

## b) Amount of advantage

The proposed definition of “advantage,” as set out in subsection 248(32) of the ITA, includes two parts: Paragraph 248(32)(a) of the ITA provides that the amount of advantage in respect of a gift

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<sup>5</sup> For more information, please see the following *Charity Law Bulletins*: Theresa L.M. Man and Terrance S. Carter, “Quick List of New Tax Rules for Charities” in *Charity Law Bulletin* No. 80 (7 November 2005); Theresa L.M. Man and Terrance S. Carter, “A Comparison of the Three Categories of Registered Charities” in *Charity Law Bulletin* No. 73 (21 July 2005); Theresa L.M. Man, “July 18, 2005 Draft Amendments to the *Income Tax Act* Affecting Charities: Part I – Definition of Gift & Split-Receipting” in *Charity Law Bulletin* No. 76 (8 September 2005); Theresa L.M. Man, “July 18, 2005 Draft Amendments to the *Income Tax Act* Affecting Charities: Part II – Other Changes” in *Charity Law Bulletin* No. 77 (8 September 2005).

includes the value, at the time when the gift is made, of “any property, service, compensation, use or other benefit” that the donor or a non-arm’s length person to the donor has “received, obtained or enjoyed, or is entitled, either immediately or in the future and either absolutely or contingently, to receive, obtain or enjoy” that is (i) in consideration of, (ii) in gratitude of, or (iii) in “any other way related to” the gift. Paragraph 248(32)(a) applies to gifts made after December 20, 2002, save and except that the provision concerning the phrase “in any other way related to” the gift in subparagraph 248(32)(a)(iii) applies to gifts made on or after 6 p.m. (Eastern Standard Time) on December 5, 2003.

The proposed paragraph 248(32)(b) of the ITA provides that an advantage would also include the amount of limited-recourse debt incurred as determined pursuant to the newly proposed subsection 143.2(6.1) in respect of a gift at the time when the gift is made. The purpose of this proposed amendment is to curtail abusive tax shelter schemes involving limited-recourse debts. This paragraph applies to gifts made on or after February 19, 2003.

c) Deemed fair market value and non arm’s length transactions

Complicated new rules to curtail tax shelter schemes may result in reductions of eligible amounts on charitable receipts for gifts in kind. Where (1) donated property was acquired by the donor through a tax shelter arrangement regardless of when it was acquired, or (2) donated property was acquired by the donor less than 3 years before making the gift, the value of the donated property would be “deemed” to be the lesser of (i) the fair market value otherwise determined and (ii) the cost of the property to the donor immediately before making the gift. Where donated property was acquired less than 10 years before making the gift, and it is “reasonable to conclude” that one of the main reasons for acquiring the property was to make a gift to a qualified donee, the deeming provision also applies. The acquisition of a donated property by a person or a partnership not dealing at arm’s length with the donor within the said three-year or ten-year hold periods would also impact how the fair market value of the donated property is determined.

d) Withdrawal of onus on charities to make reasonable inquiries of donors

On November 22, 2005, the Department of Finance advised that they are prepared to recommend to the Minister of Finance that the proposed subsection 248(40) be withdrawn. This provision in the July 2005 Amendments would have required charities to make reasonable inquiries with respect to

all gifts having eligible amounts in excess of \$5,000. In a letter to the Canadian Association of Gift Planners, the Department of Finance stated that they “recognize the difficulties that have been brought to light by this proposal” placing an administrative burden on charities. While this news should come as relief to all charities, charities will still have to exercise due diligence when issuing charitable donation receipts so as to ensure that the information on receipts is accurate.

e) New definitions of charitable organizations and public foundations

New definitions of charitable organizations and public foundations in the July 2005 Amendments will replace the current contribution test (requiring that not more than 50% of the capital contributed to a charitable organization or public foundation be from one donor) with a control test. The new control test will allow a donor to donate more than 50% of the capital of a charity, provided the donor or donor group does not exercise control directly or indirectly in any manner over the charity and is not in a non-arm’s length relationship with more than 50% or more of the directors or trustees of the charity. This new regime will be retroactive to 2000.

f) Gifts to non qualified donees

The July 2005 Amendments provide that gifts made by a charity to a non qualified donee will become cause for revocation of the charity’s registration.

g) Municipalities and other government bodies

Sections 110.1 and 118.1 of the ITA are proposed to be amended by expanding the list of “qualified donees” as defined in subsection 149.1(1) to include municipal or public bodies performing a function of government in Canada.

## C. NEW POLICIES FROM CANADA REVENUE AGENCY

### 1. Applicants Assisting Ethnocultural Communities<sup>6</sup>

In June 2005, CRA released a policy statement which sets out detailed guidelines for organizations assisting ethnocultural communities that wish to attain charitable status. This policy outlines CRA’s requirements for attaining registered charitable status under the ITA for organizations whose activities may fall under one of the four heads of charities, but that may not meet the public benefit test as the

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<sup>6</sup> For more information, see Terrance S. Carter, “New CRA Policy on Applicants Assisting Ethnocultural Communities” in *Charity Law Bulletin* No. 74 (7 September 2005).

scope of their services is restricted to a specific group of people. The policy recognizes this and allows for organizations to focus their services on one ethnospecific group's needs, so long as there is a logical connection between the focus and the benefit provided, the benefit is explained in the application for charitable status, and they do not exclude some individuals or parts of the community with the identified need.

2. Umbrella Organizations<sup>7</sup>

CRA's draft policy on *Guidelines for Registration of Umbrella Organizations* (the "Guidelines") enables umbrella organizations to qualify for charitable registration even if their purpose or activities do not involve working directly with individual charitable beneficiaries. Under the Guidelines, three types of umbrella organizations are considered to be charitable: those established to improve the efficiency and effectiveness of other registered charities; those that work with and through constituent groups that may or may not be registered charities in order to achieve a recognized charitable purpose; and those that hold property for other registered charities.

3. New Requirements for Official Donation Receipts

To give effect to the new split-receipting rules, CRA announced new requirements for official donation receipts. The new rules require charities to value property being transferred, value any consideration received by the donor, and then determine the "eligible amount" for tax donation receipts issued. All this information, including the name and address of the appraiser, if applicable, are required to be shown on the official donation receipt. In addition, all receipts must now include the name and website address of the CRA. Sample official donation receipts can be found at <http://www.cra-arc.gc.ca/tax/charities/pubs/receipts-e.html>.

4. Political Activities<sup>8</sup>

In December 2005, CRA issued an advisory on Partisan Political Activities, confirming the continuing operation of the *Policy Statement on Political Activities*, CPS-022, stating that "a registered charity is prohibited from directly or indirectly supporting or opposing a candidate for public office as well as a

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<sup>7</sup> For more information, see Jacqueline M. Connor and Terrance S. Carter, "New CRA Policy on Umbrella Organizations" in *Charity Law Bulletin* No. 78 (12 October 2005).

<sup>8</sup> For more information, see Esther S.J. Oh and Terrance S. Carter, "Political Activities: What Churches and Charities Can and Cannot Do" in *Church Law Bulletin* No. 15 (15 December 2005).

political party.” CRA will generally consider whether the activity can reasonably be construed as intending to influence the outcome of the election when determining if a registered charity has breached this prohibition.

#### 5. CRA’s New T3010 Charity Information Return Now Available

The new T3010 Charity Information Return form is now available on CRA’s website with the accompanying guide. The new version (05) of Form T3010A, Registered Charity Information Return, is to be used by registered charities completing returns for fiscal periods starting after March 22, 2004 (e.g., April 1, 2004 to March 31, 2005 fiscal period). All charities will still have to use the old form for year-ends of March 22, 2004 or earlier.

### D. OTHER LEGISLATIVE INITIATIVES

#### 1. New Canada Not-for-Profit Corporations Act

On November 15, 2004, the federal Parliament introduced Bill C-21, the new *Canada Not-for-Profit Corporations Act*, which is intended to replace Parts II and III of the *Canada Corporations Act*.<sup>9</sup> The bill, which is heralded as providing a modern corporate governance framework for regulating federally incorporated not-for-profit corporations, was abandoned when Parliament prorogued in December 2005.

#### 2. National Do Not Call List

Federal Parliament passed Bill C-37,<sup>10</sup> *An Act to amend the Telecommunications Act*, on October 24, 2005, moving Canada one step closer to implementing a national Do Not Call list. When enacted, Bill C-37 will permit the Canadian Radio-television and Telecommunications Commission to administer databases for the purpose of establishing a national Do Not Call registry, which will prohibit or regulate the use by any person of Canadian telecommunications facilities for unsolicited telecommunications, to the extent considered necessary in order to prevent undue inconvenience or nuisance. Although registered charities are exempted from the general prohibition, they are still required to maintain their own Do Not Call list and ensure that the organization and purpose for the call is identified at the beginning of the telecommunication.

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<sup>9</sup> R.S.C. 1970, c. C-32.

<sup>10</sup> S.C. 2005, c. 50.



### 3. Ontario Heritage Amendment Act<sup>11</sup>

Bill 60, the *Ontario Heritage Amendment Act*,<sup>12</sup> which came into force on April 28, 2005, may be problematic for charities that own properties which may have cultural heritable value or interest, as it is anticipated to increase the number of buildings so designated under the former *Ontario Heritage Act*.<sup>13</sup>

In addition to expanding the number of buildings designated, Bill 60 extends demolition controls by municipalities by eliminating the designated property owner's right under the former Act to demolish the building 180 days after the municipality's refusal to approve an application, while introducing a new appeal mechanism. Charities, and their directors, are liable for a \$1 million fine for breaching demolition provisions. Charities may have difficulty meeting the financial burdens resulting from Bill 60's requirement that property owners comply with minimum standards for the preservation and upkeep of designated buildings as prescribed by municipalities. Designation may further restrict the development potential of such properties and curtail the market for, as well as the market value of, these properties.

### 4. ULCC Charitable Fundraising Legislation<sup>14</sup>

In August 2005, the Uniform Law Conference of Canada adopted the *Uniform Charitable Fundraising Act* ("UCF Act"), recommending that the provinces enact the same. The threefold purpose of the UCF Act is: ensuring members of the public have sufficient information to make informed decisions when contributing to charities; protecting the public from fraudulent, misleading or confusing solicitations; and establishing standards for charities and fundraising businesses in making solicitations. The UCF Act introduces six areas of focus:

- ◆ Solicitations: Regulating the time and manner in which solicitations are made; providing a cooling-off period for the donor; mandating receipts; requiring prescribed financial records, and making them publicly available. Organizations that raise less than \$25,000 annually would be exempt from these record-keeping provisions;
- ◆ Registering Charities: Prohibiting charities from either soliciting donations or using a fundraising business unless it is registered or deemed to be registered under the UCF Act. A charity that intends to raise less than \$25,000 would be exempt from the registration requirements unless they used a fundraising business;

<sup>11</sup> For more information, see Terrance S. Carter and D. Ann Walters, "Impact of Proposed Amendments to the *Ontario Heritage Act* on Charities and Not-for-Profit Organizations" in *Charity Law Bulletin* No. 63 (31 January 2005).

<sup>12</sup> S.O. 2005, c. 6.

<sup>13</sup> R.S.O. 1990, c. O.18.

<sup>14</sup> For more information, see Terrance S. Carter, "ULCC Recommends that Provinces Enact Charitable Fundraising Legislation" in *Charity Law Bulletin* No. 79 (14 October 2005).

- ◆ Fundraising Businesses: Licensing of fundraising businesses is a prerequisite to their solicitation of donations on behalf of any charity. Boundaries of the fundraising business are clearly delineated, making them a trustee for the contributions received on behalf of the charity;
- ◆ Fundraising Agreements: Written fundraising agreements setting out the rights and duties of both the charity and the fundraising business would be mandatory under the UCF Act. They would establish the remuneration to be paid to the fundraising business, the methods of solicitation, and the circumstances and mechanism for termination of the agreement.
- ◆ Retail Incentive Donors: Requiring retail incentive donors to make their donations in accordance with representations made to the consumer; and
- ◆ Inspections and Investigations: Empowering the enforcement authority to conduct investigations and to obtain the assistance of the court. Contravention of the UCF Act brings with it the possibility of suspension, cancellation or imposition of conditions on the charity's registration or the fundraising business' license.

#### 5. Same-Sex Marriage<sup>15</sup>

On July 20, 2005, Bill C-38, the *Civil Marriage Act*,<sup>16</sup> received Royal Assent, extending the legal capacity for marriage for civil purposes to same-sex couples. In response to concerns raised by individuals and groups opposed to same-sex marriage, two last-minute amendments were made to the Bill, one providing a guarantee that “no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction” solely because of their exercise of freedom of conscience and religion in respect of same-sex marriage, and the other specifying that a registered charity whose stated purpose includes the advancement of religion will not have its registration revoked solely because of its or its members' exercise of freedom of conscience and religion in respect of same-sex marriage.

Prior to this, the Ontario legislature passed the *Spousal Relationship Statute Law Amendment Act, 2005*,<sup>17</sup> which amended, inter alia, the Marriage Act and the *Human Rights Code (Ontario)* in order to provide an exemption for religious officials who are opposed to same-sex marriage on religious grounds from having to solemnize a same-sex marriage, and from having to allow a sacred place to be used for solemnizing or celebrating a same-sex marriage.

<sup>15</sup> For more information, see Terrance S. Carter and Anne-Marie Langan, “Implications of Recent Amendments to *Civil Marriage Act* for Religious Groups and Officials” in *Church Law Bulletin* No. 12 (6 September 2005).

<sup>16</sup> S.C. 2005, c. 33.

<sup>17</sup> S.O. 2005, c. 5.

6. Local Health System Integration Act

The Ontario government introduced Bill 36, the *Local Health System Integration Act, 2005*, on November 24, 2005, which will lead to the integration of local health systems via local health integration networks. Of interest to charitable donors are provisions that enable the Minister and a local integration network to order a health service provider, which includes hospitals, psychiatric facilities, seniors and nursing homes, and mental health and addiction service providers, to transfer charitable property to another health service provider. This would include all gifts, trusts, bequests, devises and grants of property made before and after the provision comes into force. Gifts given for a specified purpose would still be required to be used for the specified purpose by the recipient health service provider. The bill passed second reading and was referred to committee as of this writing.

7. Anti-Terrorism Act Review

In late 2004, both the Senate and House of Commons began a mandated comprehensive three-year review of the provisions and operation of the *Anti-terrorism Act*,<sup>18</sup> with a requirement to report back within a year. However, with the dissolution of Parliament in early December 2005, no report was completed.

## E. CASELAW

1. Vicarious Liability

In two October 2005 decisions, the Supreme Court of Canada further clarified vicarious liability in relation to charitable institutions. In *Blackwater v. Plint*,<sup>19</sup> the Court upheld the trial judge's finding of liability against the United Church of Canada because the Church exerted sufficient control over the operations at the residential school that gave rise to the wrong to be found vicariously liable for the wrongful acts of the employee. The Court rejected a class-based exemption from vicarious liability, stating that such exemptions would not motivate non-profit organizations to take precautions to screen their employees and protect children from sexual abuse. In *E.B. v. Order of the Oblates of Mary Immaculate in the Province of British Columbia*,<sup>20</sup> the Court held that in order to impose vicarious liability on the defendant school, there had to be a strong connection between what the employer asked the employee to do and the wrongful conduct such that it could be demonstrated that the employer-

<sup>18</sup> S.C. 2001, c. 41.

<sup>19</sup> 2005 SCC 58, [2005] S.C.J. No. 59.

<sup>20</sup> 2005 SCC 60, [2005] S.C.J. No. 61.

created features of the employment relationship contributed to the employee's ability to carry out the impugned actions.

2. Same-Sex Marriage Reference<sup>21</sup>

In *Reference re Same-Sex Marriage*,<sup>22</sup> the Supreme Court of Canada answered in the affirmative that the freedom of religion guaranteed by paragraph 2(a) of the *Canadian Charter of Rights and Freedoms* protects religious officials from being compelled to perform a marriage between two persons of the same sex that is contrary to their religious beliefs. Absent exceptional circumstances, the Court also concluded state compulsion on religious officials to perform same-sex marriages could not be justified under s. 1 of the *Charter*, and that sacred places were to be protected. The Court noted that human rights codes must be interpreted and applied in a manner consistent with the broad protection granted to religious freedom under the *Charter*.

3. Split-Receipting<sup>23</sup>

The British Columbia Supreme Court upheld the new split-receipting requirements in its decision in *Richert v. Stewards' Charitable Foundation*,<sup>24</sup> holding that the charity's issuance of an official donation receipt in the amount of the donation less the advantage received by the donor was correct. An appeal to the Court of Appeal was dismissed January 5, 2006.

4. Revoking Charitable Status<sup>25</sup>

In *Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada*,<sup>26</sup> the Federal Court of Appeal endorsed CRA's decision to revoke the appellant's charitable registration for, inter alia, gifting \$150,000 to the Church's pastor, and additional gifts of money to the pastor's children as down payments on family homes.

<sup>21</sup> For more information, see Terrance S. Carter and Mervyn F. White, "Supreme Court Same Sex Marriage Reference: What are the Implications for Churches and Religious Officials?" in *Church Law Bulletin* No. 7 (10 January 2005).

<sup>22</sup> [2004] 3 S.C.R. 698, 2004 SCC 79, [2004] S.C.J. No. 75, 246 D.L.R. (4th) 193, 328 N.R. 1.

<sup>23</sup> For more information, see Suzanne White and Terrance S. Carter, "B.C. Court Upholds CRA Guidelines on Split-Receipting" in *Charity Law Bulletin* No. 68 (7 April 2005).

<sup>24</sup> [2005] B.C.J. No. 279, 2005 BCSC 211, 137 A.C.W.S. (3d) 635 (S.C.).

<sup>25</sup> For more information, see Theresa L.M. Man and Terrance S. Carter, "Recent Federal Court of Appeal Decisions Revoking Charitable Status of Charities" in *Charity Law Bulletin* No. 75 (7 September 2005).

<sup>26</sup> [2004] F.C.J. No. 1984, 2004 FCA 397, 135 A.C.W.S. (3d) 748 (C.A.).

5. Same-Sex Discrimination<sup>27</sup>

In the *Smith v. Knights of Columbus*<sup>28</sup> decision, the British Columbia Human Rights Tribunal fined the Knights of Columbus for failing to accommodate a same-sex couple to the point of undue hardship by refusing the couple the use of a facility that was customarily available to the public. In the decision, the Tribunal reviewed recent human rights cases involving conflicts between religious freedom and the right not to be discriminated against based on sexual orientation. The Tribunal concluded that although there is a spectrum of situations where a religious group can restrict the use of their facilities (i.e. in situations where the proposed activity would be contrary to core religious beliefs), in this case the Knights infringed the human rights of the same-sex couple because they failed to inform them of any facility use restrictions prior to entering into a rental agreement, and by not making sufficient effort to assist and compensate the couple after they refused them the use of the facility.

6. Donation Tax Shelter Valuations

In *Nash v. Canada*,<sup>29</sup> the Federal Court of Appeal indicated that registered charities and donors should be wary of the valuations provided by promoters of donation tax shelters, particularly if the valuation is based on the “financial planner market.” This decision, along with a recent decision of the Tax Court of Canada in *Corbett v. The Queen*<sup>30</sup> relating to the donation of land to a charitable trust, provides important guidance when reviewing appraisal reports in relation to gifts in kind.

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<sup>27</sup> For more information, see Anne-Marie Langan and Terrance S. Carter, “Knights of Columbus Decision and the Implications for Churches and Religious Charities” in *Church Law Bulletin* No. 16 (15 December 2005).

<sup>28</sup> 2005 BCHRT 544, [2005] B.C.H.R.T.D. No. 544.

<sup>29</sup> 2005 FCA 386, [2005] F.C.J. No. 1921 (C.A.).

<sup>30</sup> 2005 TCC 756.

## F. CONCLUSION

The year 2005 has brought a number of significant changes to charitable and not-for-profit organizations which are of particular concern for their directors and officers. The Charities Directorate of CRA have made a number of changes to policies and practices affecting charities, while a number of important legislative initiatives were advanced by both the provincial and federal governments, as well as the Uniform Law Conference of Canada. Finally, various courts in Canada have come out with important decisions concerning the operation of charitable and not-for-profit organizations. By virtue of their broad fiduciary duties, directors and officers of charitable and not-for-profit organizations are well-advised to educate themselves concerning these changes and revise their practices accordingly.



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