

---

**THE CANADIAN BAR ASSOCIATION/ONTARIO BAR ASSOCIATION  
2010 National Charity Law Symposium**

**Toronto – April 30, 2010**

---

**Environmental Issues  
Under the 4<sup>th</sup> Head of Charity**

---

**By Karen J. Cooper, LL.B., LL.L., TEP**

© 2010 Carters Professional Corporation



**Carters Professional Corporation / Société professionnelle Carters**  
Barristers, Solicitors & Trade-mark Agents / Avocats et agents de marques de commerce

Ottawa (613) 235-4774  
Mississauga (905) 306-2791  
Orangeville (519) 942-0001

**Toll Free: 1-877-942-0001**

**www.charitylaw.ca**



The Canadian Bar Association/Ontario Bar Association  
2010 National Charity Law Symposium  
Toronto – April 30, 2010

**Environmental Issues Under the  
4<sup>th</sup> Head of Charity**

By Karen J. Cooper, LL.B., L.L.L., TEP  
© 2010 Carters Professional Corporation



Carters Professional Corporation / Société professionnelle Carters  
Barristers, Solicitors & Trade-mark Agents / Avocats et agents des marques de commerce

Ottawa, Mississauga, Orangeville  
Toll Free: 1-877-942-0001

[www.charitylaw.ca](http://www.charitylaw.ca)  
[www.carters.ca](http://www.carters.ca)

**A. OUTLINE**

- An overview of environmental protection as a charitable purpose:
  - Examples of environmental non-governmental organizations (ENGOS)
  - Environmental purposes under the fourth head of charity
  - Environmental purposes under the advancement of education
  - Protection of the environment in other jurisdictions
  - CRA's draft Guidance

[www.carters.ca](http://www.carters.ca)

2

[www.charitylaw.ca](http://www.charitylaw.ca)

**B. ENVIRONMENTAL ORGANIZATIONS – CHARITABLE?**

- More than 4,424 ENGOS operating in Canada in 2003 (Imagine Canada)
- Included in this number are organizations promoting and providing services in environmental conservation, pollution control and prevention, environmental education and health and animal protection
- 41% of these ENGOS were registered charities

[www.carters.ca](http://www.carters.ca)

3

[www.charitylaw.ca](http://www.charitylaw.ca)

## 1. Land Trusts

- Purpose:
  - The conservation and protection of Canada's environmental heritage
- Activities:
  - Acquisition of environmentally sensitive land and conservation easements
  - Continual stewardship of acquired lands and monitoring of easements for contract violations

www.carters.ca

4

www.charitylaw.ca

---

---

---

---

---

---

---

---

- The *Income Tax Act* explicitly recognizes an environmental charitable purpose in the provisions regarding ecological gifts
- To qualify for favourable tax treatment, the donation must be regarding ecologically sensitive land and made to an eligible recipient, including approved registered charities
- There are more than 190 eligible recipients across Canada, including land trusts and nature conservation groups
- The common law has generally recognized conservation purposes as charitable

www.carters.ca

5

www.charitylaw.ca

---

---

---

---

---

---

---

---

## 2. Recycling

- Purpose:
  - To protect the environment through the promotion of recycling and the provision of recycling facilities
- Activities:
  - Operate a local recycling service/depot
  - Operate a shop selling re-used items

www.carters.ca

6

www.charitylaw.ca

---

---

---

---

---

---

---

---

- *Recycling In Ottery* - the Charity Commission for England and Wales considered whether the promotion of recycling furthers a charitable purpose
- Charity Commissioners - Recycling activities could be an appropriate means of achieving the charitable purpose of protecting the environment, citing public policy recognition of the environmental benefits derived from recycling. However, the recycling must not take place in ways that generates a private profit
- A recycling charity may carry on a related business

www.carters.ca<sup>TM</sup>

7

www.charitylaw.ca<sup>TM</sup>

---

---

---

---

---

---

---

---

- A “related business” is either a business run substantially by volunteers, or a business that is linked to a charity’s purpose and subordinate to that purpose
- A recycling charity may run a shop selling re-used items as an off-shoot of its recycling program
- New types of related businesses carried on by environmental charities are emerging – developing social entrepreneurship

www.carters.ca<sup>TM</sup>

8

www.charitylaw.ca<sup>TM</sup>

---

---

---

---

---

---

---

---

### 3. Green Power Generation

- Purpose:
  - To protect the environment by producing green electrical power
- Activities:
  - Operating solar or wind power generation facilities which feed into the general grid

www.carters.ca<sup>TM</sup>

9

www.charitylaw.ca<sup>TM</sup>

---

---

---

---

---

---

---

---

- Ontario Power Authority's recently announced Feed-In Tariff ("FIT") Program is designed to encourage the development of renewable energy projects
- Under the FIT Program, eligible participants will receive a guaranteed price for power produced by renewable technology that is fed into the local electricity distribution system
- The FIT Program could provide an attractive source of funding for organizations increasingly seeking alternative sources of support

www.carters.ca

10

www.charitylaw.ca

---

---

---

---

---

---

---

---

#### 4. Carbon Offsetting (1)

- Purpose:
  - Protection of the environment
- Activities:
  - Carbon reducing projects such as reforestation
  - Sale of resulting carbon offsets

www.carters.ca

11

www.charitylaw.ca

---

---

---

---

---

---

---

---

#### 5. Carbon Offsetting (2)

- Purposes:
  - To promote the conservation, protection and improvement of the natural environment, principally in the areas of air and water
- Activities
  - Offset carbon emissions by buying regulated carbon credits to finance projects worldwide to reduce emissions
  - "Cancel" credits to force further reductions in emissions
  - Support clean energy technology via grants

www.carters.ca

12

www.charitylaw.ca

---

---

---

---

---

---

---

---

- Pure The Clean Planet Trust - registered by the Charity Commission in 2005 for these purposes
- According to its website, Pure has offset more than 100,000 tons of carbon dioxide to date
- Pure primarily buys and cancels Certified Emission Reduction credits (CERs) issued by the United Nations. Cancelling the credits makes them unavailable for use by any other polluter - the cancelled number of carbon tons will never enter the atmosphere <sup>1</sup>

<sup>1</sup> <http://www.puretrust.org.uk/>

www.carters.ca<sup>TM</sup>

13

www.charitylaw.ca<sup>TM</sup>

---

---

---

---

---

---

---

---

#### C. OTHER PURPOSES BENEFICIAL TO THE COMMUNITY

- Many environmental charities have objects which fall under the fourth head of charity - other purposes beneficial to the community
- Few cases dealing with protection of the environment and much of the existing case law deals with conservation-related purposes
- However, the case law has evolved as changing social and economic conditions have impacted the way courts view environmental purposes

www.carters.ca<sup>TM</sup>

14

www.charitylaw.ca<sup>TM</sup>

---

---

---

---

---

---

---

---

- *In re Verral*, [1916] 1 Ch 100, determined that a trust established for the following purpose was charitable:

*“promoting the permanent preservation for the benefit of the nation of lands and tenements (including buildings) of beauty and historic interest, and as regards lands for preservation (so far as practicable) of their natural aspect features and animal and plant life”*

- The Court regarded the trust as clearly providing a public benefit

www.carters.ca<sup>TM</sup>

15

www.charitylaw.ca<sup>TM</sup>

---

---

---

---

---

---

---

---

- In *Re Grove-Grady*, [1929] All ER Rep 158, the English Court of Appeal found that a trust created to establish an animal refuge was not a valid charitable trust. The majority found that the animal refuge would provide no benefit to the community, particularly since there was no provision for public access to the refuge

www.carters.ca

16

www.charitylaw.ca

---

---

---

---

---

---

---

---

- In *Attorney-General (NSW) v. Sawtell*, [1978] 2 NSWLR 200, the Supreme Court (New South Wales) noted that

*“over the years since the case of Re Grove Grady was decided, there has been a radical change of circumstances affecting the question of benefit to the community from the preservation of native wild life”*

- The Court found that there was a real and substantial benefit to the community in the preservation of Australian wildlife

www.carters.ca

17

www.charitylaw.ca

---

---

---

---

---

---

---

---

- In a Canadian case, *Grandfield Estate v. Jackson*, [1999] B.C.J. No. 711, the B.C. Supreme Court found that a trust for the purpose of providing a game and bird sanctuary was a valid charitable trust. The Court determined that the reasoning in *Grove-Grady* was not appropriate in 1999, stating that

www.carters.ca

18

www.charitylaw.ca

---

---

---

---

---

---

---

---



*“In 1929 England, there were likely no restrictions on hunting fox, there was probably little if any environmental law in place dealing with oil spills and responsibility therefore. England had not witnessed the effects of oil spills from huge oil tankers on sea life and birds. Rain forests in the Amazon were theoretically there forever. Urban sprawl in North America was not displacing game and birds from their natural habitat.”*

www.carters.ca

19

www.charitylaw.ca

---

---

---

---

---

---

---

---

- The preservation of human life and health is a long recognized charitable purpose
- Preservation of the environment is vitally important to human life and health and damage to the environment has many negative health impacts. Environmental protection can be viewed as charitable as a means of preserving human life and health
- Several cases have alluded to the health benefits derived from environmental purposes, although none have dealt with the issue directly
- Modern scientific evidence demonstrates the connection between human health and the environment

www.carters.ca

20

www.charitylaw.ca

---

---

---

---

---

---

---

---

#### D. ADVANCEMENT OF EDUCATION

- Many environmental organizations have objects that are charitable under the advancement of education
- For example, charities have been registered to advance education and research in many environmentally related fields, such ecology, botany, energy and zoology

www.carters.ca

21

www.charitylaw.ca

---

---

---

---

---

---

---

---

- In an early decision, *In Re Lopes*, [1930] All ER Rep 45, the English Chancery Division held that the objects of the Zoological Society of London were for the advancement of education and therefore charitable
- The Zoological Society had two objects: (1) the advancement of zoology and animal physiology; and (2) the introduction of new and curious subjects of the animal kingdom. The Court found both objects to be educational

www.carters.ca

22

www.charitylaw.ca

---

---

---

---

---

---

---

---

- In Information Letter CIL-1998-023, CRA explains its position regarding an ENGO that “propagating a particular point of view on a social issue does not constitute the advancement of education”
- A charity may engage in public awareness campaigns as long as that activity is connected and subordinate to the charity’s purpose
- An educational activity must be reasonably objective and based on a well reasoned opinion. CRA’s position is that a well-reasoned position should address serious arguments and relevant facts to the contrary

www.carters.ca

23

www.charitylaw.ca

---

---

---

---

---

---

---

---

#### E. PROTECTION OF THE ENVIRONMENT IN OTHER JURISDICTIONS

1. Charities Act, 2006 – UK Statutory Definition of Charitable Purposes
  - Expanded list of charitable purposes
  - “the advancement of environmental protection or improvement” is a charitable purpose for the purposes of the law of England and Wales
  - Includes preservation and conservation of the natural environment and the promotion of sustainable development

www.carters.ca

24

www.charitylaw.ca

---

---

---

---

---

---

---

---

- In its guidance on the advancement of environmental protection or improvement, the Charity Commission has provided the following examples of charities which fall under this charitable purpose:
  - Charities concerned with conservation of flora, fauna or the environment generally
  - Charities concerned with conservation of a particular geographical area
  - Charities concerned with conservation of a particular species

www.carters.ca

25

www.charitylaw.ca

---

---

---

---

---

---

---

---

- Zoos
- The promotion of sustainable development and biodiversity
- The promotion of recycling and sustainable waste management
- Research projects into the use of renewable energy sources

www.carters.ca

26

www.charitylaw.ca

---

---

---

---

---

---

---

---

## 2. Charities Definition Inquiry – Australia

- The Inquiry was established to study definitional issues relating to charities
- In its report, released in 2001, the Inquiry concluded that the advancement of the natural environment was a charitable purpose significant enough to warrant its own head of charity
- Australia has not codified the advancement of the natural environment as its own head of charity
- The Australian Taxation Office recognizes entities that operate to protect, preserve, care for, and educate the community about the environment as charitable

www.carters.ca

27

www.charitylaw.ca

---

---

---

---

---

---

---

---

**F. CRA DRAFT GUIDANCE**

- CRA is considering releasing detailed guidance with respect to the conservation and protection of the environment as a charitable purpose
- The Guidance is expected to be much more comprehensive than what exists and will reflect recent case law
- The purpose of the Guidance will be to explain the statutory and common law requirements for receiving and maintaining charitable registration under the subcategory of purposes relating to the protection of the environment

www.carters.ca

28

www.charitylaw.ca

---

---

---

---

---

---

---

---

**1. Potential Structure of the Draft Guidance**

- General Requirements for charitable registration
- Environmental purposes beneficial to the community
- Advancement of environment-related education
- Environmental activities under other charitable purpose subcategories
- Other Issues

www.carters.ca

29

www.charitylaw.ca

---

---

---

---

---

---

---

---

**2. Issues To Be Covered in the Draft Guidance**

- The draft Guidance will deal with many different types of environmental charities which fall under the category of other purposes beneficial to the community, including green power generation and offset projects
- The draft Guidance recognizes that the preservation of human health is now seen as central to modern environmental protection concerns
- The draft Guidance also discusses how the general requirements and limitations imposed on all charities relate to environmental charities

www.carters.ca

30

www.charitylaw.ca

---

---

---

---

---

---

---

---

**DISCLAIMER**

This handout is provided as an information service by Carters Professional Corporation. It is current only as of the date of the handout and does not reflect subsequent changes in the law. This handout is distributed with the understanding that it does not constitute legal advice or establish a 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.

© 2010 Carters Professional Corporation

**CARTERS™.ca**

Carters Professional Corporation / Société professionnelle Carters  
Barristers, Solicitors & Trade-mark Agents / Avocats et agents des marques de commerce

Ottawa, Mississauga, Orangeville  
Toll Free: 1-877-942-0001

**www.charitylaw.ca**  
**www.carters.ca**

---

---

---

---

---

---

---

---