

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

NOVEMBER 2003 ISSUE**SECTIONS**

New Publications	2
In the Press	4
Recent Events and Presentation Materials	5
Upcoming Events and Presentations	8
Contributors	10
Acknowledgements, Errata and other Miscellaneous Items	12

HIGHLIGHTS

Impact of the Personal Information Protection and Electronic Documents Act
CCRA Adopts New Policy on Charities that Promote Racial Equality
Recent Changes to the Income Tax Act and Policies Relating to Charities and Charitable Gifts
Saskatchewan Directors and Officers Relieved from Liability
Summary of Additions and Changes to the CCRA Website: 2002 and 2003
New CCRA Policy Statement on Registering Charities that Promote Racial Equality

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NEW PUBLICATIONS

Impact of the Personal Information Protection and Electronic Documents Act

by Mark J. Wong in Charity Law Bulletin No. 28, November 29, 2003.

Recent developments that have been made in the area of electronic commerce have provided consumers with many conveniences, but at the same time these developments have given rise to significant privacy concerns. Modern day conveniences that consumers enjoy, such as online banking, online trading and the use of Interac have enabled businesses to collect with relative ease the personal information of consumers without their specific knowledge or consent. In addition, the combination of e-commerce and the internet means that personal information collected can potentially be made available to a worldwide audience.

In response to these concerns, the Federal Government of Canada passed the *Personal Information Protection and Electronic Documents Act* (“PIPEDA” or the “Act”) to inspire consumer confidence in e-commerce activities. Although PIPEDA initially was proclaimed into force in response to e-commerce concerns, the Act is actually broad and far reaching in that when fully implemented it will purport to regulate all collection, use and disclosure of personal information by organizations in the course of commercial activities, regardless of whether the personal information was obtained through or is even related to e-commerce.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2003/chylb28.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2003/chylb28.htm

CCRA Adopts New Policy on Charities that Promote Racial Equality

by Terrance S. Carter in The Lawyers Weekly, November 28, 2003.

The Policy Statement *Registering Charities that Promote Racial Equality* issued by the Canadian Customs and Revenue Agency (CCRA) on September 2 (“Policy Statement”) will be of interest to organizations that address racial discrimination and those established to foster positive race relations within Canada, as well as to immigrant, refugee, ethno-cultural, and other organizations seeking to include racial equality objects in their governing documents.

Read More:

[Link] www.carters.ca/news/2003/lawyerwkly/November%2028%202003.pdf

Recent Changes to the Income Tax Act and Policies Relating to Charities and Charitable Gifts

by Terrance S. Carter for the Law Society of Upper Canada, November 19, 2003.

The purpose of this paper is two-fold. Firstly, it is intended to provide an overview of new materials made available from Canada Customs and Revenue Agency (“CCRA”) in 2002 and 2003 affecting charities. Secondly, the paper provides an explanation and discussion of the legislative changes affecting charities under the *Income Tax Act* (“ITA”) for the same period of time, as well as a summary and commentary of a number of key new policies released by CCRA that impact the way in which charities become registered and maintain their charitable status.

Read More:

[PDF] www.carters.ca/pub/article/charity/2003/tsc1119.pdf

Saskatchewan Directors and Officers Relieved from Liability - Will Canada Corporations Act Reform Provide Similar Protection?

by Jane Burke-Robertson in *Charity Law Bulletin No. 27*, November 12, 2003.

Saskatchewan’s *Non-Profit Corporations Act*, 1995, was amended in June 2003 to provide some welcome relief to non-profit directors and officers in that province. The amendments are based on a 2001 report released by the Law Reform Commission of Saskatchewan which carried out extensive consultation with voluntary groups in the province. In a nutshell, directors and officers of non-profit corporations in Saskatchewan are not personally liable (to third parties or to the corporation itself) in any civil action for acts or omissions in connection with their responsibilities to the corporation they serve, provided they acted in good faith. The general immunity does not extend to fraud or profit-taking at the expense of the corporation. Directors remain liable for certain statutory liabilities.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2003/chylb27.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2003/chylb27.htm

Summary of Additions and Changes to the CCRA Website: 2002 and 2003

by Suzanne White and Terrance S. Carter for the 2003 Church & the Law Seminar, November 12, 2003.

Read More:

[PDF] www.carters.ca/pub/seminar/chrchlaw/2003/ccrachng.pdf

New CCRA Policy Statement on Registering Charities that Promote Racial Equality

by Terrence S. Carter and Suzanne E. White in *Charity Law Bulletin* No. 26, November 11, 2003.

This *Charity Law Bulletin* (“Bulletin”) provides a brief overview of the *Registering Charities that Promote Racial Equality Policy Statement*, issued by the Canadian Customs and Revenue Agency (“CCRA”) on September 2, 2003 (“Policy Statement”). The *Bulletin* also comments on a few of the more important aspects of the new *Policy Statement*. The *Policy Statement* is available on the CCRA website at www.ccradrc.gc.ca/tax/charities/policy/cps/cps-021-e.html.

Read More:

[PDF] www.carters.ca/pub/bulletin/charity/2003/chylb26.pdf

[WEB] www.carters.ca/pub/bulletin/charity/2003/chylb26.htm

IN THE PRESS

Charity Law Bulletin No. 22 summarized in *Charitable Thoughts* (Vol. 7, No. 1, October 2003).

“Update on Use of Relational Provisions by Ontario Non-share Capital Corporations”

[PDF] www.carters.ca/news/2003/charthts/TSCoct.pdf

Canadian FundRaiser eNews coverage of Mark Wong's presentation from the 2003 Annual Church & the Law Seminar. PRIVACY - As deadline looms, it's time to review law's requirements (*Canadian FundRaiser eNews*, November 30, 2003).

[Link] www.canadianfundraiser.com/newsletter/article.cfm?ArticleID=955

Charity Law Bulletin No. 27 summarized in **Canadian FundRaiser eNews** (November 30, 2003).

Saskatchewan eases directors' load - will Canada follow suit?

[Link] www.canadianfundraiser.com/newsletter/article.cfm?ArticleID=960

RECENT EVENTS AND PRESENTATION MATERIALS

Carter & Associates is pleased to announce that Jane Burke-Robertson, B.Soc.Sci, LL.B., has joined the firm as counsel on charitable and not-for-profit matters. Jane is a practitioner with an office in Ottawa and a noted author in the area of charity and not-for-profit law as well as a co-author of the book entitled "Non-Share Capital Corporation" which is a primary resource book used in Canada (October, 2003).

[CV] www.carters.ca/lawyers/janebr.html

Presentation materials now available from **The 2003 Annual Church & the Law(tm) Seminar**, a seminar for churches and religious charities held every year since 1994:

"Policy Based Board Governance: What Works and What Doesn't" by Donald J. Bourgeois, B.A., LL.B. - author, speaker and counsel on charitable and not-for-profit legal issues, in particular on governance issues, Carter & Associates.

[PDF] www.carters.ca/pub/seminar/chrchlaw/2003/db_bgov.pdf

[WEB] www.carters.ca/pub/seminar/chrchlaw/2003/db_bgov.htm

"Privacy Compliance: What Churches and Charities Need to Do by January 1, 2004" by Mark J. Wong, B.A., LL.B. - author, speaker and litigation counsel on legal issues involving churches and charities.

[PDF] www.carters.ca/pub/seminar/chrchlaw/2003/mjw_priv.pdf

[WEB] www.carters.ca/pub/seminar/chrchlaw/2003/mjw_priv.htm

"Disbursement Quotas and Related Matters for Churches and Charities" by M. Elena Hoffstein, B.A., M.A., LL.B. - author, speaker and Chair of the Charities Practice Group, Fasken Martineau DuMoulin, Toronto.

[PDF] www.carters.ca/pub/seminar/chrchlaw/2003/meh_disq.pdf

[WEB] www.carters.ca/pub/seminar/chrchlaw/2003/meh_disq.htm

"Criminal Investigations: When to Initiate and How to Respond" by Bruce W. Long, B.A., LL.B. - author, speaker and litigation counsel for charities, former Regional Director of Crown Attorneys, Carter & Associates.

[PDF] www.carters.ca/pub/seminar/chrchlaw/2003/bwl_invs.pdf

[WEB] www.carters.ca/pub/seminar/chrchlaw/2003/bwl_invs.htm

"Criminal Code Amendments (Bill C-250) Regarding Hate Propaganda" by Bruce W. Long, B.A., LL.B.

[PDF] www.carters.ca/pub/seminar/chrchlaw/2003/bwl_c250.pdf

[WEB] www.carters.ca/pub/seminar/chrchlaw/2003/bwl_c250.htm

"Same Sex Marriages: What Churches and Religious Charities Can Do in Response" by Esther S.J. Oh, B.A., LL.B. - speaker and counsel on legal issues involving churches and charities, Carter & Associates - and Terrance S. Carter, B.A., LL.B. - author, speaker and counsel on legal issues involving churches and charities, as well as editor of www.charitylaw.ca, Carter & Associates.

[PDF] www.carters.ca/pub/seminar/chrchlaw/2003/eso_ssex.pdf

[WEB] www.carters.ca/pub/seminar/chrchlaw/2003/eso_ssex.htm

"Church Incorporation: Why, How and What's Next" by Jacqueline M. Connor, B.A., LL.B. - Author, author, speaker and counsel on legal issues involving churches and charities, Carter & Associates.

[PDF] www.carters.ca/pub/seminar/chrchlaw/2003/jmc_cinc.pdf

[WEB] www.carters.ca/pub/seminar/chrchlaw/2003/jmc_cinc.htm

"Recent Changes Under The Income Tax Act and Related Policies Affecting Churches and Charities" by Terrance S. Carter, B.A., LL.B.

[PDF] www.carters.ca/pub/seminar/chrchlaw/2003/tsc_ita.pdf

[WEB] www.carters.ca/pub/seminar/chrchlaw/2003/tsc_ita.htm

"The Public Guardian and Trustee in Ontario: How to Avoid Complaints and Court Audits" by Kenneth Goodman, B.A., LL.B. - Counsel & Team Leader, Charitable Property Program, The Office of the Public Guardian & Trustee of Ontario, Toronto.

[PDF] www.carters.ca/pub/seminar/chrchlaw/2003/kg_pgt.pdf

[WEB] www.carters.ca/pub/seminar/chrchlaw/2003/kg_pgt.htm

"New Directions at CCRA and in the Courts Affecting Churches and Charities" by Carl Juneau, LL.L., B.A. - Director, Policy and Communications Division, Charities Directorate, CCRA - Mr. Juneau is currently on loan to the Department of Finance, Personal Income Tax Division, as Senior Policy Advisor in charities matters.

[PDF] www.carters.ca/pub/seminar/chrchlaw/2003/cj_ccra.pdf

[WEB] www.carters.ca/pub/seminar/chrchlaw/2003/cj_ccra.htm

"Charities and Privacy Legislation - Are You Ready for January 1" presented by Mark J. Wong for the **Charity and Not-for-Profit Law section of the Ontario Bar Association**. (November 27, 2003)

[PDF] www.carters.ca/pub/seminar/charity/2003/mjw1127.pdf

[WEB] www.carters.ca/pub/seminar/charity/2003/mjw1127.htm

"Recent Changes to the Income Tax Act and Policies Relating to Charities and Charitable Gifts"
presented by Terrance S. Carter at the **Canadian Association of Gift Planners Ottawa Region Round Table**. (November 26, 2003)

[PDF] www.carters.ca/pub/seminar/charity/2003/tsc1126.pdf

[WEB] www.carters.ca/pub/seminar/charity/2003/tsc1126.htm

"Recent Changes to the Income Tax Act and Policies Relating to Charities and Charitable Gifts"
presented by Terrance S. Carter at the **Law Society of Upper Canada's 6th Annual Estates and Trusts Forum**. (November 19, 2003)

[PDF] www.carters.ca/pub/seminar/charity/2003/tsc1119.pdf

[WEB] www.carters.ca/pub/seminar/charity/2003/tsc1119.htm

[Paper] www.carters.ca/pub/article/charity/2003/tsc1119.pdf

UPCOMING EVENTS AND PRESENTATIONS

"Charities and Privacy Legislation - Are You Ready for January 1?" to be presented by Mark J. Wong for the **Synagogue and Temple Administrators of Toronto (STAT)**. Registration is closed. (December 11, 2003)

The Impact of the Personal Information Protection and Electronic Documents Act (PIPEDA) on Ontario Business: Are you ready for January 1, 2004?" to be presented by Mark J. Wong for the **Orangeville Chamber of Commerce**. (December 12, 2003)

"Director's Liabilities" to be presented by Donald J. Bourgeois for the **Etobicoke District Chartered Accountants' Association**. (January 5, 2004)

[Notice] www.carters.ca/pub/seminar/notice/2003/djb0105.pdf

"Recent Changes to the Income Tax Act and Policies Relating to Charities and Charitable Gifts" to be presented by Terrance S. Carter for the **Waterloo-Wellington Estate Planning Council**. (January 8, 2004)

"Liabilities of Directors, Officers and Trustees" to be presented by Donald J. Bourgeois at **The Essential Curriculum in Charities course from Osgoode Hall Law School**. (January 15, 2004) More details at Osgoode's web site.

[Link]

<http://osgoode.yorku.ca/pdpwebsite.nsf/00580069eadebe7e85256a3f005763d1/7fb24ccb57be6d3c85256d9600577af2?OpenDocument&Date=2004-01-15#>

Additions to www.antiterrorism.ca

BILL C-17 (As passed by the House of Commons on October 7, 2003): An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety

[PDF] www.parl.gc.ca/PDF/37/2/parlbus/chambus/house/bills/government/C-17_3.pdf

[WEB] www.parl.gc.ca/37/2/parlbus/chambus/house/bills/government/C-17/C-17_3/C-17_cover-E.html

BILL C-45 (as assented to November 7, 2003): An Act to amend the Criminal Code (Criminal Liability of Organizations)

[PDF] www.parl.gc.ca/PDF/37/2/parlbus/chambus/house/bills/government/C-45_4.pdf

[WEB] www.parl.gc.ca/37/2/parlbus/chambus/house/bills/government/C-45/C-45_4/C-45_cover-E.html

Recent Additions to "Listed Entities" as of November 13, 2003:

- 32. Palestine Liberation Front (PLF)
- 33. Popular Front for the Liberation of Palestine (PFLP)
- 34. Popular Front for the Liberation of Palestine - General Command (PFLP-GC)

The complete list can be found at www.sgc.gc.ca/national_security/counter-terrorism/Entities_e.asp

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.



Donald J. Bourgeois – Counsel to Carter & Associates in the area of Charity and Not-for-Profit Law, governance and fundraising, Mr. Bourgeois is author of *The Law of Charitable and Not-for-Profit Organizations, 1st, 2nd and 3rd Editions*, the *Charities and Not-for-Profit Fundraising Handbook*, *Charities and Not-for-Profit Administration and Governance Handbook* and *Public Law in Canada* published by Butterworth.



M. Elena Hoffstein – From the affiliated firm, Fasken Martineau DuMoulin LLP - Toronto office, Ms. Hoffstein practices in the area of Charity and Not-for-Profit Law and has been ranked by LEXPERT as one of the most frequently recommended Toronto private client practitioners and as one of the top 500 lawyers in Canada. Ms. Hoffstein was also a consulting editor of *Charities Law, 2003/2004 Ed.* published by Butterworths



Jane Burke-Robertson – Counsel to Carter & Associates in the area of Charity and Not-for-Profit Law, Ms. Burke-Robertson is agent of the Attorney General of Canada and outside counsel to the Corporate Law Policy Directorate of Industry Canada to provide legal advice on the reform of the *Canada Corporations Act* effective March 12, 2004, as well as co-author of *Non-Share Capital Corporations* published by Carswell and contributing author to Industry Canada’s *Primer for Directors of Not-For-Profit Corporations*.



Kenneth Goodman – Counsel & Team Leader, Charitable Property Program, The Office of the Public Guardian & Trustee of Ontario, Toronto.

Carl Juneau – Director, Policy and Communications Division, Charities Directorate, CCRA. Mr. Juneau is currently on a loan to the Department of Finance, Personal Income Tax Division, as Senior Policy Advisor in charitable matters.



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.



Jacqueline M. Connor – Practices in Charity and Not-for-Profit Law, including Incorporation and Corporate Restructuring, Legal Risk Management Reviews, as well as Wills, Estate Planning and Estate Administration. She is a contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*, and has written numerous articles on Charity and Not-for-Profit issues for the *Charity Law Bulletin*. Ms. Connor is also a regular speaker at the annual Church & the Law™.



Mark J. Wong – Practices in Intellectual Property, focusing on Trade-Marks, Copyrights, and Privacy and Information Protection, Employment law and General Litigation. Mr. Wong has been an invited speaker for charitable organizations and also contributes regularly to www.charitylaw.ca and the *Charity Law Bulletin*, having written articles ranging anywhere from Employment to Privacy and Trade-Mark Law.



Esther S.J. Oh – Practices primarily in Charity and Not-for-Profit Law, as well as in Immigration Law. Ms. Oh is also a frequent contributor to www.charitylaw.ca and the *Charity Law Bulletin*, and has spoken at the annual Church & the Law™ Seminar as well as at the Canadian Bar Association/Ontario Bar Association's 2nd National Symposium on Charity Law.



Suzanne E. White – Articling with Carter & Associates, Ms. White has a Law degree from the University of Windsor and was also a Student Editor at the Canadian American Research Centre for Law & Policy. During that time, she has regularly assisted on articles posted to www.charitylaw.ca and the *Charity Law Bulletin*. After being called to the Bar in August 2004, Ms. White will be returning to Carter & Associates to practice in the area of Charity & Not-for-Profit Law as well as General Litigation.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

Errata: *Charity Law Bulletin No. 25*- Sec. H para. (2) first line has now been corrected to read as; CCRA has now expanded the allowable charitable activities that a charity can undertake. As such, charities will want to engage the bulk of their activities in permissible charitable activities, where possible, and thereby avoid the restriction associated with the safety net of permissible political activities.

Charity Law Bulletin No. 21 - Sec. B para. 2 (1) has now been corrected to read as; Under the current provisions of the Act, two of the criteria that both charitable organizations and public foundations are required to comply with include the following: (1) more than 50% of its directors, trustees, officers or like officials must deal with each other and with each of the other directors, trustees, officers or officials at arm's length, and (2) not more than 50% of the capital contributed or otherwise paid to the charity can be contributed by one person or members of a group of such persons who do not deal with each other at arm's length. The second requirement is usually referred to as a "contribution" test.

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