THE LAW SOCIETY OF UPPER CANADA
19th ANNUAL ESTATES AND TRUSTS SUMMIT

Toronto – November 4, 2016

UPDATE ON CHARITY LAW
(Current as of October 12, 2016)

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A. INTRODUCTION

Over the last 12 months there have been a significant number of legislative and common law developments at the federal and provincial level that impact how charities operate in Canada. The intent of this paper is to provide a brief overview of some of the more important developments in the last year, including changes introduced through the 2016 Federal Budget, changes to the Income Tax Act involving estate gifts, new publications from the Charities Directorate of the Canada Revenue Agency (“CRA”), corporate updates under the Canada Not-for-Profit Corporations Act (“CNCA”) and the Ontario Not-for-profit Corporations Act (“ONCA”), other federal and provincial initiatives, as well as recent court decisions affecting charities.

B. 2016 FEDERAL BUDGET HIGHLIGHTS

On March 22, 2016, the new Liberal government tabled its first federal budget (“Budget 2016”). Subsequent legislation to implement certain portions of Budget 2016 was introduced on April 20, 2016 by Bill C-15, Budget Implementation Act, 2016 No. 1, (“Budget Implementation Act”), which received Royal Assent on June 22, 2016.

Although Budget 2016 did not dramatically alter the legal and regulatory landscape for charities, there are, nonetheless, a number of important developments of note.

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5 *Supra* note 1.
1. **Donation of Sale Proceeds of Real Estate and Shares of Private Corporations**

One of the key provisions of Budget 2016 was the announcement that the federal government does not intend to proceed with the proposal to provide an exemption, beginning in 2017, from capital gains tax for dispositions involving private corporation shares or real estate where cash proceeds are donated to a qualified donee within 30 days of disposition. This proposal was originally contained in the previous federal government’s budget announced on April 21, 2015 (“Budget 2015”), with draft legislative proposals to amend the ITA having been released on July 31, 2015, by the Department of Finance for consultation. The decision of the current federal government not to proceed with these exemptions from capital gains tax has been disappointing for the charitable sector, although the proposed rules were complicated and fraught with practical and implementation issues.

2. **Consultation with Sector on Political Activities**

Under the heading of “Improving Client Services at the Canada Revenue Agency”, Budget 2016 announced that the federal government proposed committing $185.8 million to do so over 5 years, with $14.6 million ongoing for CRA to address a number of initiatives. Of note to the charitable sector, one of these initiatives includes CRA and the Department of Finance engaging with charities through “stakeholder groups and an online consultation” in order to clarify the rules concerning political activities.

This announcement followed the wind-down of the audit program directed at the political activities of charities announced by the Minister of National Revenue on January 20, 2016. The announcement was also consistent with the mandate letter to the Minister of Finance released on November 13, 2015, which asked the Minister to “[w]ork with the Minister of National Revenue to allow charities to do their work on behalf of Canadians free from political harassment,

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7 *Supra* note 1 at 221.
10 *Supra* note 1 at 206.
and modernize the rules governing the charitable and non-for-profit sectors. This will include clarifying the rules governing ‘political activity.’”

As a follow-up, on September 27, 2016, the Minister of National Revenue announced the launching of public consultations to “clarify the rules regarding the involvement of registered charities in political activities.”

CRA followed the Minister of National Revenue’s announcement with its own announcement the same day detailing the online component of the consultation. The consultation questions have been grouped into three categories related to carrying out political activities, CRA’s policy guidance, and future policy development. Specific questions asked by CRA include:

- Are charities generally aware of what the rules are on political activities?
- What issues or challenges do charities encounter with the existing policies on charities’ political activities?
- Do these policies help or hinder charities in advocating for their causes or for the people they serve?
- Is CRA’s policy guidance on political activities clear, useful, and complete?
- Which formats are the most useful and effective for offering policy guidance on the rules for political activities?; and
- Should changes be made to the rules governing political activities and, if so, what should those changes be?

Comments concerning the online consultation will be received until November 25, 2016. In person consultations will follow at a later date in Halifax, Montréal, Toronto, Winnipeg, Calgary and Vancouver. The Minister of National Revenue also announced the establishment of a consultation panel consisting of five individuals experienced with the regulatory issues facing charities, presumably in the context of political activities.

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15 Canada Revenue Agency’s online consultation on charities’ political activities (27 September 2016), online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/whtsnw/pacnslttns-eng.html>.

16 Ibid.
3. **Acquisition of Interest in Limited Partnerships by Registered Charities**

Budget 2016 also confirmed the intention of the federal government to proceed with implementing the acquisition or holding of limited partnerships interests by registered charities announced in Budget 2015. Budget 2015 had contained amendments to the ITA to allow registered charities, including private foundations and registered Canadian amateur athletic associations (“RCAAAs”), to passively invest in limited partnerships without being considered to be carrying on the business of the partnership provided that certain conditions were met.

In this regard, Part 1 of the *Budget Implementation Act* adds a new subsection 253.1(2) to the ITA to permit registered charities and RCAAAs to hold limited partnership interests.\(^{17}\) The new provision provides that where a registered charity or RCAA holds an interest as a limited partner in a limited partnership, it will not be considered (for purposes of sections 149.1 and subsections 188.1(1) and (2)) of the ITA, solely because of its acquisition or holding of the limited partnership interest, to be carrying on any business or other activity of the partnership if the following conditions are met:

- By operation of any law governing the arrangement in respect of the partnership, the liability of the registered charity or RCAA as a member of the partnership is limited;
- The registered charity or RCAA deals at arm’s length with each general partner of the partnership; and
- The registered charity or RCAA together with persons and partnerships with which it does not deal at arm’s length, does not hold interests in the partnership that have a fair market value of more than 20% of the fair market value of the interests of all members of the partnership.\(^{18}\)

As well, a new subsection 149.1(11) will also be added so that limited partnerships of which a private foundation is, directly or indirectly, a member, would not be included when calculating the private foundation’s excess corporate holdings.\(^{19}\) These amendments apply in respect of investments in limited partnerships that are made or acquired after April 20, 2015. This is consistent with CRA’s policy to permit registered charities and RCAAAs to invest in limited partnerships since 2015, after the proposal was contained in the 2015 Federal Budget, notwithstanding that the proposal had not yet been enacted by Parliament.

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\(^{17}\) *Supra* note 6 at Part 1.


\(^{19}\) *Ibid.*
4. Amendments to Donation Tax Credits for Trusts

By way of background, on December 7, 2015 the Minister of Finance announced changes to the federal personal income tax rates for individual taxpayers as of January 1, 2016.\(^{20}\) Bill C-2, *An Act to amend the Income Tax Act* (“Bill C-2”) was subsequently tabled in the House of Commons on December 9, 2015 to amend the formula used to calculate the donation tax credit in subsection 118.1(3) of the ITA.\(^{21}\) Bill C-2 proposes to reduce the second personal income tax rate to 20.5% from 22% and the introduction of a new 33% personal income tax rate on individual taxable income in excess of $200,000 effective for the 2016 and subsequent taxation years. One of the consequential proposals contained in Budget 2016 was to provide a 33% charitable donation tax credit on donations above $200 to trusts that are subject to the 33% rate on all of their taxable income. This measure was also intended to extend the 33% charitable donation tax credit contained in Bill C-2 to donations made by a graduated rate estate during a taxation year of the estate that straddles 2015 and 2016.\(^{22}\)

In this regard, Part 1 of the *Budget Implementation Act* amends the ITA to include the proposed amendments under Bill C-2 and the amendments contained in Budget 2016. As a result subsection 118.1(3) of the ITA will be amended to apply a new tax credit rate equal to the highest individual percentage to the extent that the total gifts for the year exceed $200, and to the extent that the taxpayer has income that is subject to the top marginal tax rate. Specifically for trusts to which subsection 122(1) applies to pay tax at a flat rate equal to the highest individual percentage, the new tax credit rate (33% for the 2016 taxation year) will apply to total gifts in excess of $200. For individuals, (including graduated rate estates and qualified disability trusts) to which section 117 applies so that tax at the highest individual percentage only applies to taxable income above a certain threshold ($200,000 for the 2016 taxation year), the new tax credit rate (33% for the 2016 taxation year) will apply to total gifts in excess of $200, to the extent the individual has taxable income above that threshold. These changes will apply to gifts made after 2015.


\(^{21}\) Canada Bill C-2, *An Act to amend the Income Tax Act*, 1\(^{st}\) Sess, 42\(^{nd}\) Parl, 2016, (second reading 7 October 2016).

5. **Sales and Excise Tax Measures**

Part 2 of the *Budget Implementation Act* enacted two charity-related Goods and Services Tax/Harmonized Sales Tax (“GST/HST”) measures that were mentioned in Budget 2016. In the first instance, the *Budget Implementation Act* amends Section 1 of Part V.1 of Schedule V to the *Excise Tax Act* (“ETA”), by including a new paragraph (p) so that a supply of a service rendered to an individual to enhance or otherwise alter the individual’s physical appearance, and not for medical or reconstructive purposes or a supply of a right entitling a person to such service, would be subject to GST/HST. This amendment applies to any supply made after March 22, 2016. 23

In the second instance, a new section 164 of the ETA has been included so that where a charity or public institution receives a donation and provides a property or service to the donor in return, the part of the donation that exceeds the value of the property or services supplied would not be subject to GST/HST. 24 This new rule requires that two conditions must be met: (a) the services or property provided must be included in calculating the value of the advantage for purposes of split-receipting, and (b) a donation receipt may be issued, or could be issued if the donor were an individual. 25 The new section applies to supplies made after March 22, 2016.

### C. **INCOME TAX CHANGES REGARDING ESTATE GIFTS** 26

1. **Testamentary Trusts and the Graduated Rate Estate**

Commencing in 2016, new rules were introduced regarding the manner in which testamentary trusts are taxed which will significantly impact estate gifts. In the past, income and capital gains retained in *inter vivos* trusts were taxed at a different rate than testamentary trusts. *Inter vivos* trusts have always been taxed at the top marginal rates of tax, while testamentary trusts and certain pre-1971 *inter vivos* trusts have enjoyed progressive rates of tax. An amendment to section 122 of the ITA has eliminated the various differences between *inter vivos* and testamentary trusts commencing in 2016 27. An exception, however, is that progressive tax

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23 *Supra* note 6 at Part 2.
24 *Ibid*.
25 *Ibid* at 77.
26 This portion of the paper has been excerpted from *Charities Legislation & Commentary* by Terrance S. Carter, Maria Elena Hoffstein & Adam Parachin, (Toronto: LexisNexis Canada Inc., 2017). The authors would like to thank Elena Hoffstein for her kind permission to allow the inclusion in this paper of said excerpt that she authored.
27 *Supra* note 1, s 122; Department of Finance Canada, *Notice of Ways and Means Motion to amend the Income Tax Act*, (Ottawa: Department of Finance Canada, 7 December 2015), online: <https://www.fin.gc.ca/drleg-
rates will continue to apply to graduated rate estates ("GREs"). A GRE is defined in subsection 248(1) of the ITA as an estate that arose on and as a consequence of the death of an individual if: (a) not more than thirty-six (36) months have passed since the date of death; (b) the estate is at that time a testamentary trust (as defined in subsection 108(1) of the ITA); (c) the estate designates itself as a GRE in its tax return for the first taxation year ending after 2015; (d) no other estate has designated itself as a GRE of the deceased individual; and (e) the deceased’s social insurance number is provided.\(^{28}\)

The benefits that are available for a GRE and not for other testamentary trusts include the following:

- The graduated tax rates applicable to individuals will apply to income retained in the GRE (subsection 117(2));
- A GRE can continue to have an off-calendar year;
- A GRE will be exempt from remitting tax instalments and will only be required to pay Part I Tax within 90 days after the end of its taxation year (subsections 104(23)(e) and 156.1(2)(c);
- A basic exemption from Alternative Minimum Tax of $40,000 will be available to the GRE (section 127.51);
- It will be able to access new flexible rules for donations by will or estate; and
- Nil capital gains on donations of public securities;

The graduated tax rates apply to income retained in the GRE during the term of an estate qualifying as a GRE. A GRE can only qualify as such for a maximum of thirty-six (36) months after the death of an individual. At the end of the thirty-six (36) month period, the estate realizes a taxation year end and the GRE status is lost (subsection 249(4.1))\(^{29}\).

Furthermore, there is no grandfathering for existing trusts which will have a deemed year-end on December 31, 2015. Thus, for those testamentary trusts which had a fiscal period or off calendar year end, this would have result in two year ends in 2015. An exception is provided in

\(^{28}\) For further information on graduated rate estates, see M. Elena Hoffstein, “Problems Arising from the Estate Donation Rules and the 2015 Federal Budget” (Presentation to the 2015 National Charity Law Symposium, May 29, 2015, Toronto, Ontario).

\(^{29}\) Draft legislation tabled January 15, 2016 introduced a proposal to extend the thirty-six (36) month period to sixty (60) months after the death of an individual. See M. Elena Hoffstein, “Testamentary Charitable Giving: The New Regime (Revised)” (2016) at 8.
subsection 249(4.1) if the particular trust is an estate which existed at the end of 2015 and is a GRE of the individual for the 2016 taxation year. In this case and in the case where the particular trust is an estate that arose on a death after 2015 and is a GRE for its first taxation year that deemed taxation year-end is deferred until the last time at which the estate is a GRE.

One of the prerequisites for a GRE is that only one estate can qualify. In situations where multiple wills are used to avoid probate tax, the question has arisen as to whether this creates two estates. CRA has indicated that, in its view, there is only one estate and that, therefore, a combined tax return should be filed and joint election made to designate the estates as a GRE.  

2. Changes to Timing and Recognition of Charitable Gifts

New legislation introduced significant changes to the testamentary charitable gift regime for the 2016 and subsequent taxation years both as to timing and recognition of charitable gifts for tax purposes. Donations made by will and designated donations (Registered Retirement Savings Plan (“RRSP”), Registered Retirement Income Fund (“RRIF”), Tax-Free Savings Account (“TFSA”) or life insurance policy) are deemed to be made by the estate at the time when the property is transferred to a charity. As well, the fair market value (“FMV”) of the gift for tax receipting purposes is to be determined at the time of the transfer of property rather than at the date of death. For pre-2016 deaths, the ITA provided that a charitable gift made by will (often referred to as a “Gift by Will”) was deemed to have been made by the donor immediately prior to death. If the estate which makes the gift is a GRE, there is flexibility as to the allocation of the donation tax credit. The value of the gift will be the value of the property at the time it is transferred to the charity rather than the value on the date of death, as it had been under the old rules.

This legislation builds new flexibility into the ability to use donation tax credits in respect of estate gifts by will and designated donations by permitting the executors or trustees of a GRE to allocate the tax credits among the terminal or last taxation year of the donor, the taxation year preceding the taxation year of death, and the taxation year of the estate in which the donation is made and up to two (2) prior years of the estate. It is only a GRE that has the flexibility to allocate the donation tax credit among different tax years and, most importantly, to carry-back

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30 Canada Revenue Agency Views 2010-0358461-spousal trusts and see explanatory notes under definition of Graduated Rate Estate in ss. 248(1) ITA.
31 Supra note 2, s 118.1(5).
the donation tax credit to the year of death and one year prior, which in many cases is where the largest tax liability arises (because of the deemed disposition on death rules). An additional requirement is that the property to be transferred to the charity by the GRE must be property held by the deceased at date of death or property substituted therefor.

It is important to note that a borrowing of funds by an estate to effect a charitable gift within the thirty-six (36) months will not qualify for the flexible rules allowing use of the donation tax credit in the year of death or the year before the year of death. Current annual charitable donation limits of 100% of net income for the donor’s last taxation year or for the taxation year preceding the taxation year of death will continue to apply. Note that generally, the maximum amount of donations that may be claimed in a year is 75% of an individual’s net income. Subsection 118.1(1) of the ITA provides that the 75% limit does not apply in the year of the donor’s death and the immediately preceding year.

A qualifying donation will be a donation effected by a transfer of property, within the first 36 months after the individual’s death, to a qualified donee. Where an individual designated a qualified donee (e.g., a registered charity) as the recipient of the proceeds under a RRSP, RRIF, TFSA and life insurance, donation tax credits will also be available. In this regard, if the transfer of the gift to the qualified donee occurs within thirty-six (36) months after death, then the gift would be deemed to be made immediately before the individual’s death. In any other case, the donated property will be required to have been acquired by the estate on and as a consequence of the death (or to have been substituted for such property). An estate which does not qualify as a GRE will continue to be able to claim a donation tax credit in respect of donations in the year in which the donation is made or in any of the five following years. It is also noted that the rules relating to the tax free transfer of publicly traded securities to charity are now limited to gifts of publicly traded securities made by the GRE.

The new rules create more flexibility by apparently eliminating the need for testamentary donations to qualify as “Gift by Wills” so long as the transfer of property to the charity takes place within thirty-six (36) months of death. Because of the additional tax benefits of gifts made by will that are available under subsection 118.1(5) of the ITA, determining whether a gift qualifies as a gift by will has been a key consideration in estate planning and a complex area because there is little case law dealing with what would constitute a gift by will.
3. Charitable Remainder Trusts

The new regime does not appear to specifically deal with the treatment of gifts to a charity on the death of an intervening life interest (commonly referred to as charitable remainder trusts), which can qualify as a “Gift by Will” under the current regime so long as the trustees have no right to encroach on the capital in favour of the life tenant. The new rules contemplate that the property that is the subject of a testamentary charitable gift must be transferred to a qualified donee within thirty-six (36) months of death. While a residual interest in a charitable remainder trust is a property interest that can be transferred, it is only that property interest and not the actual underlying property of the charitable remainder trust that can be transferred prior to the death of the life tenant. As a result, there remain some questions as to the manner in which testamentary charitable remainder trusts will be dealt with under the new rule.

4. Gifts of Private Company Shares/Non-Qualifying Security/Excepted Gift

In addition, it would appear that there are unintended consequences to a new rule that it is not the deceased but rather the estate of the deceased (whether the estate generally or the GRE) which is considered the donor of the gift. This relates to gifts of private company shares to public foundations or charitable organizations.

Under the prior rules, a testamentary gift of private company shares to either a public foundation or charitable organization (but not to a private foundation in order to avoid the excess corporate holdings rules) and that qualified as a gift by will would give rise to an immediate donation tax credit that could be applied to offset income in the year of death or the year prior to death.

Under the new rules, such a gift would be treated as a non-qualifying security. A non-qualifying security is defined in subsection 118.1(18) of the ITA as a share or debt of a private company with which an individual or estate does not deal at arm's length immediately after the relevant time (which in our case would be the time of the gift). Gifts of private company shares by an individual who controls the company are caught by the definition as are gifts of debt by an individual where the debt is in respect of a non-arm’s length corporation. If a donation of a non-qualifying security is made, the donor will be denied a tax credit for the donation in the year in which the gift is made. However, if the non-arm’s length connection between the donor and the issuer of the security is broken within the first sixty (60) months or the recipient charity disposes
of the security within sixty (60) months of the time the donation is made, the gift will be deemed to have been made at the time the non-qualifying security is disposed of or ceases to be non-qualifying. The charity can then issue a donation receipt for the gift.

There are certain gifts of shares that do not fall within the definition of a non-qualifying security. These are called excepted gifts and tax relief will apply in the usual way. An excepted gift is a gift of shares made to a charity that is not a private foundation (i.e., to a public foundation or charitable organization) with the proviso that the donor deals at arm’s length with the donee charity and with each director, trustee or officer of the donee charity. It is noted that this exception applies only to shares not listed on a prescribed stock exchange and it does not apply to gifts of debt. This is the rule with respect to inter vivos gifts of private company shares and was also the rule with respect to gifts by will.

However, under the new rules, as noted above, a testamentary gift of private company shares, even if made to a public foundation or charitable organization would not qualify as an excepted gift and would therefore be a non-qualifying security.

The reason for this is that a testamentary trust is deemed not to deal at arm’s length with a person that is beneficially interested in the trust including a public foundation or charitable organization such that, as noted above, a testamentary gift to such charity would not qualify as an excepted gift. No receipt could therefore be issued and no donation tax credit would be usable until such time as the private company shares are liquidated and this has to occur within sixty (60) months if the extension to the GRE becomes law, or thirty-six (36) months if it is desired to have the donation tax credit available not only in the year of death and prior year but also during the three (3) years of the GRE.

The natural question that arises is why there is a difference in tax treatment between inter vivos gifts and testamentary gifts of private company shares. Submissions have been made to the Department of Finance by the Canadian Association of Gift Planners that the simplest way to resolve this difference in tax treatment is to make testamentary gifts of private company shares to public foundations and charitable organizations an excepted gift.

5. **New Life Interest Trust Rules (subsection 104(13.4))**

Life interest trusts are trusts that are (i) spouse/common-law partner trusts that are established inter vivos or on death (testamentary); (ii) alter-ego trusts; (iii) joint spouse/common-law partner trusts; and (iv) self-benefit trusts. The common elements to these trusts are that the
assets can be transferred to such trusts on a roll-over or tax deferred basis. On the death of the life tenant beneficiary there is a deemed disposition and tax is exigible on any accrued gains. Until 2016, any tax arising on the death of the life tenant would be taxed in the trust.

The new rules, effective January 2016, provide that on the death of the life interest beneficiary (or on the death of the survivor of the life tenants in the case of joint partner trusts) there is a deemed year-end for the trust, the gain on the deemed disposition and all income for that year is deemed payable to and included in the life interest beneficiary’s income. That is to say, the estate of the life tenant becomes liable for the tax arising in the trust. There is no grandfathering of existing trusts. While it was stated that there is a joint and several liability for the trust and the life interest beneficiary estate, there were many issues identified by the estates and trust and charitable sector. These included an unfair tax burden on the beneficiaries of the estate or the life tenant who were shouldering the tax burden without the benefit of owning the assets to which such tax burden anticipated to take place on the death of the life tenant to avoid double tax situations was frustrated.

In response to such concerns, on November 16, 2015 a “Comfort Letter” was released from the Department of Finance and on January 15 draft legislation followed. These responded on two concerns:

- Misplaced tax liability; the new provision caused the tax liability from the deemed disposition of the trust assets and trust income in the year of the (life interest) beneficiary to be taxed in the hands of the deceased life tenant’s estate, not the trust,
- The stranding of donation tax credits with respect to charitable donations made by the trust after the death of the (life interest) beneficiary.

The proposed new rules would return to the status quo prior to January 1, 2016. Thus, it is proposed that gains on deemed dispositions occurring on the death of the life tenant will continue to be taxed in the life interest trust and not in the life tenant’s estate. The proposed new rule also provides that, in limited circumstances, there will be an opportunity to elect to tax the gain in the life tenant’s estate, but this will only apply to post-1971 testamentary spouse or

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33 i.e., ss. 104(13.4)(b.1) – 104(13.4)(b) will no longer apply.
common-law partner trusts created by the will of a taxpayer who died before 2017 with a Canadian resident beneficiary.

With respect to charitable gifting, under the January 2016 draft legislation, if the life interest trust makes a gift within ninety (90) days after the end of the calendar year in which the beneficiary spouse dies (the filing due date), it can allocate the charitable tax credit to the short taxation year of the trust that resulted from the beneficiary spouse’s death or alternatively in the year of the gift or the following five (5) years. This will allow for the matching of tax liabilities and charitable credits.

In order to achieve this result the property transferred to charity must be property owned by the trust on the date of death of the life interest beneficiary or property substituted therefor. Thus dividends paid on shares held by the trust on the death of the life tenant could not be used to make the charitable gift as the dividends would not qualify as property held on the death of the life tenant or property substituted therefor. If shares of a corporation are redeemed the cash share qualify as property substituted therefor.

In addition, in order to qualify as a donation by the trust (as opposed to a distribution to a charity as a beneficiary) the terms of the trust must give the trustees the ability to make or not make the charitable donation (i.e., the charity must not be receiving the gift as a beneficiary of the trust but as a charity recipient of a charitable gift). This is because to qualify as a gift it must be voluntary, hence the need for the trustees to have the ability to make or not make the gift.34

These proposals, while welcome, only partly address the issue of stranded donation tax credits after the death of a life tenant of a life interest trust. Firstly, the “gift” may not qualify as such based on CRA’s interpretation of what constitutes a “gift”. There may also be timing issues depending on when the life tenant dies. If the death occurs close to the end of the calendar year, there will only be a short time before the tax return has to be filed (e.g., a December death allows only a three (3) month window (to March 31 of the following year). A death earlier in the year could provide more time to effect the charitable gift.

6. Spousal Sharing of Donation Tax Credits

Spousal sharing of charitable gifts is now addressed in the ITA as amended by Bill C-43, Economic Action Plan 2014, No. 2 (“Bill C-43”) through amendments to the definition of “total

charitable gifts” of an individual in subsection 118.1(1) for 2016 and subsequent taxation years. In this regard, if an individual is not a trust, clause 118.1(1)(c)(i)(A) provides that the eligible amount of “total charitable gifts” includes the amount of a gift made to a qualified donee by an individual or the individual’s spouse or common-law partner in a taxation year or any of the five preceding taxation years. However, clause 118.1(1)(c)(i)(C) provides that gifts made by a GRE can be claimed on the deceased individual’s tax return for the year of death or the immediately preceding year. In a technical interpretation released by CRA, CRA takes the view that this clause is more limited in scope and does not include gifts made by the GRE of a spouse or common-law partner. CRA therefore concluded that, given the new amendments, its current administrative practice allowing gifts made by an individual’s will to be claimed by the deceased individual’s spouse will no longer apply for deaths occurring after 2015.

D. RECENT CRA PUBLICATIONS AND WEBSITE UPDATES

1. GST/HST Info Sheets

On April 6, 2016, CRA released a number of GST/HST Info Sheets regarding the Public Service Bodies’ (“PSB”) Rebate that may be claimed by charities and qualifying NPOs, as defined under s. 149.1(l) of the ITA. As a general overview, charities and qualifying NPOs may be able to recover a percentage of the Goods and Services Tax (“GST”) and/or the federal part of the Harmonized Sale Tax (“HST”) paid or payable on its eligible purchases and expenses by claiming a PSB rebate. In addition, a charity or qualifying NPO resident in a participating province may also be able to claim a PSB rebate to recover a percentage of the provincial part of the HST paid or payable on its eligible purchases and expenses.

Through various Info Sheets, CRA has provided guidance on how a number of scenarios are to be addressed based upon a charity’s or qualifying NPO’s province of residence. For those charities and qualifying NPOs that are resident in only one participating province, they should use the applicable Info Sheet for Prince Edward Island, Ontario, Nova Scotia, Newfoundland and Labrador, New Brunswick or British Columbia (GI 172 to 177 for charities and GI 180 to 185 for qualifying NPOs). (Note: British Columbia was a participating province from July 1, 2010 until

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35 Canada Revenue Agency Document #2014-0555511 (January 27, 2015). Also see Canada Revenue Agency Document #2016-0624851 (27 April, 2016.).
March 31, 2013, meaning charities and qualifying NPOs in British Columbia may only apply for a PSB rebate for claim periods within these dates. Similarly, Prince Edward Island only became a participating province on April 1, 2013, meaning that the PSB rebate in Prince Edward Island is only available for claims that end on or after this date.)

Alternatively, where a charity or qualifying NPO is resident in one or more non-participating provinces and is not resident in a participating province, it should use the applicable Info Sheet GI 178 or GI 186. However, where a charity or qualifying NPO is resident in two or more provinces, at least one of which is a participating province, it should use the applicable Info Sheet GI 179 or GI 187. These Info Sheets are helpful to this type of charity and qualifying NPO applying for the PSB rebate by breaking down the process into the various steps necessary to determine whether the PSB rebate applies and, if so, how to do its calculation. The Info Sheets also contain a number of illustrative examples regarding calculation of the PSB rebate at the different stages in the process.

2. New Guidance on Becoming a Qualified Donee


According to Guidance CG-025, a low-cost housing corporation for the aged ("LCHCA") that seeks qualified donee status must be resident in Canada and meet the criteria of paragraph 149(1)(i) of the ITA. Paragraph 149(1)(i) states that an LCHCA is “a corporation that was constituted exclusively for the purpose of providing low-cost housing accommodation for the aged, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof.” CRA interprets this to mean an organization that is constituted exclusively for the purpose of providing low-cost housing accommodation for the aged and operated only for that purpose. CRA has also interpreted “aged” to mean 55 years of age and over.

Guidance CG-025 also explains that such accommodation “includes comfortable but modest rental accommodation, at rents that are low relative to rents generally available for

37 Ibid.
39 Ibid.
similar accommodations in the same community (other than subsidized or non-profit accommodations).” An LCHCA may also provide housing related services such as “meals, laundry services, home furnishings, medical/nursing care, house-keeping services, resident aides’ services, and general assistance with matters of daily living.” As well, an LCHCA must not distribute income, either directly or indirectly, to, or for the personal benefit of, any member or shareholder. It also should not have the power to declare and pay dividends out of income. Guidance CG-025 further sets out how a corporation can seek qualified donee status, as well as the documentation that the Charities Directorate will expect of an LCHCA when applying.40

3. **Updated Charities Audit Statistics for 2015-2016**

On May 12, 2016, CRA updated its webpage titled *The Audit Process for Charities*.41 The webpage generally describes the reasons that CRA undertakes audits for charities on a yearly basis and notes that it audits roughly 1% of the registered charities in Canada each year.42 CRA’s compliance approach is described as an “education-first” approach, and the outcomes that a charity can receive as a result of an audit include education letters, compliance agreements, sanctions, and revocation of registration.43 In addition, the webpage lists the types of recourse available to charities during and after the audit.

The updated webpage reflects the following audit outcomes in 2015-2016:

<table>
<thead>
<tr>
<th>Outcome</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Change</td>
<td>40</td>
</tr>
<tr>
<td>Education</td>
<td>444</td>
</tr>
<tr>
<td>Compliance Agreement</td>
<td>111</td>
</tr>
<tr>
<td>Voluntary Revocation</td>
<td>22</td>
</tr>
<tr>
<td>Penalty/suspensions</td>
<td>4</td>
</tr>
<tr>
<td>Notice of intent to Revoke issued</td>
<td>21</td>
</tr>
<tr>
<td>Annulment</td>
<td>59</td>
</tr>
<tr>
<td>Other (includes other audit activities such as pre-registration and Part V audits)</td>
<td>25</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>726</strong></td>
</tr>
</tbody>
</table>

40 Ibid.
42 Ibid
43 Ibid
4. Two New Information Webpages

On June 10, 2016, CRA introduced two new webpages. The first, Charities Listing Request Form, allows the public to request on-line an electronic version of data that is available to the public on the Charities Listings webpage. The information will be sent to the applicant by email or mail. While this data will be interesting to researchers, it will also be valuable to organizations and their advisors who wish to know how many and the kind of organizations in a particular category or subcategory have been registered as a charity or revoked as a charity for failure to file, following an audit, voluntarily or for other reasons.

The second page, Request for Registered Charity Information, allows the public to make a request on-line for information about a charity that is publically available but not in the Charities Listings e.g. application for charitable registration, governing documents, notification of registration, letters regarding grounds for revocation, and financial statements. Authorized agents of a charity can also request electronically information about the charity’s file that is not available to the public. CRA will send the information by email, mail, or fax.

5. New Guidance on Requirements for Foreign Charities to become Qualified Donees

On June 16, 2016, CRA issued Guidance CG-023, Qualified donee: Foreign charities that have received a gift from Her Majesty in right of Canada, which outlines the new process whereby foreign charities that have received a gift from Her Majesty in right of Canada can, upon application with Canada Revenue Agency, become a qualified donee that has the ability to issue official donation receipts to donors (for Canadian income tax purposes) and can also receive gifts from Canadian registered charities. In this regard, if an applicant meets the criteria outlined in Guidance CG-023 and the ITA and has been registered as a qualified donee by CRA (in consultation with the Ministry of Finance), the foreign charity may become a qualified donee for a period of 24 months as of the date on which it received the gift from Her Majesty. It should be

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46 Canada Revenue Agency, Qualified Donee: Foreign charities that have received a gift from Her Majesty in right of Canada, (Ottawa: 16 June 2016) (CG-023), online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/cg-023-eng.html>.
noted that the Guidance CG-023 applies as of June 23, 2015 in accordance with the 2012 Federal Budget.

To apply to become a qualified donee, an authorized representative or official of the foreign charity that has received a gift from Her Majesty must send a letter to CRA indicating that the foreign charity is applying for registration as a qualified donee and also explain how its activities meet the applicable criteria listed in CG-023 and the ITA. Guidance CG-023 says that application must also include the following:

- A copy of the charity’s governing document(s);
- A description of all of the charity’s activities;
- A description of, and the scope of, the specific activities that meet the requirements for relief activities in response to a disaster, providing urgent humanitarian aid, or activities in the national interest of Canada;
- A list providing the full name of all the current officials (board members, directors, trustees, officers, and like officials), their contact information, and their position within the charity;
- A copy of the letter or certificate granting charitable status to the charity from the relevant authority in the country in which the charity is established;
- A copy of the charity’s most recent financial statements;
- A copy of correspondence, agreements, or other documents related to the gift from Her Majesty in right of Canada; and
- Proof that the gift was made (for example, a copy of the cashed cheque with the deposit stamp, or the bank statement showing the deposit).

Guidance CG-023 states, in accordance with the ITA, that “[t]o be eligible for registration as a qualified donee, a foreign charity must:

- Be established or created outside Canada and not be resident in Canada;
- Have exclusively charitable purposes and activities in accordance with applicable common law;
- Ensure that its income is not payable or otherwise available for the personal benefit of any owner, member, shareholder, trustee, or settlor of the organization;
- Be the recipient of a gift from Her Majesty in right of Canada; and
- Be undertaking at least one of the following at the time of the application:


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o Relief activities in response to a disaster;
  o Urgent humanitarian aid;
  o Activities in the national interest of Canada.”

6. Length of Retention for Church Offering Envelopes Changes

On July 22, 2016, CRA published a statement outlining their position on church offering envelopes. Effective as of 2016, church offering envelopes are now required to be kept for a period of six years from the end of the tax year to which the envelope relates. The new six year requirement also applies to church offering envelopes for the 2015 tax year. CRA’s previous position was that church offering envelopes must be kept for two years after the year in which the envelope relates. However, CRA states that the above change was made in order to reflect consistency with the provisions of the ITA which relate to retention of source documents.

7. New Infographic to Assist Charities Calculate When Their T3010 is Due Each Year

A charity is required to file an annual Registered Charity Information Return T3010 within six months of its fiscal year end. Late filing of the T3010 can result in the loss of charitable status. To assist charities in determining their filing deadline, CRA has published an infographic on its website (see below). The infographic outlines the filing deadline for T3010 based on the fiscal year end of an organization.

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48 Ibid.
CRA normally mails the T3010 return and related documents to each charity in the month following the end of the charity’s fiscal period, however if a charity does not receive the package of documents in the mail, charities may contact CRA by phone in order to request the same.

E. RECENT TAX DECISIONS, RULINGS, AND INTERPRETATIONS INVOLVING CHARITIES

1. FCA Revokes Charitable Status Based on Failure to Maintain Proper Books & Records

On February 10, 2016, the Federal Court of Appeal (“FCA”) delivered a summary decision in *Al Uloom Al Islamiyyah Ontario v The Queen*, in which the FCA confirmed a decision of the Minister of National Revenue, acting through CRA, to issue a Notice of Intent to Revoke (“NIR”) the charitable status of Jaamiah Al Uloom Al Islamiyyah Ontario (“Charity”).

The NIR resulted from an audit by CRA of the Charity for its 2007 and 2008 taxation years. The NIR was issued on the basis that the Charity failed to maintain adequate books and records in accordance with the ITA issued receipts for gifts otherwise than in accordance with the ITA and the *Income Tax Regulations*\(^{51}\) (“ITA Regulations”), and failed to file information returns when required. CRA Appeals Branch confirmed the decision by the Charities Directorate to issue the NIR.

In its appeal to the FCA, the Charity did not deny that it had been non-compliant with the requirements of the ITA and the ITA Regulations. Rather, the Charity asserted that it understood

\(^{51}\) *Income Tax Regulations*, CRC, c 945.
why its actions were not in compliance, that they would not occur again, and that it had already hired experienced accountants to address the deficiencies. The Charity asserted that the sanction of revocation was too extreme under the circumstances and failed to address the remedial steps that the Charity had taken.

In its analysis, the FCA stated that the privilege of issuing charitable donation receipts is one that comes with important responsibilities, one of which is to maintain proper books and records. The FCA went on to say that the absence of proper books and records prevented the Minister of National Revenue from fulfilling her obligation to verify the accuracy and validity of the charitable donation receipts that the Charity has issued. As a result, the failure by the Charity to maintain adequate books and records was considered by the FCA to be serious and justified the Minister of National Revenue’s conclusion that the penalty of revocation was warranted.

This decision of the FCA underscores the importance of a charity maintaining proper books and records in accordance with CRA requirements under the ITA and ITA Regulations. It is also important in demonstrating that even if remedial actions are taken, charitable status may still be revoked if CRA is of the opinion that the incidents of non-compliance are either “serious” or “aggravated” under the circumstances.

2. **FCA Dismisses Revocation Appeal**

On March 24, 2016, the FCA released its decision to dismiss an appeal of the proposed revocation (“Revocation Proposal”) of the Minister of National Revenue (“Minister”) in the matter of *Opportunities for the Disabled Foundation v Minister of National Revenue*.

In three audits (taxation years 1995 to 1997, 1998 and 2004), CRA raised concerns about the Opportunities for the Disabled Foundation’s (“Appellant”) “books and records, failures to devote all of its resources to charitable activities, incomplete/inaccurate information returns and gifts made to non-qualified donees”. As a result of these concerns, in 2006, the Appellant and CRA subsequently entered into an agreement that addressed these concerns and mandated corrective actions by the Appellant (“Compliance Agreement”). The subsequent Revocation Proposal resulted from an audit for the 2010 taxation year, which identified concerns similar to those of the previous audits and in the Compliance Agreement. CRA then sent the Appellant the Revocation Proposal, stating that their concerns had not been addressed and that it proposed to revoke the Appellant’s charitable status.
Although there were various jurisdictional issues raised by the Appellant, Justice Ryer noted that “[t]he overarching issue in this appeal is whether the Minister erred in issuing the Revocation Proposal”. Accordingly, it was incumbent upon the Appellant to demonstrate that the Minister acted unreasonably in identifying the specific grounds for issuing the Revocation Proposal. For each of the grounds, however, the FCA found the Appellant did not offer enough evidence to discharge its onus and that each ground, on its own, provided a sufficient basis to dismiss the appeal. The FCA therefore found that the Minister had acted reasonably in issuing the Revocation Proposal.

Interestingly, one of the grounds for revocation relied upon by the Minister was that the T3010 information return filed by the Appellant was inaccurate or incomplete and therefore the Appellant had failed to file an information return as required by the ITA\(^{52}\).

While the Appellant argued that any errors on its T3010 were minor, the FCA found that the record demonstrated the inaccuracies were beyond minor and that simply filing an information return by the required deadline is not sufficient to comply with the requirement in the Act that the return meets the requirements of the “Act and applicable regulations”.

The decision provides a reminder for charities of the importance of ensuring compliance with the ITA, and recognizing that a compliance agreement is also a binding obligation of the charity, which can lead to revocation of charitable status if not followed.

3. **CRA View on FMV of Receipts for Gifts of Property to a Municipality**

On May 18, 2016, CRA released technical interpretation 2015-0593921\(^{53}\) in response to an email request for comments on “whether an official receipt for a gift of property to a municipality can be made out for an amount other than the fair market value of the gifted property.”\(^{54}\) For the purposes of their response, CRA made the following assumptions about the gifting arrangement: “the donor is an individual, the gifted property is capital property, and the municipality is a qualified donee.”\(^{55}\)

CRA pointed out that the provision that allows a taxpayer to claim a tax credit is found in section 118.1 of the ITA if the eligible amount is made to a qualified donee, and is supported by

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\(^{52}\) Supra, note 2.


\(^{54}\) Ibid.

\(^{55}\) Ibid.
an official receipt. According to subsection 118.1(2) of the ITA, this means that the official receipt must be in the prescribed form which is found in section 3501 of the ITA Regulations.\textsuperscript{56} For a gift which is a “gift of property other than cash,” the official receipt “must contain the fair market value of the property at the time that the gift was made.”\textsuperscript{57} If the qualified donee cannot reasonably determine the fair market value (“FMV”) at the time the gift is made, then the official receipt for the donation may not be issued.

CRA also pointed out that generally, when subsections 118.1 (5.4) and (6) are considered together, “if an individual donates capital property to a qualified donee, the individual may designate an amount between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating the individual’s capital gain and the fair market value of the donated property for the purpose of determining the eligible amount of the gift in calculating the donation tax credit.”\textsuperscript{58} In addition, CRA noted that if an individual designates an amount, that amount may not exceed the FMV of the property. Likewise, the designated amount cannot be less than whichever of the following three is greater: the amount of advantage, the adjusted cost base of the property, or (for depreciable properties) the undepreciated capital cost. In any case, CRA notes that, for the purpose of determining the eligible gift amount, a designation under subsection 118.1(6) still requires that the FMV of the property at the time the gift was made is included on the official receipt.

CRA also noted that there may be situations in which the deeming provision of subsection 248(35) may be relevant. The effect of this deeming provision when applicable is that, for the purpose of the eligible amount of the gift, “the fair market value of the gifted property is deemed to be the lesser of its fair market value otherwise determined and its cost, or in the case of capital property, its adjusted cost base, or in the case of a life insurance policy in respect of which the taxpayer is a policyholder, its adjusted cost basis, of the property immediately before the gift is made.”\textsuperscript{59}

\textsuperscript{56} Supra note 52 at 3501.
\textsuperscript{57} Ibid.
\textsuperscript{58} Supra note 54.
\textsuperscript{59} Ibid.
4. Ontario Court Rules that CRA Does Not Owe Duty of Care for Disallowed Tax Shelters

On June 20, 2016, the Ontario Superior Court of Justice (“the Court”) allowed the Crown’s motion to strike the plaintiff’s statement of claim for failing to disclose a reasonable cause of action in the case of Deluca v The Queen. The plaintiff participated in a charitable tax shelter, which involved the plaintiff taking a loan from a barter organization for which he received “TradeBux” and then making donations to Liberty Wellness Initiate Foundation (“LWIF”), a registered charity at the time. The plaintiff received “very substantial tax refunds” for donations he made under the scheme in 2007, 2008, and 2009. In 2010, LWIF’s charitable registration was revoked. While the decision does not specify a time frame, at some point the plaintiff was issued notices of reassessment for his 2007 and 2008 taxation years. Although the plaintiff is disputing these reassessments in the Tax Court of Canada, he also brought a claim against the Crown and two individual CRA employees, asserting that they “failed to take prompt actions to warn the public” about problems it was aware of with the tax shelter “and the risks in dealing with them until April 2010.” This, the plaintiff alleged, constituted negligence on the part of CRA and was “a breach of a public and private law duty of care” that resulted in the denial of the Plaintiff’s charitable donations and the resulting credits for their respective tax years.

One of the issues central to the decision was whether CRA owed a duty of care to the Plaintiff, since CRA was aware of problems with the tax shelter and LWIF failed to take steps to warn the public. In its analysis, the Court rejected the claim that there was a duty of care for a number of reasons. First, the Court held that the “loss of value of a tax deduction stemming from a questioned (and questionable) in-kind donation” was not a “foreseeable consequence of failing to police the registration of charitable organizations.” Second, the Court held that there was no statutory duty under the ITA “from which the necessary degree of proximity might be inferred” and would be required to establish the duty of care. In commenting on this point the Court clearly stated that the purpose of issuing charitable registrations or tax shelter identification number is “to protect the tax base administered by CRA” and that the “ITA cannot be construed to impose a duty on the Minister or his or her officials to administer the registration and supervision of registered charities in order to protect taxpayers from the risk of dealing with them.” As a result, the Court found that the relationship between the plaintiff and CRA “lacks the elements of foreseeability of harm and proximity necessary to sustain a claimed duty of care” and the Court therefore struck the Plaintiff’s claim for this, and a number of other reasons including public
policy. As the Court summarized “There is no duty to warn taxpayers away from participating in tax shelter schemes that prove unsuccessful”. It is not yet known if the plaintiff plans to appeal, but this decision will likely have a strong persuasive effect in similar types of actions.

5. FCA Holds That Prevention of Poverty is Not a Charitable Purpose

On June 24, 2016, the FCA released its decision in the Credit Counselling Services of Atlantic Canada Inc. v Minister of National Revenue case. The issue in this decision was whether the activities carried on by Credit Counselling Services of Atlantic Canada Inc. (“Appellant”) “related to the ‘prevention of poverty’” could be classified as “charitable activities for the purposes of the ITA”. Ultimately, the FCA found that the prevention of poverty object and related activities carried on by the Appellant were not charitable at law and dismissed its appeal, upholding the decision of the Minister to confirm the annulment of the Appellant’s charitable registration. The FCA also confirmed that the Notice of Annulment of Registration (“Notice of Annulment”) issued by the Minister would be assessed by the same standards of review as a revocation of charitable registration – on a standard of correctness.

On April 21, 2015, the Minister confirmed the issuance of the Notice of Annulment, which was originally issued in July 2013. This Notice of Annulment resulted from Canada Revenue Agency’s finding that the purposes and activities being carried on by the Appellant were not wholly charitable because “prevention of poverty was not a recognized charitable purpose”. Prior to receiving the Notice of Annulment, the Appellant had been carrying on business and providing services as a registered charity since their original establishment as a not-for-profit corporation in 1993 under the Canada Corporations Act,60 and subsequent registration as a charity in October 1993 under the ITA. Their stated objects were as follows:

- The prevention of poverty;
- To provide professional financial and debt counselling to the community
- To develop and promote educational program for the public on family money management, budgeting and use of credit
- To conduct and fund research on credit-related concerns; and
- To collect and disseminate data and information on consumer credit issues to the public

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60 Canada Corporations Act, RSC 1970, c- 32.
In confirming the issuance of the Notice of Annulment to the Appellant, the Minister largely focused on the object relating to the prevention of poverty. The Minister stated that although the Appellant may “contribute to the charitable purpose of relieving poverty ... the services were not limited to individuals who were poor ... and were more properly classified as relating to the prevention of poverty rather than the relief of poverty”.

In terms of the appropriate standard of review to be applied in a case dealing with an annulment, the FCA followed the standard of review articulated in Prescient Foundation v Minister of National Revenue, i.e. that “extricable questions of law ... are to be determined on a standard of correctness” and “questions of fact or of mixed fact and law ... are to be determined on a standard of reasonableness.” The FCA found “no reason why different standards of review would be applicable to a decision of the Minister to annul a registration” and noted that the determination of “[w]hether activities related to the prevention of poverty are charitable activities for the purposes of the Act is a question of law” subject to review on the standard of correctness.

With regards to the analysis of relief of poverty vs. prevention of poverty, the FCA began by outlining the definition of a charitable organization and stating that “at any particular time ... all the resources ... are (to be) devoted to charitable activities carried on by the organization itself”. In deciding what a charitable purpose is, the FCA outlined the following standard heads of charity:

- The relief of poverty;
- The advancement of education;
- The advancement of religion; and
- Certain other purposes beneficial to the community.

In its reasons the FCA indicated that the Appellant provided services to “consumers who are in serious financial difficulties but who are employed and have assets.” The FCA went on to say that, in order to “satisfy the requirement that a purpose is for the relief of poverty, the person receiving the assistance must be a person who is then in poverty,” although they noted the term poverty is a “relative term.” As such, it would seem possible for charities to provide services to individuals who are in serious financial trouble but not insolvent and, in so doing, relieve poverty. However, because the Appellant in this case was providing services to individuals who were employed and had assets, the FCA found that the consumers were not in poverty at the time of receiving the assistance and, therefore, the services provided by the Appellant could not be
classified as relief of poverty. Rather, according to the FCA, the services were better described as being related to the prevention of poverty.

While the FCA did make reference to the fact that the prevention of poverty is a recognized charitable purpose in the United Kingdom in response to the Appellant’s submissions, it went on to confirm that, absent “an act of Parliament to add prevention of poverty as a charitable purpose”, it was not possible for the FCA to take such a step on its own. Accordingly, the FCA held that “the prevention of poverty is not a charitable purpose” and the Appellant’s appeal could not succeed.

The Appellant also argued that the services they provided to their consumers could also fall under the fourth head of charity - purposes beneficial to the community. Referencing the Supreme Court of Canada decision in Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue, the FCA indicated that, in order for a charitable purpose to fall under this fourth heading, “more is required than simple public benefit,” and that the purposes need to be beneficial “in a way the law regards as charitable.”

Further guidance from case law suggests that courts may consider, amongst other things, trends in objects known to be charitable and certain accepted anomalies. The FCA also added that it “must also be for the benefit of the community or of an appreciably important class of the community, rather than for private advantage”. As such, the FCA stated that the Appellant “had not established that its services ... would benefit the community in a way that is considered charitable.” In the view of the FCA, this was a private benefit to individuals who secured the appellant’s services, as opposed to a public benefit that the law regards as charitable.

Although this decision is not surprising, it does underscore the fact that if there is going to be substantive progress made in expanding the parameters of what is considered to be charitable, it will have to be at the initiative of Parliament in amending the ITA as opposed to the courts.

F. CORPORATE LAW UPDATE

1. Corporate Canada Postings Re: Canada Not-for-profit Act

On January 16, 2016, Corporations Canada posted a notice titled Public disclosure of corporate information on their website which indicates that information about federal
corporations is public information. This includes a corporation’s registered office address and the names and addresses of its directors. The notice explains that public disclosure applies even after a corporation has been dissolved. For those directors who do not wish to have their residential addresses posted on Corporations Canada’s website, they may use another address (which is not a P.O. box) where legal documents must be accepted by the director or someone on the director’s behalf.

On January 15, 2016, Corporations Canada posted another notice titled Extending the time for calling an annual meeting of members, which explains its policy on how corporations under the CNCA may apply to extend the time for calling an annual meeting of members. Under the CNCA, a corporation has to call an annual general meeting of the members (“AGM”) within 18 months of incorporation and, thereafter, an AGM must be called no later than 15 months after the previous AGM and no later than 6 months after the corporation’s preceding financial year-end. Corporations Canada recognizes that there may be circumstances where it would be detrimental to a corporation to call an AGM within the required time. These corporations may apply to Corporations Canada extending the time for calling the AGM, as long as members will not be prejudiced. However, Corporations Canada cannot exempt a corporation from calling an AGM altogether. Usually, an extension is granted for one year, but there may be situations where a multi-year exemption may be permitted. The policy explains when such an application may be made, what information is to be contained in the application and the factors considered by Corporations Canada in granting the extension.

2. **Technical Amendments to the Canada Not-for-profit Corporations Act**

On September 28, 2016, the Minister of Innovation, Science and Economic Development tabled Bill C-25, *An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, and to make consequential amendments to other Acts*. 

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62 Ibid.
64 Supra note 3.
65 Ibid at Part 10 at s 160.
66 Ibid.
In particular, Bill C-25 proposes to, amongst other amendments:

- reform some aspects of the process for electing directors of public Canada Business Corporations Act (“CBCA”) corporations;
- replace paper-based communication between corporations and their shareholders with electronic communication to provide notice of meetings to shareholders and online access to relevant documents;
- require public CBCA corporations to place before the shareholders, at every annual meeting, information respecting diversity among directors and the members of senior management; and
- amend the Competition Act to expand the concept of affiliation to a broader range of business organizations.

Notwithstanding the breadth of the changes being introduced for public CBCA corporations, Bill C-25 includes only minor technical amendments for CNCA corporations. These amendments, amongst others, include a definition of a person who has become “incapable” in subsection 2(1) of the CNCA, and the addition of section 277.1 of the CNCA requiring the Director to publish a notice of any decision made by the Director in respect of applications made under various sections of the CNCA, including amongst others, when a corporation is deemed non-soliciting (ss. 2(6), when a corporation is permitted to delay calling of annual meetings (ss. 160(2), and when the Director relieves the corporation from certain parts of the CNCA (s.173).

3. **Update on Ontario Not-for-Profit Corporations Act**

Since the announcement was made by the Ministry of Government & Consumer Services on September 17, 2015, there have been no subsequent updates concerning when the ONCA will be proclaimed. For reference purposes, the Ministry of Government & Consumer Services’ (“Ministry”) announcement on September 17, 2015 indicated that the ONCA would not come

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67 Canada Bill C-25, An Act to amend the Canada Business Corporations At, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act, 1st Sess, 42nd Parl, 2005, (first reading 29 September 2016).
68 Canada Business Corporations Act, RSC 1985, c C-44.
69 Supra note 3.
70 Competition Act, RSC 1985, c C-34.
71 Supra note 4.
into effective for at least another 2 years\textsuperscript{72}. Specifically, the Ministry’s announced that the ONCA will not come into force until two things happen, “(a) the Legislative Assembly passes a number of technical amendments to the legislation and related acts and (b) technology is upgraded to support these changes and improve service delivery”.\textsuperscript{73} The Ministry further indicated that the “government is fully committed to bringing ONCA into force at the earliest opportunity and will provide the sector with at least 24 months’ notice before proclamation.”\textsuperscript{74} Once the ONCA is proclaimed, existing Ontario not-for-profit corporations will have three years to transition under the ONCA.

Considering that a new bill to replace Bill 85\textsuperscript{75} (which died on Order Paper in May 2014 when the provincial election was called) has not been introduced at this time and that it would be difficult to expect the 24 months’ notice would start running before the amendments having been passed, one would anticipate that the ONCA would not be proclaimed until perhaps late 2018 or into 2019, eight to nine years after the enactment of the ONCA. Factoring in the three year transition period, it would be more than a decade before the ONCA would be fully implemented by Ontario not-for-profit corporations. By then, one wonders whether the rules in the ONCA made in light of the corporate landscape in 2010 would be out-of-date and thereby requiring further changes to meet their needs.

By way of background, before the demise of Bill 85, the government had indicated that the ONCA would not be proclaimed until at least 6 months after the enactment of Bill 85 in order to allow corporations to prepare for the transition. The government then indicated that the ONCA was not expected to come into force before 2016. With the Ontario Liberal Party, which originally introduced the ONCA, winning the election in June 2014, many in the sector had hoped that there might be an earlier proclamation date if Bill 85 was to be reintroduced into the Legislature shortly after the election. The sector was further encouraged Premier Wynne’s September 25, 2014 “Mandate Letter” to Minister Orazietti, indicating that the implementation of the ONCA was a priority.

With the implementation date being at least 2 years from now, many not-for-profit corporations continue to be left in corporate limbo, having to make the difficult decision whether


\textsuperscript{73} \textit{Ibid}.

\textsuperscript{74} \textit{Ibid}.

\textsuperscript{75} Ontario Bill 85, \textit{Companies Statute Law Amendment Act, 2014}, 2\textsuperscript{nd} Sess, 40\textsuperscript{th} Leg, Ontario, 2013.
to update their objects and bylaws as required to further their mission, or to keep waiting for the proclamation of the ONCA. In light of the announcement by the Ministry in September 2015, corporations wanting to amend their by-laws or update their corporate objects should proceed to do so under the Ontario Corporations Act (“OCA”), since there is no way of telling with certainty when the ONCA will be proclaimed. Having the ONCA proclaimed as early as possible is certainly a priority for the sector. It is hoped that the government will move forward with tabling a new bill to amend the ONCA and then proclaim the ONCA as soon as possible. If upgrading Ministry technology to support electronic filing of documents under the ONCA is an issue, the sector would be better served by proclaiming the ONCA sooner rather than later and continuing to use paper filings after proclamation, followed by gradually phasing in the implementation of electronic filing once the system is ready.

4. Unfair Proxy Form for Members’ Meeting Revised by Ontario Court

On August 4, 2016, the Ontario Superior Court of Justice (“Court”) released it decision with respect to the Jacobs v Ontario Medical Association case. This case is an interesting reminder to not-for-profit corporations of the Court’s willingness to intervene on procedural or substantive issues involving members’ meetings to enable governance process to proceed in a proper and timely fashion. The case also shows the importance that proxy forms must be carefully drafted in a clear, balanced and fair manner, so that it is helpful to members and proxyholders in their consideration of how to cast their votes at the meeting. The Court is also willing to intervene if a proxy would likely compromise the fair conduct of a meeting.

This case involved a governance dispute between the Ontario Medical Association (“OMA”) and some of its members. The matters in dispute were in relation to the conduct of a general members’ meeting of approximately 42,000 OMA members to ratify or reject a Physician Services Agreement (“PSA”) with the Ministry of Health and Long Term Care. The PSA sets out physicians’ fees to be paid by the Ontario Government. The meeting was schedule to be held on August 14, 2016.

The Court disagreed with the Applicant members’ submission that notice of the members’ meeting contravened OMA’ by-laws. The Court also refused the Applicant members’ request to obtain a membership list that would include information about members’ phone numbers including cellular phone numbers because the OMA has no obligation to provide such information. A membership list containing appropriate membership information (names,
addresses and email addresses) had already been provided by the OMA. The Court also refused to appoint a neutral chair to preside over the meeting because a strong case for court intervention had not been made. However, the Court did order that the proxy form circulated for the meeting be revised because it was “unhelpful, unclear, unbalanced, and unfair” and “is a catalyst for a governance meltdown at the upcoming general meeting.” The proxy would likely compromise the fair conduct of the meeting.

The proxy was problematic because it contained one restriction that would compel the proxyholder to vote for or against one of three resolutions (being the resolution to ratify the PSA) that members were asked to vote on at the meeting, and the proxy form contained a highlighted recommendation to vote “For” this resolution. There was no restriction or recommendation for the other two resolutions. The Court found that it was “unfair and confusing if not somewhat sneaky ... to make no recommendation about the other matters and to leave it to the member to make instructions about these matters” in light of the following facts:

- The proxyholder has been empowered by the proxy “to vote in accordance with the following direction (or if no directions have been given, as the proxyholder sees fit)”;
- The notes to the proxy indicate that: “if such a direction is not made in respect of any matter and you have not appointed a person other than the persons whose names are printed herein, this proxy will be voted as recommended by OMA Management”; and “this proxy confers discretionary authority in respect of ... amendments to matters identified in the Notice of Meeting or other matters that may properly come before the meeting.”

As such, the Court held that it would have been “far fairer” for the proxy to either (a) provide no instructions and no recommendations for the three resolutions to be debated at the meeting; or (b) to provide instructions but no recommendations for the three resolutions to be debated at the meeting.

The Court therefore ordered the proxy be revised by deleting the highlighted recommendation on how to vote on the PSA resolution, providing “for” and “against” options for all three resolutions, adding two directions to make it clear that a vote on one resolution does not preclude a vote on any of the other resolutions; and revising the language so that the proxyholders “are voting on matters of policy and not purporting to make findings of fact, findings of law, or findings of mixed fact and law, which are matters better addressed by a court.”
The Court also held that it has jurisdiction to vitiate a proxy (that does not allow a meeting to be fairly conducted) and ordered it be revised pursuant to section 297 the Ontario \textit{Corporations Act}, which empowers the court to order a members’ meeting and/or section 332 of the Act which provides a process by which members can force a corporation and/or its directors or officers to comply with their obligations under the Act.

The Court further explained that “the proxy system is a fundamental instrument of shareholder or member participation in the affairs of a corporation, be it a business corporation a not-for-profit organization, a non-governmental organization, or an association like the OMA that plays an extremely important role in civil society.” The Court stated that “the proxy system is particularly important in the immediate case where the exercise of the members...will affect the entire population of Ontario.”

The Court also acknowledged that its jurisdiction to intervene to supervise the governance of an association is governed by the \textit{Corporations Act}. However, the jurisdiction is to be exercised cautiously and that courts are highly reluctant to intervene unless a strong case for intervention is demonstrated. Quoting from an earlier case, the Court stated that the “court’s role is to decide issues of a procedural or substantive nature which need to be determined to enable the process to proceed in a proper and timely fashion, but otherwise to remain apart from the battle.”

\subsection*{G. PROVINCIAL LEGISLATION UPDATE}

\subsubsection*{1. Ontario Legislation on Forfeited Property to Come into Force in December 2016}

The Ontario government has passed new legislation to address situations wherein corporations, including charities and not-for-profits, dissolve without having properly disposed of all of their assets. On December 10, 2015, Bill 144, the \textit{Budget Measures Act, 2015}\textsuperscript{76} (“Bill 144”), received Royal Assent and enacted five new statutes, including the \textit{Forfeited Corporate Property Act, 2015}\textsuperscript{77} (“FCPA”) and the \textit{Escheats Act, 2015}\textsuperscript{78} (“EA”).

The FCPA and EA both come into force on December 10, 2016, and will address how forfeited property is dealt with in Ontario, along with implementing changes to the role of the Public Guardian and Trustee (“PGT”) in dealing with forfeited property. The FCPA will give the

\textsuperscript{76} \textit{Budget Measures Act, 2015}, SO 2015, c 38 - Bill 144.

\textsuperscript{77} \textit{Forfeited Corporate Property Act, 2015}, SO 2015, c 38, Schedule 7.

\textsuperscript{78} \textit{Escheats Act, 2015}, SO 2015, c 38, Schedule 4.
Minister of Economic Development, Employment and Infrastructure sole jurisdiction over forfeited corporate real property. The PGT under the EA, on the other hand, will retain discretionary authority to take possession, and dispose of, forfeited corporate personal property, as well as the property of heirless deceased persons. In addition, the new legislation will introduce changes in the processes by which claimants will be able to recover forfeited corporate property. As the FCPA and the EA may have application to incorporated charities and not-for-profits in Ontario facing either intentional or unintentional dissolution of their corporate status, including involuntary dissolution under the CNCA for failure to continue, it will be important for these corporations to consult with their legal counsel to determine the impact of these new acts.

2. Quebec Ends Duplicate Registration Process for Registered Charities

The March 17, 2016, Québec Budget provided good news for charities that receive donations from Québec residents and are registered as charities by CRA under the ITA. Previously, the Province of Quebec required that charitable registration also be obtained in Quebec if donations were received from Québec residents. Otherwise, the tax receipts given by the charity for donations from Québec residents could be denied by Revenu Québec, the provincial tax authority.

Recognizing that Québec was the only province to require this double registration and in order to “ensure equivalent treatment”, the 2016 budget provides that, effective January 1, 2016, charities that have been registered by CRA under the ITA will no longer be required to file a separate application for charitable registration in Québec, but will be deemed to have also been registered in Québec. Donations made prior to January 1, 2016, to a charity registered by CRA will also be deemed to have been made to a charity in Québec. Notwithstanding this simplification of the registration process, Québec has retained its power to “refuse, cancel or revoke a registration or to modify a designation.”

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79 Supra note 80.
80 Supra note 81.
81 Supra note 79.
83 Ibid at 106.
84 Ibid.
85 Ibid at 106.
3. **Amendments to the Ontario Lobbyists Registration Act Come into Effect**

On July 1, 2016, amendments to the *Ontario Lobbyists Registration Act, 1998* ("Lobbyist Registration Act") \(^{86}\) took effect, pursuant to the *Public Sector and MPP Transparency and Accountability Act, 2014* \(^{87}\), which received Royal Assent on December 11, 2014. These amendments also have application to charities and not-for-profits. In the Lobbyist Registration Act, lobbying is defined as a paid individual communicating with a public office holder in order to influence a decision with regards to legislation, policy, programs, decisions of the Executive Council, or financial benefits from the Crown. A “consultant lobbyist” is an individual who, for payment, undertakes to lobby on behalf of a client, whereas “In-house lobbyist” is redefined in the Lobbyist Registration Act to include any employee who spends at least 50 hours a year lobbying as part of their employment or whose job involves lobbying and whose time spent lobbying in addition to the other employees hours lobbying equal at least 50 hours. The new threshold for in-house lobbyist is significantly lower than the previous threshold, and corporations who employ someone who meets the threshold must register and file prescribed returns. This replaces the previous regime that required registration only when individual lobbying activities comprised a “significant” part of employee duties, defined as 20% of overall work hours. Additionally, registration itself will now be renewed every 6 months, as opposed to annually.

A section on Investigations and Penalties is now added to the Lobbyist Registration Act granting the Integrity Commissioner of Ontario investigative powers for matters of suspected non-compliance, penalties for which include: prohibition from lobbying for up to two years and public statements about the violation. Punishment for committing an offence under the Act has changed from a maximum fine of $25,000 for each offence to a fine of not more than $25,000 for the first offence and not more than $100,000 for subsequent offences. A section on prohibited activities has also been added, which includes knowingly placing public office holders in a position of conflict of interest, which is defined in the Lobbyist Registration Act, and receiving payment contingent on the degree of success in lobbying.

The timelines and contents of filing a return under the Lobbyist Registration Act have also changed for lobbyists. Whereas in-house lobbyists working for a person or partnerships used to

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be required to file returns themselves, the duty is now placed on the senior officer of the in-
house lobbyist’s employer. The timeline for filing returns has also changed, and now must be
filed within two months of starting as an in-house lobbyist and within 30 days before or after the
six-month period after the last return. Additionally, the list of information required for the return
has also changed for both consultant and in-house lobbyists.

4. Proposed Ontario EHT Regulation Will Affect Registered Charities

On July 18, 2016, the Ministry of Finance released a notice of intention to bring forward
a regulation under the Employer Health Tax Act regarding special rules for registered charities. The notice indicates that the regulation being considered would “provide additional certainty for
registered charities by codifying a preferential administrative practice.” While the notice provides
little detail of what will be contained in the regulation, the notice does indicate that the
regulation would:

- provide one exemption for each qualifying location of a registered charity;
- clarify that registered charities are exempt from the association rules for claiming the
  exemption; and
- waive the requirement for registered charities to enter into and file an Associated
  Employers Exemption Allocation Agreement.

The notice further indicates that the regulation would “end the preferential
administrative practices that allow multiple exemptions at a single qualifying location.” As well,
registered charities would be required to file an annual return for each of its qualifying locations,
and in some situations may be required to make monthly instalments of EHT, although this would
not affect the amount of tax that a registered charity would pay. The regulation, if it comes into
force would be effective as of January 1, 2017

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89 Ibid.
H. OTHER CASE LAW OF INTEREST

1. Discriminatory Will Provision Ruled Invalid

The Ontario’s Superior Court of Justice (“Court”) has reaffirmed the common law prohibition against enforcing testamentary trusts that are contrary to public policy by striking down a fund that was discriminatory on the basis of race, gender and sexual orientation. In its February 16, 2016 decision in Royal Trust Corporation of Canada v The University of Western, the estate trustee for the testator, Dr. Victor Hugh Priebe (“Dr. Priebe”), applied for direction from the Court concerning certain provisions contained in the will providing for the establishment of a fund for “awards and bursaries” which were to be restricted to certain male and female candidates on the basis of race, gender and sexual orientation. The estate trustee applied for direction from the court concerning these provisions pursuant to section 60 of the Trustee Act, section 10 of the Charities Accounting Act90 and Rules 14.05(3)(a), (b) and (d) of the Rules of Civil Procedure.91

Paragraph 3(d)(ii)(E) of Dr. Priebe’s will provided for a fund for “awards or bursaries” to be awarded to “Caucasian (white) male, single, heterosexual students in scientific studies...”. Further requirements stated that candidates must “not be afraid of manual labour” or “anyone who plays intercollegiate sports”. A separate award, to be named the Ellen O’Donnel Priebe Memorial Award, was to be awarded to “a hard-working, single, Caucasian white girl who is not a feminist or a lesbian, with special consideration, if she is an immigrant, but not necessarily a recent one.” Justice Mitchell concluded that she had “no hesitation in declaring the qualifications relating to race, marital status and, in the case of female candidates, philosophical ideology, in paragraph 3(d)(ii)(E) of the will void as being contrary to public policy.”

Paragraph 3(d)(ii)(G) of the will also provided that if any of the provisions of Dr. Priebe’s will were found to be of a non-charitable nature or were declared void for public policy by the courts, that the gift “shall be deleted without prejudice to the remaining provisions of this paragraph 3(d)(ii)”. The Court found that this provision precluded it from applying the doctrine of cy-pres, which meant that the Court was unable to exercise its inherent jurisdiction to alter the offending paragraph in a manner that was not discriminatory. As a result, the Court was bound to delete the discriminatory provision of paragraph 3(d)(ii)(E) from the will.

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90 Charities Accounting Act, RSO 1990, c C.10, s 10.
91 Ontario RRO 1990, Reg 194.
The Court cited Canada Trust Co. v Ontario Human Rights Commission as the leading authority on this matter, as well as authority for the principle that each trust must be evaluated on a case-by-case basis and that not all restrictions amount to discrimination that are contrary to public policy. However, testamentary provisions that are blatantly contrary to applicable human rights legislation will almost certainly be found to be void as being contrary to public policy. Whether such provisions can be saved based upon the Court’s inherent cy-pres jurisdiction will depend upon the specific wording of each will, as was evident in this case.

2. Affiliation Agreement Upheld by BC Court of Appeal

On May 20, 2016, the B.C. Court of Appeal (“BCCA”) upheld a claim for specific performance by Habitat for Humanity Canada (“Habitat”) pursuant to an affiliation agreement in an appeal of the decision of the B.C. Supreme Court by Hearts and Hands for Homes Society (“HHHS”). Habitat for Humanity Canada v Hearts and Hands for Homes Society involved a dispute between Habitat as a national umbrella organization and HHHS as one of Habitat’s affiliate members. As a Habitat affiliate, HHHS was required to enter into an affiliation agreement with Habitat. The agreement gives affiliates a non-exclusive sublicense to use the intellectual property associated with the “Habitat for Humanity” marks, to solicit donations, and to carry out the charitable activities to provide affordable housing to individuals in need in Canada.

The dispute arose as a result of HHHS’s non-compliance with the requirements under the affiliation agreement, which led to Habitat invoking the disaffiliation process set out in Habitat’s disaffiliation policies. Upon completion of all six stages of the disaffiliation process, Habitat determined that HHHS had not brought itself into compliance with the affiliation requirements, disaffiliated HHHS, and proceeded to enforce the provision of the affiliation agreement to require the net assets of HHHS be transferred to Habitat. On appeal, the BCCA dismissed all grounds of the appeal and upheld the specific performance as granted by the trial judge, declaring that the net assets of HHHS were assets of Habitat.

Many umbrella organizations utilize a similar structure whereby affiliates or chapters are required to comply with certain requirements or standards, non-compliance with which would lead to disaffiliation. For these organizations, a few lessons can be learned from this case in structuring such a relationship:
First, this case shows the willingness of the courts to uphold reasonable provisions set out in an affiliation agreement entered into between charities.

Second, it is important for parties to comply with the process set out in their policies and agreements. Both the BCCA and the lower court in this case agreed that their role was not to conduct a judicial review of the reasonableness of Habitat’s decision to disaffiliate HHHS, but to determine whether Habitat complied with the process in its own disaffiliation policy.

Third, when structuring the mechanism for the disaffiliation process, it is important to consider the purpose of such a process and the fairness of the process. It is interesting to note that the Court of Appeal “agree[d] with the judge’s comments … that the disaffiliation policy is designed to benefit affiliates experiencing difficulty as it offers a defined path to remain in or return to good standing. The aim is to keep the affiliate in the Habitat family. The policy should be interpreted with this goal in mind.”

Fourth, before entering into an affiliation agreement, affiliates should be given an opportunity to provide input or feedback to the terms of the agreement. In this case, the court found that HHHS did not provide any input although an opportunity was given by Habitat.

Fifth, it is helpful for parties to confirm in the affiliation agreement and constating documents their respective purposes and how they align with each other. In this case, the court held that HHHS did not have a “distinct charitable purpose from that of Habitat.” Instead, HHHS’s charitable purpose was substantially the same as that of Habitat and the affiliation agreement states that the affiliate’s purpose was consistent with the purpose of Habitat.

3. Alberta Court of Appeal Affirms Court’s Jurisdiction to Review Unfair Church Discipline

On September 8, 2016 the decision in Wall v Judicial Committee for the Highwood Congregation of Jehovah’s Witnesses (“Wall” case) was released whereby a majority on the Alberta Court of Appeal (“ABCA”) followed a line of case law affirming that courts have the legal jurisdiction to review decisions made by a religious organization where discipline or expulsion was carried out in a manner that does not reflect principles of natural justice. The Wall case involved the expulsion of an individual from the membership of the Highwood Congregation of Jehovah’s Witnesses in Alberta (“Congregation”), using procedures that the court found did not reflect principles of natural justice.

On March 2014, Mr. Wall was provided with a brief letter from the Congregation requesting that he attend a meeting with the Judicial Committee of the Congregation. The letter
only stated that his “alleged wrongdoing involves drunkenness” and the letter also stated “[w]e look forward to providing you whatever spiritual assistance we can”, together with the logistical details for the meeting. At the meeting with the Judicial Committee, Mr. Wall admitted to having engaged in two incidents of drunkenness. After the meeting Mr. Wall was advised that he was “disfellowshipped” from the Congregation because the committee determined that he was not sufficiently repentant of his alleged wrongdoing. Mr. Wall appealed the decision and an appeal committee formed by the Congregation upheld the disfellowshipping of Mr. Wall for the same reasons provided by the judicial committee (i.e. that he was not sufficiently repentant). The decisions of the judicial committee and the appeal committee were brief and were communicated orally. Mr. Wall then sent a further letter of appeal to the Watch Tower and Bible Tract Society of Canada and was later advised by phone that the “Canadian Branch” of the church would not be overturning the decision of the Appeal Committee.

Mr. Wall had been a Jehovah’s Witness from 1980 until his expulsion in April 2014. He was also a realtor. Since Jehovah’s Witnesses are required to shun disfellowshipped members, Mr. Wall’s family and other Jehovah’s Witnesses were compelled to shun him. This resulted in alienation from his family and significant loss of clientele from his real estate business, many of whom were Jehovah’s Witnesses.

After receiving the response from the national Jehovah’s Witness organization, Mr. Wall commenced an application for judicial review over the decision to disfellowship him. A chambers judge concluded that the Alberta Court of Queen’s Bench had jurisdiction to hear the application. This decision was then appealed by the Congregation. A majority of the ABCA affirmed that the Court of Queen’s Bench has the jurisdiction to carry out the judicial review. However, ABCA decision was confined only to the issue of jurisdiction and no comments were made on the merits of Mr. Wall’s allegations of the breach of the rules of natural justice, which were to be addressed in a separate hearing.

In finding that Mr. Wall’s expulsion did not reflect principles of natural justice and thereby invoking the court’s jurisdiction to review the decision, the ABCA noted that prior to Mr. Wall’s expulsion, he was not provided with the details of the allegations against him or an explanation of the discipline process that he would face. Mr. Wall was not advised whether he could retain counsel for purposes of the meeting with the judicial committee or whether there would be a record of the proceedings, nor did he receive a written reasons of both the judicial committee and the appeal committee. The ABCA also noted that Mr. Wall appeared to have exhausted all
avenues of appeal within the church prior to commencing legal action, so court jurisdiction to review the expulsion could also be found on that basis in accordance with applicable case law.

I. CONCLUSION

The breadth and number of developments that have occurred in the area of charity law during the last 12 months underscore how complicated the law involving charities has become in Canada. As such, it is increasingly important for practitioners who are interested in working with the charitable sector to keep abreast of developments in the law with regard to charities as they occur. Hopefully this paper has been of some help in this regard.
J. CASE LAW APPENDIX

- *Jaamiah Al Uloom Al Islamiyyah Ontario v. Canada (National Revenue)*, 2016 FCA 49.
- *Opportunities for the Disabled Foundation v Minister of National Revenue*, 2016 FCA 94.
- *Credit Counselling Services of Atlantic Canada Inc v Canada (National Revenue)*, 2016 FCA 193.
- *Royal Trust Corporation of Canada v The University of Western Ontario*, 2016 ONSC 1143.