

PREFACE

Charity law has recently emerged as a specialty practice area. As is true of other specialty practice areas, the statutory regime governing charities consists of numerous complex and, in some cases, perhaps unexpected legislative requirements. There is no single statute that sets out all of the legislative requirements applicable to charities. Instead, the statutory provisions applicable to charities are set out in multiple federal and provincial statutes. The practical effect of this is that charity law research can be cumbersome to undertake and it is easy to overlook an applicable statute.

In addition, the complexity of charity law has in recent years been compounded by numerous legislative changes. By way of example, there have been several recent amendments to the provisions of the *Income Tax Act* (Canada) that regulate the conduct of registered charities. As well, the anti-terrorism measures recently adopted by the federal government include new statutory provisions that are applicable to charities.

The purpose of this consolidation is to assist charity law practitioners, both specialists and generalists, in this regard. Accordingly, this consolidation provides excerpts from or the entire version of the key federal and Ontario statutes that apply to charities. The reader should, however, bear in mind that not every statutory provision applicable to charities is included in this consolidation.

A brief description of the statutes included in this book, as well as certain of those that have been omitted, is set out below.

Federal Statutes:

Income Tax Act, R.S.C. 1985, c. 1 (5th Supplement), as amended.

There are two key advantages for a charity to obtain the status of a “registered charity” under the *Income Tax Act* (Canada). First, charitable registration allows a charity to issue gift receipts for donations that qualify as charitable gifts. Second, charitable registration exempts a charity’s taxable income from income taxes.

The excerpts from the *Income Tax Act* (Canada) generally relate to these two issues. In particular, these excerpts set out the rules applicable to the tax consequences of charitable donations and also the various requirements that must be complied with in order for charities to both obtain and maintain registered status. The excerpts can be generally categorized as follows:

<u>Select Provisions of the <i>Income Tax Act</i> (Canada)</u>	<u>General Description</u>
<u>Capital Gains Arising from Charitable Donations</u>	
Subsections 38(a),(a.1) & (a.2) Regulation 6210	Subsections 38(a) and 69(1) provide the basic rules regarding capital gains arising from charitable donations.

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<p>Subparagraph 39(1)(a)(i.1) Subsection 46(5) Subsection 69(1) Subsection 40(1.01) & Paragraph 72(1)(c)</p>	<p>Subsections 38(a.1) & (a.2) modify the basic rules for, respectively, donations of certain types of securities (see Regulation 6210) and ecological property to charity. Subparagraph 39(1)(a)(i.1) and subsection 46(5) provide special rules for, respectively, donations of culturally significant objects and arrangements such as “art flips”. Subsection 40(1.01) and paragraph 72(1)(c) provide special rules re capital gains arising from the donation of “non-qualifying securities”.</p>
<p><u>General Provisions Regarding Charitable Donations</u></p>	
<p>Section 110.1 Section 118.1 Regulation 3503 Schedule VIII of Regulations</p>	<p>These provisions provide the tax advantages for charitable donations. Section 110.1 provides for a charitable tax deduction for corporations and section 118.1 provides for a charitable tax credit for individuals. Regulation 3503 and Schedule VIII to the Regulations enumerate the foreign universities to which receiptable charitable donations may be made.</p>
<p><u>Special Provisions Regarding Charitable Donations</u></p>	
<p>Subsection 43(2) Subsections 169(1.1) & 171(1.1) Section 43.1 Paragraphs 87(2)(m.1) & 88(1)(e.2) Paragraph 67.1(2)(b) Paragraphs 87(2)(v), 88(1)(e.6) & 88(1)(e.61) Paragraph 110(1)(d.01) Subsections 110(2) & (2.1) Section 143 Paragraph 152(6)(c)</p>	<p>These provisions provide special rules applicable to certain charitable donations. Subsection 43(2) applies to ecological gifts. Also, subsections 169(1.1) & 171(1.1) are relevant to the valuation of gifts of ecological property. Section 43.1 applies to gifts of remainder interests in real estate. Paragraphs 87(2)(m.1) and 88(1)(e.2) apply to gifts of “non-qualifying securities” in the context of, respectively, an amalgamation and winding-up. Paragraph 67.1(2)(b) provides for a special rule regarding the deductibility of meal expenses incurred for a charitable fund-raising event. Paragraph 87(2)(v) applies to a gift to charity by a corporation that</p>

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	<p>subsequently amalgamates. Paragraphs 88(1)(e.6) & 88(1)(e.61) apply to gifts made by a corporation that subsequently winds up. Paragraph 110(1)(d.01) applies to gifts of stock options to charity. Subsection 110(2.1) provides for special rules for the donation of the proceeds of disposition of stock options. Subsection 110(2) provides special rules for donations made to religious orders by members of such orders who have taken vows of perpetual poverty. Section 143 provides special rules for donations made by “congregations”. Paragraph 152(6)(c) allows for the amendment of a tax return to reflect charitable donations.</p>
<p><u>Charitable Registration</u></p>	
<p>Paragraph 149(1)(f) Section 149.1 Regulations 3500 – 3502 Regulations 3700 – 3702</p>	<p>Paragraph 149(1)(f) exempts registered charities from federal income tax. Section 149.1 sets out the key rules applicable to charitable registration. These include rules applicable to the:</p> <ul style="list-style-type: none"> • Designation of registered charities as charitable organizations, public foundations and private foundations; • Disbursement quota requirements of registered charities; • Permissible expenditures of registered charities; • Restrictions on activities such as political activities and business activities; and • Grounds for revocation of charitable registration. • Regulations 3500 - 3502 set out rules applicable to proper gift receipting practices of registered charities. • Regulations 3700 - 3702 provide for rules relevant to calculating the disbursement quota obligations of charitable foundations.

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<u>Loss or Denial of Charitable Registration</u>	
<p>Subsections 149.1(2), (3), (4) & (4.1) Section 168 Section 172</p>	<p>The grounds for revocation of charitable registration are set out in subsections 149.1(2), (3), (4) and (4.1). Sections 168 and 172 establish the procedural rules in this regard. In particular, section 168 establishes the procedure by which charitable registration may be revoked and section 172 establishes the procedure by which the revocation or denial of registered charity status may be appealed.</p>
<u>Special Taxes / Penalties Applicable to Charities</u>	
<p>Section 163.2 Section 187.7 Section 188 Section 189 Section 207.3 Section 207.31 Section 207.4</p>	<p>These sections establish special taxes and penalties in respect of registered charities. Section 163.2 provides for penalties that could apply in relation to certain charitable fundraising schemes. Subsection 188(1) provides for a revocation tax applicable where a charity's registration is revoked. Subsection 188(3) provides for a transfer of property tax applicable to certain inter-charity transfers. Section 189 provides for a tax regarding non-qualified investments of private foundations. Sections 207.3 and 207.31 provide for a tax applicable in certain circumstances where a charity disposes of, respectively, a culturally significant object or an ecological gift. Section 207.4 provides for a filing obligation applicable where sections 207.3 or 207.31 apply.</p>
<u>Miscellaneous</u>	
<p>Paragraph 150(1.1)(a) Regulation 204(3)(c) Subsection 230(2) Subsection 248(1)</p>	<p>Paragraph 150(1.1)(a) exempts charitable corporations from the obligation of corporations to file returns pursuant to paragraph 150(1)(a). Regulation 204(3)(c) exempts charities from the requirement to file returns as</p>

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	provided for in Regulation 204(1). Subsection 230(2) sets out the requirement for registered charities to keep certain records. Subsection 248(1) provides definitions for “private foundation”, “public foundation”, “qualified donee” and “registered charity”.
Obtaining Information Relating to Charities	
Subsections 241(1), (3.2) & (4)(f.1)	These provisions allow the government to release certain information relating to registered charities to certain persons.

The reader is encouraged to also consult the various interpretation bulletins, information circulars, advance tax rulings, technical interpretations and guides that elaborate on these provisions. Certain of these documents are available at the Canada Customs and Revenue Agency charities web site at <http://www.ccr-adrc.gc.ca/tax/charities/menu-e.html>.

The reader should be aware that on December 20, 2002 a number of proposed amendments (not reflected in the above table) to the provisions of the *Income Tax Act* (Canada) that are relevant to registered charities were released. As of the date of writing, the proposed amendments have not been enacted. Consequently, this consolidation sets out the relevant provisions of the *Income Tax Act* (Canada) as they currently stand. However, the proposed amendments have also been included as they stand at the date of writing.

The reader is encouraged to consult Technical News No. 26, published by the Canada Customs and Revenue Agency, for an explanation of certain of the proposed amendments. By way of summary, there are three key respects in which the proposed amendments impact registered charities.

First, amendments pertaining to the circumstances in which a donor will be entitled to a charitable gift receipt have been proposed. Currently, a donor is not entitled to a charitable gift receipt if the donor receives any consideration for the gift. Also, it is currently the case that charitable gift receipts are required to be issued for the full fair market value of the donated property or not at all. Under the proposed amendments, a donor is entitled to a charitable gift receipt even if an “advantage” is received as a result of making a gift to charity. The amount of the gift receipt is the “eligible amount”, i.e., the fair market value of the property donated minus the value of the “advantage”. A number of technical amendments are required to give effect to this proposed amendment.

Second, amendments to the definitions of “charitable organization” and “public foundation” in subsection 149.1(1) have been proposed. Currently, there is a limit on the amount of a charity’s capital that may have been contributed by one person or a group of persons not dealing at arm’s length with one another in order for it to qualify as either a “charitable organization” or a “public foundation”. The limit

for a “charitable organization” is 50 per cent and for a “public foundation” is either 50 per cent or 75 per cent depending upon when the foundation was registered.¹ Under the proposed amendments, large capital contributions from a single person or group of persons not dealing at arm’s length with one another will not preclude an entity from qualifying as a “charitable organization” or a “public foundation”, provided that such person or persons do not control the charity.

Third, the creation of an additional basis upon which charitable registration may be revoked under subsections 149.1(2) - (4) has been proposed. Under the proposed amendments, charitable registration may be revoked where a registered charity transfers property to a person or entity other than a “qualified donee”, except where the transfer is in the course of the charity carrying on charitable activities. We understand that this proposed amendment is intended, at least in part, to address the ambiguity under the current wording of the *Income Tax Act* (Canada) regarding whether a charitable foundation may disburse property to an entity that, although charitable at common law, does not constitute a “qualified donee”. If enacted this proposed amendment will bring the wording of the *Income Tax Act* (Canada) into conformity with the administrative position of the Canada Customs and Revenue Agency to the effect that such transfers are not permitted.²

In addition, the federal budget of February 18, 2003 proposed certain amendments to the *Income Tax Act* (Canada) which are relevant to registered charities. In particular, it was proposed in the federal budget that the definition of “tax shelter” set out in subsection 237.1(1) be amended so as to include certain charitable gifting arrangements. Upon this proposed amendment being enacted, taxpayers who donate to registered charities via such charitable gifting arrangements could have the value of the resultant charitable gift receipt significantly reduced.

Canada-United States Tax Convention Act, 1984 - Article XXI, S.C. 1984, c. 20.

Article XXI of the *Canada-United States Tax Convention Act, 1984* deals with a variety of cross-border tax issues applicable to donations to charities in Canada and the U.S. In particular, Article XXI sets out the circumstances in which the U.S. source income of a Canadian charity will be exempt from tax in the U.S. and vice versa. Article XXI also provides rules regarding the extent to which a U.S. donor will be entitled to tax relief in respect of donations to a Canadian charity and vice versa.

Canada Corporations Act, R.S.C. 1970, Chap. C-32.

A charity may take on a variety of legal forms, such as a corporation, an unincorporated association or a trust. A charity organized as a corporation may be incorporated under the federal or a provincial incorporating statute. The *Canada Corporations Act* is the federal incorporating statute. The *Canada Corporations*

¹ See the current definitions of “charitable organization” and “public foundation” in subsection 149.1(1).

² See *Registered Charities Newsletter* (CCRA: Newsletter No. 9, Spring 2000).

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Act establishes the basic corporate framework for a federally incorporated charity. Since most incorporated charities are structured as non-share capital corporations, the excerpts from the *Canada Corporations Act* included in this consolidation are those relevant to this corporate structure. The reader is encouraged to also consider the Not-for-Profit Policy Summary published by Industry Canada for a practical discussion of certain of the requirements for a federally incorporated charity. A link to this policy summary is available from the Industry Canada homepage at <http://strategis.ic.gc.ca/engdoc/main.html>.

Criminal Code, R.S.C. 1985, c. C-46.

As is true of other entities, charities are required to conduct their affairs within the bounds of criminal law. The *Criminal Code* is therefore of general application to charities. There are, however, specific *Criminal Code* provisions of which charities should be aware. Section 336, for example, provides that it is a criminal breach of trust for the trustee of a charitable purpose trust to convert, with the intent to defraud, the property of the trust to a use not authorized under the trust. The maximum penalty for this offence is 14 years in prison.

Also, the *Criminal Code* contains provisions dealing with gambling that are fundamental to the regime of statutes and regulations that regulate charitable gaming. These provisions, while not included in this consolidation, are discussed below.

In addition, in response to the events of September 11, 2001, Parliament enacted a variety of legislative measures to combat terrorism, including the *Anti-terrorism Act*, S.C. 2001, c. 41. Many aspects of the *Anti-terrorism Act* impact charities. Among these is the creation of Part II.1 of the *Criminal Code*.

In short, Part II.1 of the *Criminal Code* criminalizes the direct or indirect participation in and facilitation of terrorist activities and terrorist groups. While the provisions of Part II.1 of the *Criminal Code* have not been drafted to apply exclusively to charities, the potential application of these provisions should nevertheless be of concern to charities. This is especially true for charities that fund activities overseas. The wording of Part II.1 of the *Criminal Code* is very broad and the consequences of running afoul of these provisions are severe, including the forfeiture of charitable property and the loss of charitable registration under the *Charities Registration (Security Information) Act* (discussed below). It is therefore important for charities to be advised of the potential effect of Part II.1 of the *Criminal Code* so that appropriate due diligence measures may be established.

Charities Registration (Security Information) Act, S.C. 2001, c. 41, Part 6.

The new *Charities Registration (Security Information) Act* was created by the *Anti-Terrorism Act*. The *Charities Registration (Security Information) Act* is intended to provide a means to ensure that charities do not directly or indirectly fund terrorist activities. In particular, the *Charities Registration (Security Information) Act* provides a two-step process whereby a registered charity or an

applicant for registered charity status may, respectively, be deregistered or denied charitable registration for supporting terrorist activities.

The first step of the process is for the Solicitor General of Canada or the Minister of National Revenue to sign a certificate stating that there are reasonable grounds to believe that the registered charity or applicant for registered charity status has made or will make resources available for terrorist activities. The second step is for the certificate to be referred to the Federal Court for a determination of whether the certificate is reasonable. A determination by the Federal Court that the certificate is reasonable is deemed to be conclusive proof that the registered charity has ceased to comply with the requirements for registered charity status or that the applicant is ineligible for such status. A notable aspect of the *Charities Registration (Security Information) Act* is that the registered charity or applicant in respect of whom a certificate has been issued may not be entitled to examine copies of the intelligence reports on which the certificate is based and may not be entitled to be present during the entire hearing before the Federal Court.

Cultural Property Export and Import Act, R.S.C. 1985, Chap. C-51.

The *Cultural Property Export and Import Act*, as it relates to charities, must be read in conjunction with certain provisions of the *Income Tax Act* (Canada). There are provisions in the *Income Tax Act* (Canada) that are intended to encourage the donation of culturally significant objects to designated institutions. In particular, the *Income Tax Act* (Canada) provides that the donation of culturally significant objects to designated institutions will not result in the donor realizing a capital gain in respect of such objects (see sub-paragraph 39(1)(a)(i.1) of the *Income Tax Act* (Canada)) and further provides for a donation limit of 100 per cent of the donors' income with a five-year carry-forward in respect of such donations (see paragraph (c) of the definition of "total gifts" in sub-paragraph 118.1(1) for individual donors and sub-paragraph 110.1(1) for corporate donors). The *Cultural Property Export and Import Act* establishes the procedure by which an institution, such as a charity, may be designated as a designated institution, an object may be designated a culturally significant object and the fair market value of such an object may be determined.

Ontario Statutes:

Charities Accounting Act, R.S.O. 1990, c. C. 10.

The *Charities Accounting Act* serves two main purposes. First, the Act vests in the Ontario Public Guardian and Trustee (the "PGT") a supervisory jurisdiction over charities in Ontario. Second, it establishes certain legal requirements applicable to charities in Ontario.

With respect to the supervisory jurisdiction of the PGT, the *Charities Accounting Act* vests in the PGT a variety of powers in relation to charities. By way of example, this includes the power to investigate certain complaints brought against charities, to consent to certain matters that would otherwise require the consent of a court, to require a passing of accounts and to advise the Attorney General to

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enact regulations under the *Charities Accounting Act*. The web site for the PGT may be found at <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/>.

With respect to establishing legal requirements applicable to charities, notable provisions of the *Charities Accounting Act* include the restriction on the ability of charities to hold land for any purpose other than the actual use of the land for charitable purposes, the express recognition that the prudent investor provisions of the *Trustee Act* (discussed below) apply to incorporated charities and certain notice requirements where property is being held by an executor or trustee for charitable purposes.

Charitable Gifts Act, R.S.O. 1990, c. C. 8.

The *Charitable Gifts Act* places restrictions on the business and investment activities of charities. In particular, the *Charitable Gifts Act* prohibits most charities in Ontario from owning more than a 10 per cent interest in any business. A charity with an interest in a business in excess of 10 per cent is required to dispose of the excess portion of the interest within seven years, or such longer period as may be determined by a court, of having acquired the interest. Upon the disposition of such an interest in a business, a charity may invest the proceeds of disposition only in investments authorized by the *Insurance Act, R.S.O. 1990, c. I.8.*

During the permissible “hold period”, a charity holding more than a 50 per cent interest in a business is required to determine jointly with the business and the PGT the profits of the business. The charity’s share of these profits are required under the *Charitable Gifts Act* to be paid to the charity rather than retained in the business.

The penalty for contravening the *Charitable Gifts Act* is a \$10,000 fine and/or imprisonment for up to one year.

Corporations Act, R.S.O. 1990, c. C. 38.

The *Corporations Act* is the provincial analogue to the *Canada Corporations Act*. As such, the *Corporations Act* establishes the basic corporate framework for charities incorporated under Ontario law. Since most incorporated charities are structured as non-share capital corporations, the excerpts from the *Corporations Act* included in this consolidation are those relevant to this corporate structure. The reader is encouraged to also consider the *Not-For-Profit Incorporator’s Handbook* (Toronto: Queen’s Printer for Ontario) prepared jointly by the Companies Branch of the Ministry of Consumer and Commercial Relations and the PGT.

Donation of Food Act, 1994, S.O. 1994, c. 19.

The *Donation of Food Act, 1994* protects donors of food and distributors of donated food from liability resulting from injuries or death caused by the consumption of donated food. The exclusion of liability generally applies except where the donated or distributed food was unfit for human consumption and the donor or distributor acted with reckless disregard or with the intent to injure or

cause death. The *Donation of Food Act, 1994* does not protect persons who distribute donated food on a for-profit basis.

Hospitals and Charitable Institutions Inquiries Act, R.S.O. 1990, c. H. 15.

The *Hospitals and Charitable Institutions Inquiries Act* grants the Lieutenant Governor in Council the broad discretion to cause an inquiry to be made in any matter affecting a hospital, sanatorium, charitable institution or other organization granted public aid by the Ontario Legislature.

Religious Organizations' Lands Act, R.S.O. 1990, c. R. 23.

The *Religious Organizations' Lands Act* serves two broad purposes. First, the Act provides a mechanism by which an unincorporated "religious organization" may own land. In particular, the Act provides that land can be held by a religious organization through "trustees" appointed by the religious organization for that purpose. The Act vests in the trustees a variety of powers that are coincident to the ownership of land, such as the power to conduct actions with respect to mortgage, purchase and alienate land. The trustees may exercise the powers granted to them under the statute, however, only where they are so authorized by a resolution of the religious organization.

Second, the Act provides a limited exception to the restrictions set out in the *Charities Accounting Act*, discussed above, on holding land. In particular, the Act provides that an unincorporated religious organization that holds land that it is not using for a religious purpose may lease out such land for up to a forty-year period. Otherwise, the land must be used for a religious purpose, as defined in the Act, or must be sold.

Trustee Act, R.S.O. 1990, c. T.23.

The *Trustee Act* is a statute of general application to trustees. It contains provisions that deal with issues such as the retirement and appointment of trustees, the powers and rights of trustees and the investments of trust property made by trustees.

While there is no doubt that the *Trustee Act* applies to charities, the law is presently not clear regarding the extent to which this is the case. In this regard, it is useful to note that a charity may take on a variety of legal forms, such as a charitable trust and a charitable corporation. Charitable trusts are, not surprisingly, generally subject to the *Trustee Act*. Charitable corporations, however, are not *per se* subject to the *Trustee Act* in all circumstances.

Determining whether a charitable corporation is subject to the *Trustee Act* in any given circumstance is a complicated issue. It will suffice for the purposes of this consolidation to note the following with respect to this issue.

First, the issue of whether the *Trustee Act* applies to a charitable corporation will often reflect the particular activity of the charity that is in question. For example, recent amendments to the *Charities Accounting Act* (discussed above) have made it clear that a charitable corporation constitutes a trustee for the purposes of the

investment provisions of the *Trustee Act*. Sections 27 to 31 of the *Trustee Act* therefore apply to the investment activities of charitable corporations. In this regard, the reader should be aware that the *Trustee Act* allows Trustees to invest in any form of property in which a prudent investor may invest and specifically authorizes Trustees to invest in mutual funds.³ The *Trustee Act* also allows Trustees to delegate investment responsibilities to an agent in limited circumstances.

Second, the issue of whether the *Trustee Act* applies to a charitable corporation may also reflect the particular asset of the charity that is in question. In this regard, it is necessary to delineate between the assets of a charitable corporation that are held for specific charitable purposes and those that are held generally for the charitable objects of the corporation.⁴ It is in relation to the first category of assets that a charitable corporation may in some circumstances be considered to be a “trustee”.

Third, even though it may not be said without qualification that directors of charitable corporations are for all purposes “trustees”, it is clear that they are subject to trustee-like duties. Therefore, to the extent that the *Trustee Act* illuminates the general nature of these duties, it is of relevance to charitable corporations.

University Foundations Act, 1992, S.O. 1992, c. 22.

The *University Foundations Act, 1992* establishes a parallel foundation for each of the major post-secondary institutions in Ontario. The Act provides for the basic structure of each foundation, including the legal form (i.e., non-share capital corporation), objects, board composition, quorum requirements, fiscal year, indemnification of directors, etc. Of particular interest is the fact that the Minister of Colleges and Universities (now the Minister of Training, Colleges and Universities) is given the power under the Act to issue “policy directives” in respect of a particular foundation. The board of a foundation in respect of which any such policy directives have been issued is required to implement them “promptly”.

Omitted Statutes:

The statutes included in this consolidation generally include the main statutes that are applicable to charities. Not every statute that may be applicable to charities has been included. The statutes that have been omitted include the following:

³ Prior to the *Trustee Act* being amended to allow for investments by Trustees in mutual funds, such investments were considered to constitute an impermissible delegation to mutual fund managers of trustees’ investment responsibilities. See *Haslam v. Haslam* (1994), 3 E.T.R. (2d) 206 (Ont. Gen. Div.).

⁴ See *Christian Brothers of Ireland in Canada (Re)* 37 O.R. (3d) 367 (Ont. Gen. Div.); varied 47 O.R. (3d) 674 (Ont. C.A.); leave to appeal dismissed [2000] S.C.C.A. No. 277 (S.C.C.).

Competition Act, R.S.C. 1985, c. C-34.

The *Competition Act* is a federal statute, the purpose of which is to encourage competition and to prohibit unfair business practices. The *Competition Act* was recently amended so that the term “business” is now defined to include the “raising of funds for charitable or other non-profit purposes”. The *Competition Act* therefore currently provides for a variety of rules that regulate the fundraising activities of charities. This includes rules that regulate telemarketing, promotional contests, lotteries and the making of representations to the public. In addition, any charity carrying on a business activity will be required to comply with the *Competition Act* regarding the manner in which the business activity is carried out. For more information regarding the *Competition Act*, including the Bulletins and Guidelines published by the Competition Bureau, the reader is encouraged to visit www.strategis.ic.gc.ca/competition.

Excise Tax Act, R.S.C. 1985, c. E-15.

Part IX of the *Excise Tax Act* (Canada) (the “ETA”) contains the rules relating to the application of the goods and services tax (“GST”). The GST applies to charities in a very different manner than it applies to most other organizations. Accordingly, there are numerous special rules and exemptions that apply to charities.

One of the main differences between charities and other organizations is that most of the goods and services supplied by charities are exempt from the application of GST. Therefore, as a general rule, charities do not need to charge and collect GST on property or services they provide. Further, charities are generally not required to register under the ETA for GST purposes. Unlike commercial entities, however, charities generally are not entitled to recover the GST that they pay on their expenses. A charity’s ability to recover the GST that it incurs is instead limited to special rebates that range from 50 to 83 per cent, depending upon the charity and its activities.

However, not all goods and services supplied by charities are necessarily exempt from GST. For example, any charity making GST taxable supplies is generally required to register for GST purposes if its GST taxable revenues exceed \$50,000.

As well, charities that have registered for GST (whether voluntarily or otherwise) are required to account for it in a different manner than other organizations. Charities are required to use a special calculation known as the “Net Tax Calculation for Charities” when making the required calculations to complete their tax returns.

Finally, the ETA distinguishes between charities that are hospital authorities, school authorities, public colleges, universities and local municipal authorities and those charities that are none of the foregoing. The former group is referred to as “public institutions” for GST purposes and follow their own unique rules for GST purposes.

Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5.

The *Personal Information Protection and Electronic Documents Act* (“PIPEDA”) applies to any organization that collects, uses or discloses personal information in the course of commercial activities. Charities that engage in commercial activities should therefore consider the implications of PIPEDA. It will be a question of fact as to whether a particular activity of a charity constitutes a commercial activity within the meaning of PIPEDA. In this regard, however, it is important to note that the definition of “commercial activity” set out in PIPEDA specifically includes in the definition the “selling, bartering or leasing of donor, membership or other fundraising lists”. It therefore appears certain that the transfer of a donor list by a charity will trigger the application of PIPEDA.

Where it does apply to an organization, PIPEDA requires that certain measures be implemented by the organization to ensure that personal information is protected and secured. In particular, PIPEDA specifically provides that every organization subject to its provisions is, subject to certain exceptions, required to comply with Schedule 1 to PIPEDA. This schedule incorporates the privacy standards that are based on those established by the Canadian Standards Association International in its *Model Code for the Protection of Personal Information*.

Statutory Regime Applicable to Charitable Gaming:

Societal attitudes regarding gambling have in recent years become more permissive. One of the manifestations of this phenomenon is that charitable gaming has grown in popularity as a fundraising mechanism for many charities.

The regime of laws and regulations regulating the charitable gaming industry is highly complicated and technical. This regime may be briefly described as follows.

The starting point for the analysis of charitable gaming is the *Criminal Code*. Subject to certain exceptions, gambling is an offence under the *Criminal Code*. One of the exceptions to this general rule is set out in paragraph 207(1)(b) of the *Criminal Code*, which provides that a charitable or religious organization may conduct a lottery scheme if authorized to do so by a licence issued by a province.

In Ontario, the issuance of licences to conduct lottery schemes is governed by Order-in-Council 2688/93. This Order-in-Council sets out in very broad terms the basic framework within which licences to conduct lottery schemes may be granted or revoked. The framework established by Order-in-Council 2688/93 is explained in great detail in the *Lottery Licensing Policy Manual* (Toronto: Entertainment Standards Branch, 1993). The *Lottery Licensing Policy Manual* also sets out the eligibility criteria for lottery licences and the terms and conditions that may be attached to their issuance.

Once a charity has been issued a licence, it will need access to gaming premises, gaming assistants and gaming equipment in order to conduct a lottery scheme. The supply of this equipment and these services by third parties is regulated under the *Gaming Control Act, 1992*, S.O. 1992, c. 24. As per the *Alcohol and Gaming Regulation and Public Protection Act, 1996*, S.O. 1996, c. 26, the administration

of the *Gaming Control Act, 1992* and the regulations passed thereunder is the responsibility of the Alcohol and Gaming Commission of Ontario. Certain gambling activities are also provided by the Ontario Lottery and Gaming Corporation, which is created by and subject to the *Ontario Lottery and Gaming Corporation Act, 1999*, S.O. 1999, c. 12.

For an in-depth commentary on the law of charitable gaming, the reader is referred to Donald J. Bourgeois, *The Law of Charitable and Casino Gaming* (Toronto: Butterworths, 1999).

Statutory Regime Applicable to Hospitals and Other Health Care Facilities:

The promotion of health has long since been recognized as being charitable at common law. Hospitals and other health care facilities are therefore very often subject to the various statutes and rules of common law applicable to charities. These entities, however, are also subject to the unique requirements of the various statutes that regulate hospitals and other health care facilities. An incomplete list of such statutes includes the *Public Hospitals Act*, R.S.O. 1990, c. P. 40, the *Charitable Institutions Act*, R.S.O. 1990, c. C.9., the *Nursing Homes Act*, R.S.O. 1990, c. N. 7, and the *Homes for the Aged and Rest Homes Act*, R.S.O. 1990, c. H. 13.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17:

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* imposes an obligation to file various reports with respect to certain types of financial transactions. The reporting obligations are applicable mainly, although not exclusively, to financial entities. The intent of the statute is to provide a mechanism by which money laundering and terrorist financing offences may be detected. It may be viewed as a companion statute to Part II.1 of the *Criminal Code* (discussed above) and the *Charities Registration (Security Information) Act* (discussed above) as reports filed under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* could conceivably contribute to the creation of an evidentiary basis to support a criminal prosecution or the revocation of charitable registration under those statutes.