

COMMENTARY

The purpose of this consolidation is to assist those undertaking research in the area of charity law. Anyone who has undertaken research in this field can attest to the fact that the statutory regime governing charities consists of numerous, complex and, in some cases, unexpected legislative requirements. There is no single statute that sets out all of the legislative requirements applicable to charities. The statutory provisions applicable to charities are instead set out in multiple federal and provincial statutes. The consequence is that an applicable statute or legislative amendment can all too easily be overlooked.

Having regard to this complicated legislative context, this consolidation aims to facilitate charity law research by setting out excerpts from or the entire text of the key federal and Ontario statutes that apply to charities. A brief description of the statutes included in this consolidation is set out below. Before proceeding, though, we offer the following observations.

We repeat the proviso that we have expressed in the previous editions to the effect that this consolidation does not set out the text of *every* statutory provision that may be of interest to charities. We have excluded statutes that deal with highly specialized subject matters, that are only tangentially related to charities or that are otherwise unlikely to arise with recurrence in charity law research. Nevertheless, in an effort to ensure the comprehensiveness of this consolidation as a research tool, the commentary below enumerates and describes both those federal and Ontario statutes that we have included and those that we have omitted. The intention is for the commentary to paint as complete a portrait of the statutory regime as possible, notwithstanding our editorial decision to exclude certain statutes and regulations from the actual text of the consolidation.

With respect to what has changed in this edition, we have expanded our coverage of statutory and regulatory provisions. Relevant excerpts from the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, the *Competition Act*, R.S.C. 1985, c. C-34 and the *Local Health System Integration Act, 2006*, S.O. 2006, c. 4 have been included in the text of the consolidation for the first time. In addition, the scope of the commentary has been enhanced. The commentary discusses 48 additional statutes and 30 additional regulations with the result that this edition compiles, describes or otherwise takes account of approximately 120 statutes and 60 regulations.

We noted in the previous edition that the law of charity was in many respects in a state of transition. At that time, the Federal Budget of 2004 had recently introduced significant income tax amendments applicable to charities,¹ other proposed income tax amendments had recently been released in July of 2005 by the Department of Finance in draft form,² Bill C-21 proposed the introduction of a

¹ The Federal Budget of 2004, for example, amended the disbursement quota formula set out in subs. 149.1(1) and introduced new penalty provisions for charities in Part V of the *Income Tax Act* (Canada).

² Legislative Proposals Relating to Income Tax, July 2005.

new federal incorporation statute for charities, the *Canada Not-For-Profit Corporations Act*, etc.

At present, the law of charity remains in a similar state of transition. The Federal Budget of 2006 has introduced significant income tax amendments applicable to charities,³ Bill C-21 died on the Order Paper when the 38th Parliament was dissolved on November 29, 2005, leaving the future of this proposed legislation uncertain and, although the aforementioned July 2005 income tax amendments have yet to reach the Bill stage, they are nevertheless being administered by government regulators as though they were enacted into law.⁴ This consolidation includes all of these proposed and enacted amendments. To avoid confusion, we note in the description below and in the body of the text if an amendment is yet to be enacted into law.

Federal Statutes Included:

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

There are two key tax advantages under the *Income Tax Act* (Canada) for an institution to obtain the status of a “registered charity”. First, registered charities are generally exempt from tax under the *Income Tax Act* (Canada). Second, registered charities are allowed to issue to donors official donation receipts, which entitle donors to tax relief under the *Income Tax Act* (Canada). The excerpts from the *Income Tax Act* (Canada) included in this consolidation generally relate to these two issues. In particular, these excerpts set out the various requirements that must be complied with in order for charities to both obtain and maintain registered status and also set out the rules applicable to the tax consequences of charitable donations. 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>Tax Exemptions for Registered Charities</u>	
Paragraph 149(1)(f)	Paragraph 149(1)(f) exempts registered charities from Part 1 tax. Paragraph 181.1(3)(c) exempts registered

³ The Federal Budget of 2006 amended paragraphs 38(a.1) and (a.2) of the *Income Tax Act* (Canada) to remove the capital gains tax from gifts of certain property, i.e., listed securities and ecologically sensitive land, to registered charities (other than private foundations).

⁴ See Technical News No. 26 published by the Canada Revenue Agency.

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<p>Paragraph 181.1(3)(c) Paragraph 210.1(c)⁵ Subsection 212(14) Paragraph 219(2)(c)</p>	<p>charities from Part I.3 tax. Paragraph 210.1(c) exempts registered charities from Part XII.2 tax. Subsection 212(14) allows for the issuance of certificates of exemption to non-resident charities, which exempts from Part XIII tax interest income described in paragraph 212(1)(b)(iv). Paragraph 219(2)(c) exempts registered charities from Part XIV tax. Due to either practical or technical considerations, registered charities are also generally exempt from tax levied under those Parts of the Act that do not contain an express exempting provision.</p>
<p><u>General Requirements for Charitable Registration</u></p>	
<p>Section 149.1 Regulations 3500 – 3502 Regulations 3700 – 3702</p>	<p>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. <p>Regulations 3500 – 3502 set out rules applicable to proper gift receipting practices of registered charities.</p> <p>Regulations 3700 – 3702 provide for rules relevant to calculating the disbursement quota obligations of charitable foundations.</p>

⁵ Proposed amendments to the *Income Tax Act* (Canada) released July, 2005 provide for the repeal of paragraph 210.1(c) and the re-enactment of this paragraph in proposed new paragraph 210(2)(c).

<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 and Penalties in Respect of Registered Charities</u>	
<p>Section 163.2 Part V (Sections 187.7, 188, 188.1,⁶ 188.2⁷ & 189) Part XI.2 (Sections 207.3, 207.31 & 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. Subsections 188(1)-(2.1) provide for a revocation tax applicable where a charity's registration is revoked. Subsections 188(3)-(5) provide for a transfer of property tax applicable to certain inter-charity transfers. Subsections 188.1(1)-(2) provide for a penalty for carrying on an impermissible business. Subsection 188.1(3) provides for a penalty where a charitable foundation acquires control of a corporation. Subsections 188.1(4)-(5) provide for a penalty for conferring an "undue benefit". Subsection 188.1(6) provides for a penalty for failure to file a return as required under paragraph 149.1(14). Paragraphs 188.1(7)-(10) provide for a penalty where a charity issues an improper gift receipt. Subsection 188.1(11) provides</p>

⁶ This section derives from the proposed amendments to the *Income Tax Act* (Canada) released in July, 2005. At the time of publication, it has yet to be enacted into law.

⁷ This section derives from the proposed amendments to the *Income Tax Act* (Canada) released in July, 2005. At the time of publication, it has yet to be enacted into law.

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	<p>for a penalty for participating in a gifting scheme to delay expenditures of amounts on charitable activities. Section 188.2 provides for the suspension of receipting privileges where certain penalties under section 188.1 apply. Subsections 189(1)-(5) provide for a tax regarding non-qualified investments of private foundations. Subsections 189(6.2)-(6.3) indicate how charities are to satisfy, respectively, revocation tax liability/penalties. 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>
<p><u>Obtaining Information Relating to Registered Charities</u></p>	
<p>Subsections 241(1), (3.2) & (4)(f.1)</p>	<p>These provisions allow government regulators to release certain information relating to registered charities to certain persons.</p>
<p><u>Miscellaneous Provisions Applicable to Registered Charities</u></p>	
<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 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”.</p>

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<u>Capital Gains Arising from Charitable Donations</u>	
<p>Subsections 38(a), (a.1) & (a.2) Regulation 6210 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) and 69(1) provide the basic rules regarding capital gains arising from charitable donations. Subsections 38(a.1) and (a.2) modify the basic rules for, respectively, donations of certain types of securities (see Regulation 6210) and donations of 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>
<u>General Provisions Regarding Charitable Donations</u>	
<p>Section 110.1 Section 118.1 Subsections 248(30)-(41)⁸ Regulation 3503 Schedule VIII of Regulations</p>	<p>These provisions allow for 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. Subsections 248(30)-(41) set out the rules for calculating the “eligible amount” of a donation – the amount for which a receipt may be issued. Regulation 3503 and Schedule VIII to the Regulations enumerate the foreign universities to which receiptable charitable donations may be made.</p>
<u>Special Provisions Regarding Charitable Donations</u>	
<p>Subsection 43(2) Subsections 169(1.1) & 171(1.1)</p>	<p>These provisions set out 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</p>

⁸ This section derives from the proposed amendments to the *Income Tax Act* (Canada) released in July, 2005. At the time of publication, it has yet to be enacted into law.

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<p>Section 43.1</p> <p>Paragraphs 87(2)(m.1) & 88(1)(e.2)</p> <p>Paragraph 67.1(2)(b)</p> <p>Paragraphs 87(2)(v), 88(1)(e.6) & 88(1)(e.61)</p> <p>Paragraph 110(1)(d.01)</p> <p>Subsections 110(2) & (2.1)</p> <p>Section 143</p> <p>Section 143.2</p> <p>Paragraph 152(6)(c)</p> <p>Section 217</p> <p>Section 237.1 & 237.2</p>	<p>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 fundraising event. Paragraph 87(2)(v) applies to a gift to charity by a corporation that 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. Section 217 enables a non-resident person to elect to pay tax under Part I instead of Part XIII and to thereby utilize the tax benefits of donations to registered charities. Sections 143.2, 237.1 and 237.2 provide for special rules for gifting arrangements that constitute “tax shelters”.</p>
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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 charities page of the Canada Revenue Agency web site <<http://www.cra-arc.gc.ca/tax/charities/menu-e.html>>.

The reader should be aware that on December 20, 2002 a number of proposed amendments to the provisions of the *Income Tax Act* (Canada) that are relevant to registered charities were released. These amendments were revised and re-released in July, 2005.⁹ As of the date of publication, these proposed amendments have not been enacted into law; in fact, they have yet to reach the Bill stage. Nevertheless, certain of these amendments are presently being applied by the Canada Revenue Agency.¹⁰ In this regard, the reader is encouraged to consult Technical News No. 26, published by the Canada Revenue Agency, for an explanation of the current administrative practices in relation to the proposed amendments.

By way of summary, there are four 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. Previously, a donor was not entitled to a charitable gift receipt if the donor received any consideration for the “gift”. Also, it was previously the case that charitable gift receipts were required to be issued for the full fair market value of the donated property or not at all. The proposed amendments allow for a practice known as “split-receipting”. In particular, 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 subs. 149.1(1) have been proposed. There has historically been 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” has been 50 per cent and for a “public foundation” it has been either 50 per cent or 75 per cent depending upon when the

⁹ The July, 2005 proposed amendments either introduced or amended the following provisions of the *Income Tax Act* (Canada) of relevance to registered charities: s. 38.1, para 40(1.01)(c), clause 40(2)(a)(i), clause 40(2)(a)(ii), clause 40(2)(a)(iii), subs. 43(2), subs. 43.1(1), clause 53(2)(c)(iii), clause 69(1)(b)(iii), para 88(1)(e.6), para 110.1(1)(a), para 110.1(1)(b), para 110.1(1)(c), para 110.1(1)(d), clause 110.1(1)(d)(i), subs. 110.1(2), subs. 110.1(3), subs. 110.1(4), para 110.1(5)(b), subs. 118.1(1) (definitions of “total ecological gifts”; “total charitable gifts”; “total Crown Gifts”; “total cultural gifts” and “total gifts”), subs. 118.1(2), subs. 118.1(6), para 118.1(7)(d), para 118.1(7.1)(d), subs. 118.1(8), para 118.1(13)(b), para 118.1(13)(c), subs. 143(3.1), subs. 143.2(6.1), subs. 143.2(13), subs. 149.1(1) (definitions of “charitable organization”; “disbursement quota” and “enduring property”), para 149.1(2)(a), para 149.1(2)(b), para 149.1(2)(c), para 149.1(3)(b.1), para 149.1(4)(b.1), subs. 149.1(9), para 149.1(15)(b), subs. 184(2), subs. 184(3), subs. 184(4), subs. 184(5), s. 207.31, subs. 237.1(1) (definition of “gifting arrangement”), subs. 248(3.1), subs. 248(30-41), subs. 188(2) and subs. 188(4).

¹⁰ See *Richert v. Stewards’ Charitable Foundation*, [2005] B.C.J. No. 279 (S.C.) for a judicial acknowledgement of this administrative practice.

foundation was registered.¹¹ 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 subs. 149.1(2) to (4) has been proposed. Under the proposed amendments, charitable registration may be revoked where a registered charity makes a "gift" 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 remedy ambiguity under 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 Revenue Agency to the effect that such transfers are not permitted.¹²

Fourth, the proposed amendments alter the scope of the "gifting arrangements" that are caught by the definition of "tax shelter" set out in subs. 237.1(1). 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 Business Corporations Act, R.S.C. 1985, c. C-44.

As its name implies, the *Canada Business Corporations Act* (the "CBCA") is the federal incorporating statute applicable to business corporations (rather than to charitable corporations). As a general rule, its provisions do not therefore apply to federally incorporated charities. Having said that, s. 157.1 of the *Canada Corporations Act* explicitly provides that certain provisions of the CBCA apply to such charities. The applicable provisions are those found in Part XIX of the CBCA, which outline the jurisdiction of a court to order an investigation of a corporation, and certain provisions found in Part XX of the CBCA, which outline the jurisdiction of a court to grant leave in relation to derivative actions.

It is worth noting that not all of the CBCA provisions referenced in s. 157.1 of the *Canada Corporations Act* apply to federally incorporated charities. Although the provisions of Part XIX.1 of the CBCA are listed in s. 157.1 of the *Canada Corporations Act*, the CBCA itself makes clear in subs. 237.2(2) that that part of the CBCA is inapplicable to registered charities.¹³ The provisions comprising Part

¹¹ See the current definitions of "charitable organization" and "public foundation" in subs. 149.1(1).

¹² See *Registered Charities Newsletter* (CRA: Newsletter No. 9, Spring 2000).

¹³ The point to note here is that s. 157.1 of the *Canada Corporations Act* is not limited in its application to charitable corporations. The reference to the provisions comprising Part XIX.1 of the CBCA in s. 157.1 of the *Canada Corporations Act* is therefore not

XIX.1 of the CBCA have therefore been excluded from this consolidation notwithstanding their reference in s. 157.1 of the *Canada Corporations Act*.

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, c. 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 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>>.

The previous federal government introduced successor legislation to the *Canada Corporations Act*. The successor legislation was set out in draft form in Bill C-21: *Canada Not-For-Profit Corporations Act*. This Bill died on the Order Paper on November 29, 2005 when the 38th Parliament was dissolved. The future of this draft legislation is uncertain. We nevertheless include the following observations regarding Bill C-21 with a view to giving the reader a general sense as to the direction the law may take if the Bill is re-introduced in similar form in the future.

Transitional Provisions:

Bill C-21 proposed that all corporations that are currently governed by Part II of the *Canada Corporations Act* be required to apply for a certificate of continuance under the new legislative regime. If an existing corporation failed to take this step within three years after the coming into force of Bill C-21, it would be subject to dissolution.

redundant, since it will be meaningful for the non-charitable corporations to which that section of the *Canada Corporations Act* applies.

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Incorporation:

Bill C-21 proposed the replacement of the current system of federal incorporation – the discretionary “letters patent” system – with the faster and more efficient system of incorporation “as of right”. In addition, it was proposed that three individuals would no longer be required to establish a new incorporation. Instead, one or more individuals or corporations would be able to incorporate a corporation by sending signed articles of incorporation and other specified documents to the “Director”, a new position created by Bill C-21, the scope of which was to exercise regulatory powers under the new legislation and to act as a public registrar of corporations.

Capacity and Powers of the Corporation:

Bill C-21 provided not-for-profit corporations with the capacity, rights, powers and privileges of natural persons. It did not require the passage of by-laws in order to confer any power on a corporation or its directors. Corporations would still be precluded, though, from carrying on activities or exercising powers in a manner contrary to their mission as articulated in their articles.

Financial Accountability and Disclosure:

Bill C-21 imposed additional financial disclosure obligations on corporations by requiring that they make financial statements available to members on request. Incorporated charities that constitute “soliciting corporations”, which generally included charities that engage in fundraising activities, would also be required to file their financial statements with the Director who will make them available to the public. Different levels of financial accountability would be imposed on different corporations depending upon variables such as annual revenue.

Administrative Obligations:

Bill C-21 required all corporations to file annual returns, keep registered offices and maintain corporate records for specified periods of time. The required records included registers of directors, officers and members, debt obligations, minutes of members meetings, accounting records and corporate documents such as articles and by-laws.

Directors:

Bill C-21 introduced a number of important changes in relation to the directors of not-for-profit corporations. These changes sought to bring the duties and responsibilities of such directors more in line with those of their for-profit counterparts. The proposed changes included the following.

There would be greater flexibility in the composition of boards and in the meetings of directors. Soliciting corporations would be required to have at least three directors, whereas non-soliciting corporations would only need one director. There was also provision for directors’ written resolutions in lieu of holding meetings, a flexible and rotating board and a maximum term of three years.

With respect to the duties of directors, under the current legislative regime, the standard of care to which directors are subject is determined by a fluctuating common law. By contrast, Bill C-21 specifically set out express duties. These included the duty to act honestly and in good faith with a view to the best interests of the corporation, the duty to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, the duty to comply with the new legislation and any governing corporate documents, the duty to manage or supervise the management of the activities and affairs of the corporation and the duty to disclose all conflicts of interest.

With respect to defences available to directors, the current legislative regime does not explicitly provide directors facing liability claims with any defences. Bill C-21, though, specifically provided a due diligence defence available to directors who have exercised the care, diligence and skill that a reasonably prudent person would have demonstrated in comparable circumstances. Under Bill C-21, due diligence included reliance in good faith on the reports of professionals and on financial statements. Bill C-21 also allowed corporations in some circumstances to indemnify directors and to maintain insurance for the benefit of directors.

With respect to statutory liabilities, Bill C-21 provided that directors could be liable to employees of the corporation for up to six months' wages. In addition, directors could be liable where they authorized, permitted or acquiesced to an offence committed by the corporation.

Members:

Bill C-21 expanded the rights of members. For example, unlike the current legislative regime, members were given the right to requisition directors to call members' meetings. In addition, Bill C-21 explicitly addressed matters relating to members' meetings such as the conduct of electronic meetings, voting in absentia and the replacement of meetings by written resolution of members.

With respect to the issues dealt with at members' meetings, Bill C-21 provided that members would be able to submit notice of a proposal that they wish to raise at members' meetings and the corporation, subject to certain exceptions, would be required to include the proposal in the notice of the meeting.

With respect to the control of members over the affairs of the corporation, Bill C-21 provided for "unanimous member agreements". This mechanism would allow members in limited circumstances to restrict the powers of the directors to manage or supervise the management of the corporation.

With respect to member remedies, Bill C-21 made available to members derivative actions and the oppression remedy. In short, the derivative action could be used by members to commence actions in the name of the corporation and the oppression remedy would allow members to bring claims seeking relief from the oppression of their rights. Courts were given wide latitude to order remedies when satisfied of the merits of a derivative or oppression action. A faith-based defence, though, was made available for religious non-profit organizations.

Changes to the Corporation:

Bill C-21 outlined specific circumstances in which special resolutions of members – two-thirds vote – would be required to make “fundamental changes” to the corporation. This included altering the conditions and rights of membership, the number of required directors and/or the distribution of assets upon dissolution. There were also detailed provisions dealing with circumstances in which a corporation wished to amalgamate with one or more other corporations, liquidate, dissolve or be continued under the laws of another jurisdiction.

Charities Registration (Security Information) Act, S.C. 2001, c. 41, s. 113.

The new *Charities Registration (Security Information) Act* was created by the *Anti-Terrorism Act*, S.C. 2001, c. 41. 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 de-registered 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.

Civil Marriage Act, S.C. 2005, c. 33.

The *Civil Marriage Act* extended the institution of marriage to include same-sex relationships. The statute contains provisions that were intended to put to rest concerns that charities whose activities and purposes reflect the traditional view of marriage would be considered discriminatory at law and possibly thus non-charitable. The statute declares that no benefit shall be deprived from any person or organization under any law of the Parliament of Canada due to the exercise or expression of the view that marriage is restricted to heterosexual relationships. In addition, the statute enacted an amendment to the *Income Tax Act* (Canada) – new subs. 149.1(6.21) – that expressly provides that the charitable registration of institutions organized for the advancement of religion shall not be revoked due solely to the exercise of freedom of conscience in relation to this issue.

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 in subs. 2(1) 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>.

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 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.

Cultural Property Export and Import Act, R.S.C. 1985, c. 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, for example, 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.

Provincial Statutes Included:

Accumulations Act, R.S.O. 1990, c. A.5.

The *Accumulations Act* provides that no disposition of any property (real or personal) may direct the accumulation of income derived from such property for any period longer than the applicable accumulations period. There are six possible accumulations periods enumerated in subs. 1(1). The statute should be consulted any time property is held in trust on terms that provide for the capitalization of income derived from the property. Where the terms of a trust provide for the accumulation of income beyond the applicable accumulations period, subs. 1(6) of the *Accumulations Act* directs how such income is to be distributed.

Assessment Act, R.S.O. 1990, c. A.31.

Although the key tax benefits associated with charitable status relate to income tax, there are additional tax benefits. The *Assessment Act*, for example, provides for a limited exemption from real property tax. Two key observations may be made in relation to excerpts from the *Assessment Act* included in this consolidation. First, the default rule under the *Assessment Act* is that all real property in Ontario is subject to real property tax.¹⁴ Thus, although the *Assessment Act* sets out exemptions from real property tax, the bias of the statute is towards its application.¹⁵ Second, the *Assessment Act* does not contain a blanket exemption from real property tax for lands held or occupied by charities. Instead, the *Assessment Act* enumerates specific examples of charities that are exempt from real property

¹⁴ Subs. 3(1). Note, though, that the *Assessment Act* does not establish a complete regime for the taxation of all real property situate in Ontario. For real property situate in territories of Ontario without municipal organization, resort must be had to the *Provincial Land Tax Act*, R.S.O. 1990, c. P.32 (discussed below).

¹⁵ The general rule set out in subs. 3(1) of the *Assessment Act* is that, subject to specifically enumerated exemptions, "[a]ll real property in Ontario is liable to assessment and taxation".

tax. This marks a critical divergence from the approach adopted in the provincial income tax statutes, which generally rely upon the conferral of charitable status under the *Income Tax Act* (Canada) as a means of identifying the institutions that should be similarly benefited under provincial income tax law. The result is that an institution may qualify as “charitable” at common law and under federal and provincial income tax law, but nevertheless fail to qualify for exemption from real property tax under the *Assessment Act*. The excerpts and regulations that have been included relate generally to identifying when and to what extent an exemption from real property tax under the *Assessment Act* will apply.

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 of having acquired the interest, or such longer period as may be determined by a court. 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 Public Guardian and Trustee 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.

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

The *Charities Accounting Act* serves two main purposes. First, the *Charities Accounting Act* vests in the Ontario Public Guardian and Trustee (the “PGT”) a supervisory jurisdiction over charities in Ontario. Second, the *Charities Accounting Act* 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 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.

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 and Personal Property Security Branch of the Ministry of Government Services and the PGT.

Corporations Tax Act, R.S.O. 1990, c. C.40.

The *Corporations Tax Act* provides the legislative framework for the taxation of corporations in Ontario. The statute extends under Ontario corporate tax law important charitable tax benefits afforded to corporations under the *Income Tax Act (Canada)*. In particular, s. 57, paragraph 57.11(a) and paragraph 71(1)1 of the Ontario *Corporations Tax Act* exempt incorporated registered charities under the *Income Tax Act (Canada)* from, respectively, income tax, corporate minimum tax and capital tax in Ontario. Also, s. 34 of the *Corporations Tax Act* contains provisions allowing corporations to deduct for Ontario corporate tax purposes charitable gifts for which receipts have been issued as contemplated by s. 110.1 of the *Income Tax Act (Canada)*. The provisions of the Ontario *Corporations Tax Act* that have been included in this consolidation generally relate to these two issues.

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.

Education Act, R.S.O. 1990, c. E.2.

Section 257.2.1 of the *Education Act* authorizes the Minister of Finance to enact regulations providing in certain circumstances for a rebate of property taxes relating to school purposes. The section applies only in relation to land situate in territories without municipal organization.¹⁶ Ontario Regulation 3/02 enacted

¹⁶ See the discussion below of the *Municipal Act, 2001, S.O. 2001, c. 25* for similar provisions relating to property situate in territories with municipal organization.

pursuant to the *Education Act* provides for the circumstances in which such a tax rebate will be available to charities.¹⁷

Estates Act, R.S.O. 1990, c. E.21.

Subsection 49(8) of the *Estates Act* provides that every executor, administrator or trustee shall provide notice to the Public Trustee where the executor, administrator or trustee receives under a will or other written instrument property to be applied for a charitable purpose.

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.

Income Tax Act, R.S.O. 1990, c. I.2.

The Ontario *Income Tax Act* is restricted in its application to “individuals”, which is defined in subs. 1(1) to generally mean natural persons and certain trusts. The statute extends under Ontario income tax law important charitable tax benefits afforded to “individuals” under the *Income Tax Act* (Canada). In particular, s. 6 of the Ontario *Income Tax Act* provides that individuals exempt from federal income tax by virtue of subs. 149(1) of the *Income Tax Act* (Canada) are also exempt from provincial income tax under the Ontario *Income Tax Act*. In effect, this section exempts unincorporated registered charities from provincial income tax.¹⁸ In addition, subs. 4(3.1) of the Ontario *Income Tax Act* entitles individuals, subject to certain limitations, to deduct the charitable tax credit provided for in subs. 118.1(3) of the *Income Tax Act* (Canada) from the income tax otherwise payable under provincial income tax law. The provisions of the Ontario *Income Tax Act* that have been included in this consolidation generally relate to these two issues.

Land Transfer Tax Act, R.S.O. 1990, c. L.6.

The *Land Transfer Tax Act* provides for a tax that is triggered by a conveyance of land. Charities do not enjoy a blanket exemption from land transfer tax. Section 1.1 of the *Land Transfer Tax Act* explicitly states that exempt status under any other statute does not automatically result in an exemption from land transfer tax. Nevertheless, a charity will in some circumstances be able to avail itself of an exemption. Subsection 2(1) of the *Land Transfer Tax Act*, for example, provides that land transfer tax is calculated on the basis of the “value of the consideration

¹⁷ Section 8 of Ontario Regulation 509/98, which we have omitted, contains similar provisions that are restricted in their application to taxation years 1998, 1999 and 2000.

¹⁸ Note that paragraph 149(1)(f) of the *Income Tax Act* (Canada) exempts “registered charities” from tax payable under Part 1 of the *Income Tax Act* (Canada).

for the conveyance”. Therefore, no land transfer tax is payable where land is transferred to a charity for no consideration. Also, regulations enacted pursuant to the *Land Transfer Tax Act* exempt from land transfer tax the conveyances of “life lease interests” to charities¹⁹ and conveyances taking place in the course of the restructuring of certain hospitals.²⁰

Local Health System Integration Act, 2006, S.O. 2006, c. 4.

The *Local Health System Integration Act, 2006* establishes a number of “local health integration networks” (“LHIN”) across Ontario with a view to better coordinating the provision of health care services, enhancing the efficient management of scarce health care resources and enabling better access to health care services.²¹ The legislative framework assigns a specific “geographic area” to each LHIN. Within its specific geographic area, the function of an LHIN is to plan, fund and integrate health services provided therein by “health service providers” (“HSP”), which is defined in subs. 2(2) to include certain institutions that are *prima facie* charitable at law, e.g., hospitals, homes for the aged, nursing homes, etc.²²

Each LHIN has the authority to require an HSP within its geographic area to provide (or cease to provide) a particular health care service, to transfer property to another HSP, etc.²³ The statute also vests in the Minister of Health and Long-Term Care, after receiving advice from an LHIN, to order an HSP to dissolve, amalgamate or transfer operations or property to another HSP.²⁴

A key problem that the statute seeks to minimize or avoid is the possibility of an order from an LHIN or the Minister forcing an HSP to apply property in a manner contrary to the wishes of the initial donor of the property or the general rules of charity law. For example, there are provisions to guard against LHINs and the Minister from ordering an HSP to transfer property to a non-charity²⁵ or from ordering an HSP that is a religious organization from performing a health care service that is contrary to an applicable religious tenet.²⁶ The statute also contains provisions intended to ensure that a donor’s requirement that property donated to an HSP be used for a “specified purpose” continue to apply notwithstanding an

¹⁹ O. Reg. 88/04. See also Tax Bulletin LTT 1-2004 “Exemption for Certain Transfers of Life Lease Interests under the *Land Transfer Tax Act*” (April 2004).

²⁰ O. Reg. 676/98.

²¹ See the Preamble and the stated purposes of the statute in section 1.

²² Individual chiropractors, dentists, doctors and optometrists providing health services directly or indirectly through a health profession corporation are excluded from the definition of HSP under subs. 2(3).

²³ See s. 26.

²⁴ See s. 28.

²⁵ See paragraph 26(2)(g) and subs. 28(4).

²⁶ See paragraph 26(2)(f) and subs. 28(2). The protection in this regard is defined in the statute with specific reference to constitutional protections under the *Canadian Charter of Rights and Freedoms*.

order issued under the statute requiring the HSP to transfer that property to another HSP.²⁷

Ministry of Community and Social Services Act, R.S.O. 1990, c. M.20.

The *Ministry of Community and Social Services Act* authorizes in subs. 13(1) the Lieutenant Governor in Council to make regulations designating a charity to be subject to the control and management of the Minister of Community and Social Services. The circumstances in which such regulations may be enacted include circumstances in which those persons managing the charity so request and circumstances in which the Lieutenant Governor in Council determines that doing so is necessary to ensure the proper application of publicly donated funds or is within the best interests of those relying upon the charity's services.

Municipal Act, 2001, S.O. 2001, c. 25.

Section 361 of the *Municipal Act, 2001* requires every municipality to have a real property tax rebate program for registered charities that occupy properties situate in territories with municipal organization that are designated in the "commercial" or "industrial" class. The excerpts included elaborate on the program requirements and the extent of the tax rebate available.

Perpetuities Act, R.S.O. 1990, c. P.9.

The *Perpetuities Act* sets out various statutory rules pertaining to the doctrine of law known as the "rule against perpetuities". This doctrine can be especially difficult to apply,²⁸ but the essence of the rule may be stated simply enough. The rule against perpetuities has been said to consist of two key elements:²⁹ the first is a prohibition against perpetual trusts;³⁰ the second is a requirement that "contingent interests"³¹ must "vest" within a period of time known as the "perpetuities period", which is the period terminating on the twenty-first anniversary of the date of death of a life "in being".³² Charities are exempt from the first aspect of the rule. There are, however, circumstances in which the second aspect of the rule

²⁷ See s. 30.

²⁸ By way of illustration, a U.S. decision, *Lucas v. Hamm*, 364 P.2d 685 (Cal.S.C. 1961), held that a lawyer was not professionally negligent for misunderstanding the doctrine.

²⁹ See, for example, D. Waters, M. Gillen and L. Smith, *Waters' Law of Trusts in Canada*, 3rd ed. (Carswell: Toronto, 2005) at pp. 645 to 656.

³⁰ This aspect of the rule has been described as the "rule against inalienability". See *ibid* at p. 646.

³¹ An interest in property will be contingent if it has yet to vest in a person. This could be for any number of reasons. The person may, for example, have yet to satisfy a condition precedent in respect of the property. Alternatively, the identity of the person may as yet be unknown.

³² This aspect of the rule has been described as the "rule against remoteness of vesting". See *supra*, note 29 at p. 645.

may apply to charities, although the precise scope of such circumstances appears to be as yet unresolved.

Although the rule against perpetuities originated as a judge-made rule, it has been legislatively codified, albeit in a modified form, in several jurisdictions of Canada, including in Ontario via the *Perpetuities Act*. A critical change effected by the enactment of the *Perpetuities Act* was the adoption of the “wait and see” approach to applying the rule against remoteness of vesting. Initially, a contingent interest was held to be invalid if there was a possibility, however remote, that it might vest beyond the perpetuity period. In contrast, subs. 4(1) of the *Perpetuities Act* now provides that the mere possibility of vesting beyond the perpetuities period will not invalidate a contingent interest in property. In effect, we “wait and see” whether the interest will vest within the perpetuities period. Another critical reform was the adoption under the *Perpetuities Act* of an attenuated perpetuities period for interests subject to “conditions subsequent” and “determinable limitations”. Subsection 15(3) of the statute provides that the perpetuities period for such interests cannot exceed forty years. The potential application of the statute should be considered whenever a charity holds a contingent interest in property.

Provincial Land Tax Act, R.S.O. 1990, c. P.32.

The *Provincial Land Tax Act* should be read together with the *Assessment Act*, since both statutes provide for the taxation of real property situate in Ontario. The *Provincial Land Tax Act* is the relevant statute for land situate in territories of Ontario without municipal organization. It contains a limited exemption from real property tax that is similar (although not identical) to that provided under the *Assessment Act*. In short, the *Provincial Land Tax Act* provides a limited exemption from real property tax for specifically enumerated charities rather than a blanket exemption for all land held or occupied by charities. As with the *Assessment Act*, it is therefore possible for an institution to qualify as “charitable” at law, but nevertheless fail to qualify for exemption from real property tax under the *Provincial Land Tax Act*. The excerpts that have been included relate generally to identifying when and to what extent an exemption from real property tax under the *Provincial Land Tax Act* will apply.³³

Public Guardian and Trustee Act, R.S.O. 1990, c. P.51.

Section 12 of the *Public Guardian and Trustee Act* specifically authorizes the Public Guardian and Trustee to administer charitable trusts.

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

³³ Paragraph 38(1)(b) of the *Provincial Land Tax Act* authorizes the Lieutenant Governor in Council to make regulations declaring classes of land to be exempt from real property tax. At the date of publication, there are no such regulations of specific relevance to charities.

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 holding property in land, such as the power to conduct actions with respect to the mortgaging, purchasing and alienation of 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.

Retail Sales Tax Act, R.S.O. 1990, c. R.31.

The *Retail Sales Tax Act* provides for a tax applicable where a “purchaser” acquires certain property or services. The tax is generally calculated as a percentage of the “fair value” of the property or service acquired. There is no blanket exemption for charities. Section 1.1 of the *Retail Sales Tax Act* explicitly states that exempt status under any other statute does not automatically result in an exemption from retail sales tax. Nevertheless, a charity will in some circumstances be able to avail itself of an exemption or rebate. The excerpts and regulations that have been included relate generally to identifying when and to what extent an exemption or rebate will apply.

Substitute Decisions Act, 1992, S.O. 1992, c. 30.

The *Substitute Decisions Act, 1992* provides a statutory regime to regulate substitute decision making in Ontario. Of particular interest to charities is the fact that s. 37 of the *Substitute Decisions Act, 1992* explicitly empowers a substitute decision maker to make charitable gifts out of the property of an incapable person subject to the various requirements enumerated therein.

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.³⁴ 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.³⁵ 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 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”.

³⁴ 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.).

³⁵ See *Christian Brothers of Ireland in Canada (Re)* (1998), 37 O.R. (3d) 367 (Ont. Gen. Div.); varied (2000), 47 O.R. (3d) 674 (Ont. C.A.); leave to appeal dismissed [2000] S.C.C.A. No. 277 (S.C.C.).

Omitted Statutes:

The statutes 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; those that have been omitted include the following:

Federal Statutes

Aeronautics Act, R.S.C. 1985, c. A-2.

Regulations enacted under the Federal *Aeronautics Act* – the *Canadian Aviation Regulations*, SOR/96-433 – provide in subs. 401.28(1) that the holder of a private pilot licence may act as the pilot-in-command of an aeroplane or helicopter for “hire or reward” in only limited circumstances. The limited circumstances include conducting a flight for a charity, provided that any payment received is calculated on a cost recovery basis.³⁶

Canadian Ownership and Control Determination Act, R.S.C. 1985, c. C-20.

The *Canadian Ownership and Control Determination Act* establishes a legislative framework whereby a person may apply for a certificate attesting to the Canadian ownership rate and control status of that person. Regulations enacted under the statute establish special rules for charities. In particular, registered charities are deemed to have a 100 per cent Canadian ownership rate.³⁷ Also, a trust may elect to have a discretionary power over trust income or capital disregarded in determining its Canadian ownership rate if that power can only be exercised in favour of certain prescribed persons, including persons obliged to apply such income or capital exclusively in furtherance of charitable purposes.³⁸

Canada Small Business Financing Act, S.C. 1998, c. 36.

The purpose of the *Canada Small Business Financing Act* is to enhance the availability of debt financing to small businesses in Canada. The statute seeks to achieve this objective by reducing the risk to lenders associated with debtor default on loans to small businesses. Under subs. 5(1) of the statute, the Government of Canada is made liable for certain losses sustained by lenders in connection with loans in respect of small business. To make clear that the statute is *not* intended to secure debt financing for the charitable sector, charities are explicitly excluded from the scope of the statute.³⁹

³⁶ Subsection 401.28(4).

³⁷ See paragraph 12(1)(h) of the *Canadian Ownership and Control Determination Regulations, 1984*, SOR/84-431.

³⁸ See paragraph 51(1)(c) of the *Canadian Ownership and Control Determination Regulations, 1984*, SOR/84-431.

³⁹ In particular, the definition of “small business” in s. 2 explicitly excludes any “business having as its principal object the furtherance of a charitable or religious purpose.”

Copyright Act, R.S.C. 1985, c. C-42.

The *Copyright Act* extends the privileged position of charities in law to the realm of copyright law. In particular, this statute exempts charities from certain copyright laws of general application. Section 19 of the *Copyright Act* articulates the general rule that the performer and maker of a published “sound recording” are entitled to “equitable remuneration” for the public performance of the recording. Subsection 32.2(3) articulates an exemption from this general rule for charities. In particular, subs. 32.2(3) provides that a charity may undertake the live public performance of a “musical work” or “sound recording” without being held liable to pay compensation if it does so in furtherance of its charitable purposes.

Corporations Returns Act, R.S.C. 1985, c. C-43.

The *Corporations Returns Act* provides that corporations carrying on business in Canada meeting certain criteria must file a return every “reporting period” with the Chief Statistician in Canada. The return must contain the particulars enumerated in the Act and accompanying regulations. Subsection 3(2) of the Act exempts from this requirement corporations with the “primary object” of furthering a charitable purpose.

Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24.

It is an indictable offence under the *Crimes Against Humanity and War Crimes Act* for any person to commit a “war crime” either in Canada (subs. 4(1)) or outside of Canada (subs. 6(1)). The definition of “war crime” under the statute underscores the special cultural and legal significance of charity under both Canadian and international law in that this definition explicitly includes intentional attacks against buildings dedicated to charitable purposes.⁴⁰

Customs Tariff, S.C. 1997, c. 36.

Regulations under the *Customs Tariff* prescribe rules requiring that the country of origin of goods imported into Canada be clearly marked on such goods.⁴¹ Goods imported for the purpose of being donated to charity are explicitly exempted from

⁴⁰ See the definition of “war crime” in subs. 4(3), subs. 6(3) and in paragraph 2 of article 8 of the *Rome Statute of the International Criminal Court*, which appears as a schedule to the *Crimes Against Humanity and War Crimes Act* and informs the meaning of “war crime” under the statute by virtue of subss. 4(4) and 6(4). For a further discussion, see Didier Pfirter, “Article 8(2)(b)(ix) — Attacking Protected Objects” in Roy Lee (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Transnational Publishers Inc., USA, 2001) at 162-3.

⁴¹ See s. 2 of the *Marking of Imported Goods Order* (C-54.011 – C.R.C., c. 535) and s. 2 of the *Determination of Country of Origin for the Purpose of Marking Goods (Non-NAFTA Countries) Regulations*, SOR/94-16.

this requirement.⁴² Other regulations under the *Customs Tariff* exempt certain imported goods – films, videotapes, and slides of a documentary nature – from the payment of duty when they are consigned to charitable organizations and subsequently exported from Canada within a prescribed period of time.⁴³ In addition, a remission order has been made under s. 115 of the *Customs Tariff* whereby remission of duties is granted in respect of food donated by a non-resident to a registered charity for charitable distribution in Canada.⁴⁴

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.

⁴² See s. 3 of the *Marking of Imported Goods Order* (C-54.011 – C.R.C., c. 535) and schedule II of the *Determination of Country of Origin for the Purpose of Marking Goods (Non-NAFTA Countries) Regulations*, SOR/94-16.

⁴³ See s. 3 and 4 and the Schedule to the *Temporary Importation (Excise Levies and Additional Duties) Regulations*, SOR/89-427.

⁴⁴ *Charitable Food Donations Anti-Dumping and Countervailing Duty Remission Order*, SOR/98-536.

Expropriation Act, R.S.C. 1985, c. E-21.

The *Expropriation Act* establishes a statutory regime under which the Crown may expropriate any interest in land for a “public work” or “other public purpose”.⁴⁵ The statute contains provisions designed to ensure that a person whose interest in land has been expropriated is fairly compensated by the state. The general rule is that the compensation should correlate with the market value of the expropriated interest.⁴⁶ The statute contains special rules to protect charities from financial loss where an interest in land has been expropriated from a charity and the market value of the expropriated interest is less than the cost of a replacement interest in land.⁴⁷

Immigration and Refugee Protection Act, S.C. 2001, c. 27.

Regulations enacted under the *Immigration and Refugee Protection Act* establish a regulatory framework for, *inter alia*, the issuance of work permits to foreign nationals in Canada.⁴⁸ The regulations privilege charity by specifically enumerating work in furtherance of a charitable purpose as qualifying as a category of work for which a work permit may be issued⁴⁹ and by exempting foreign nationals who undertake charitable work from certain fees.⁵⁰

Lobbyists Registration Act, R.S.C. 1985, c. 44 (4th Supp.).

The federal *Lobbyists Registration Act* establishes the general rule that certain persons who communicate with federal “public office holders” regarding proposed changes to the law or other matters of public policy shall file an annual return with the federal government. The persons required to file such returns include incorporated charities that employ individuals to make such communications⁵¹ and individuals who, for payment, make such communications on behalf of charities.⁵²

⁴⁵ Subs. 4(1).

⁴⁶ Subs. 26(2).

⁴⁷ Subs. 26(5). A similar provision appears in subs. 14(2) of Ontario’s *Expropriations Act*, R.S.O. 1990, c. E.26, although the Ontario version is not explicitly restricted in its application to charities.

⁴⁸ See the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

⁴⁹ See paragraph 205(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

⁵⁰ See subs. 299(2) and 305(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, which, respectively, exempt foreign nationals who undertake charitable work without remuneration from the application fee for a work permit and exempt persons involved in certain charitable work (and their relatives) from the application fee in respect of an application under subs. 181(1) to extend authorization to remain in Canada as a temporary resident.

⁵¹ See subs. 7(1) and the definition of “organization” in subs. 2(1).

⁵² See subs. 5(1) and the definition of “organization” in subs. 2(1).

In addition to complying with this statute, charities engaged in lobbying activities need to be mindful of the restrictions imposed upon them further to the so-called “doctrine of political purposes”.⁵³

National Housing Act, R.S.C. 1985, c. N-11.

One of the stated purposes of the *National Housing Act* is to facilitate access to housing finance and to promote competition and efficiency in the provision of such financing.⁵⁴ One way that the statute seeks to attain this objective is to authorize the Canada Mortgage and Housing Corporation to finance certain housing and land development projects through the provision of loans. Of special relevance to charities is the fact that the Canada Mortgage and Housing Corporation is authorized to make loans to charitable corporations in respect of housing projects for students and to forgive the repayment of such loans.⁵⁵

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*.

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

⁵³ For a description and critique of the doctrine, see A. Parachin, “Charity, Politics and Public Benefit”, Canadian Bar Association, *Fourth National Symposium on Charity Law* (Toronto: Ontario Bar Association Conference Centre, May 11, 2006).

⁵⁴ S. 3.

⁵⁵ See ss. 87 and 88.

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.

Tax Court of Canada Act, R.S.C. 1985, c. T-2.

Subsection 12(5) of the *Tax Court of Canada Act* provides that the Tax Court of Canada has exclusive jurisdiction to hear and determine applications relating to subs. 188.2(4) of the *Income Tax Act* (Canada). In effect, this affords the Tax Court of Canada exclusive jurisdiction to resolve disputes pertaining to the suspension of a registered charity's receiving privileges.

Telecommunications Act, S.C. 1993, c. 38.

The *Telecommunications Act* establishes a legislative framework for the provision of telecommunication services in Canada. A key issue dealt with by the statute pertains to the rates that may be charged consumers for telecommunication services.⁵⁶ The general rule established in subs. 27(2) is that telecommunication carriers are prohibited from charging rates that confer preferential treatment to certain consumers. An exception is set out in subs. 27(6) whereby telecommunication carriers are authorized to provide services at no charge or at a reduced rate to certain consumers, including charities.

Territorial Lands Act, R.S.C. 1985, c. T-7.

The *Territorial Lands Act* regulates work on, mineral rights to, and access to federal Crown lands in the Northwest Territories. Regulations enacted under the statute – the *Canada Mining Regulations*, C.R.C., c. 1516 – provide that the owner or operator of a mine must pay royalties to the federal government each fiscal year.⁵⁷ The royalties are calculated on the basis of the “value of the output of the mine”.⁵⁸ Since no deduction for charitable donations is permitted for the purposes of determining the value of the output of a mine, such donations do not reduce the amount of royalties payable under the regime.⁵⁹

On the upshot, the regulations also confer a benefit of sorts on charities. Although a permit is necessary to mine or remove material from the lands regulated by the statute, charities are exempt from the fee that is normally required to be paid to acquire such a permit.⁶⁰

⁵⁶ See Part III.

⁵⁷ See subs. 65(1) of the *Canada Mining Regulations*, C.R.C., c. 1516.

⁵⁸ *Ibid.*

⁵⁹ See paragraph 65.1(10)(q) of the *Canada Mining Regulations*, C.R.C., c. 1516.

⁶⁰ See ss. 4 and 24 of the *Territorial Coal Regulations*, C.R.C., c. 1522 and s. 12 of the *Territorial Quarrying Regulations*, C.R.C., c. 1527.

Ontario Statutes

Athletics Control Act, R.S.O. 1990, c. A.34.

Subsection 5(1) of the *Athletics Control Act* provides that every person conducting a professional boxing or wrestling contest or exhibition must pay a tax calculated as a percentage (between 1 per cent and 5 per cent) of the gross receipts derived therefrom. Subsection 5(3) of the statute affords the Minister discretion to alter the amount payable where he or she is satisfied that the entire proceeds of the contest or exhibition will be applied for charitable purposes.

Cemeteries Act (Revised), R.S.O. 1990, c. C.4.

A cemetery may in some circumstances qualify as charitable at law. Such a cemetery must comply not only with the various requirements of general application to charities but also those of special application to cemeteries. In Ontario, the latter statutory requirements are set out in the *Cemeteries Act (Revised)*, which provides a detailed regime for the licensing and operating of a cemetery or crematorium.

Child and Family Services Act, R.S.O. 1990, c. C.11.

The *Child and Family Services Act* provides in subs. 193(2) that, except in the case of a children's aid society, a licence is necessary to place a child for adoption. Subsection 193(4) explicitly lists a "non-profit agency", defined in s. 192 as a non-share capital corporation with charitable objects, as being among the applicants who may qualify for such a licence.

City of Hamilton Act, 1999, S.O. 1999, c. 14, Sched. C.

The *City of Hamilton Act, 1999* establishes the general rule in s. 11.12 that authorization by the city is necessary to operate a "passenger transportation system" in the city. A specific exemption from this requirement is provided for buses operated by a charitable organization.⁶¹

City of Ottawa Act, 1999, S.O. 1999, c. 14, Sched. E.

The *City of Ottawa Act, 1999* sets out in s. 12.18 an analogous provision to that discussed above in the context of the *City of Hamilton Act, 1999*. In particular, s. 12.18 establishes the general rule that authorization by the city is necessary to operate a "passenger transportation system" in the city, but provides a specific exemption for buses operated by a charitable organization.⁶²

Conservation Land Act, R.S.O. 1990, c. C.28.

The *Conservation Land Act* contains various provisions that enhance the capacity of "conservation bodies" to encourage and support responsible, environmental

⁶¹ See paragraph 11.12(2)2.

⁶² See paragraph 12.18(2)1.

stewardship. The statute is of interest to charities inasmuch as subs. 3(1) defines “conservation body” to include registered charities designated as charitable foundations under the *Income Tax Act* (Canada).⁶³

Consumer Protection Act, 2002, S.O. 2002, c. 30, Sched. A.

The *Consumer Protection Act, 2002* establishes in Part IV rules applicable to contracts for the provision of “personal development services”, which is defined in subs. 20(1). Subsection 29(2) explicitly provides that the rules do not apply where the personal development services are provided by a charity.

Crown Foundations Act, 1996, S.O. 1996, c. 22.

The *Crown Foundations Act, 1996* allows the Lieutenant Governor in Council to establish by order foundations for the purpose of benefiting one or more “institutions”. The statute defines institutions to include certain categories of charities, including public hospitals, the Royal Ontario Museum and various other cultural organizations. The statute provides for the objects, powers and various other matters pertaining to the governance of such foundations.

Day Nurseries Act, R.S.O. 1990, c. D.2.

Section 6 of the *Day Nurseries Act* provides that, where the Minister of Community and Social Services is satisfied as to the capability of a corporation competently operating a day nursery, he may approve the corporation to receive government funding for that purpose. Regulations enacted under the statute specifically enumerate corporations with charitable objects as being among the limited corporations that may be approved under s. 6 of the statute.⁶⁴

Developmental Services Act, R.S.O. 1990, c. D.11.

The *Developmental Services Act* provides a legislative framework for the establishment, operation and funding of facilities providing services for persons with a “developmental disability”.⁶⁵ Section 35.1 of the statute identifies charitable corporations as the kind of corporation with which a regional municipality may “enter into an agreement” for the construction and operation of such a facility.

Discriminatory Business Practices Act, R.S.O. 1990, c. D.12.

The *Discriminatory Business Practices Act* prohibits in subs. 5(1) any person in Ontario from engaging in a “discriminatory business practice”.⁶⁶ In an apparent recognition of the fact that a person’s involvement in charitable work will often

⁶³ See also s. 1 of the *Conservation Land Act*, Ontario Regulation 293/03, which prescribes all registered charities created by statute to be conservation bodies.

⁶⁴ See s. 2 of the *Day Nurseries Act*, R.R.O. 1990, Reg. 262.

⁶⁵ “Developmental disability” is defined in s. 1.

⁶⁶ The statute does not define “discriminatory business practice”. It does, however, deem in s. 4 certain activities to be discriminatory business practices.

reflect personal attributes – discrimination in business on the basis of which is prohibited under the statute – subs. 5(5) prohibits seeking information about a person’s involvement in charitable activities for the purposes of engaging in a discriminatory business practice. Subsection 5(6) actually deems the collection of such information about a person to be for the purpose of engaging in a discriminatory practice until the contrary is established.

Elderly Persons’ Housing Aid Act, R.S.O. 1990, c. E.5.

The *Elderly Persons’ Housing Aid Act* seeks to provide provincial funding for the purpose of constructing and equipping low rental housing units for elderly persons. Corporations with charitable objects are explicitly enumerated in subs. 1(1) as being among the corporations to which the provincial government may disburse cash in furtherance of the statute’s purpose.

Employer Health Tax Act, R.S.O. 1990, c. E.11.

Every “employer” in Ontario is subject to employer health tax pursuant to the *Employer Health Tax Act*. The tax is calculated as a percentage of the “total Ontario remuneration” paid by an employer. There is no blanket exemption for charities. Subsection 2(4) of the *Employer Health Tax Act* explicitly states that exempt status under any other statute does not automatically result in an exemption from employer health tax. Nevertheless, a charity will in some circumstances be able to avail itself of a reduction of employer health tax. Section 5 of Ontario Regulation 319 enacted pursuant to the *Employer Health Tax Act* provides for relief from employer health tax for employers who are registered charities under the *Income Tax Act* (Canada) and who employ persons who work outside of Canada for a continuous period of at least 183 days.

Employment Standards Act, 2000, S.O. 2000, c. 41.

The *Employment Standards Act, 2000* establishes numerous rules governing employment relations in Ontario, including rules with respect to overtime pay (Part VIII), minimum wage (Part IX) and public holidays (Part XX). Regulations enacted under the *Employment Standards Act, 2000* provide for limited exemptions to certain of the rules established in the statute. By way of example, the rules with respect to overtime pay, minimum wage and public holidays do not apply to any person employed as a student in a recreational program operated by a registered charity.⁶⁷

Environmental Protection Act, R.S.O. 1990, c. E.9.

The *Environmental Protection Act* provides in section 9 that a “certificate of approval” is necessary to undertake certain specified activities that will result in the discharge of a contaminant into the environment. Regulations enacted under the

⁶⁷ See ss. 7, 8 and 9 of *Exemptions, Special Rules and Establishment of Minimum Wage*, O. Reg. 285/01. Note that the exemption only applies where the student’s employment is “directly connected with the recreational program”. Also, although Part XX of the statute imposes on directors liability for employee wages, s. 80 exempts directors of certain incorporated charities from this general rule.

statute provide an exception from this requirement where a contaminant discharging apparatus is being used for the preparation of food or beverages being sold or distributed in furtherance of a charitable purpose.⁶⁸

Financial Administration Act, R.S.O. 1990, c. F.12.

The *Financial Administration Act* establishes rules of general application governing, *inter alia*, the investment and disbursement of “public money” in Ontario. Section 6 of the statute explicitly authorizes the Minister of Finance to accept property received by way of gift or bequest for the permanent endowment of any charitable purpose in Ontario.

French Language Services Act, R.S.O. 1990, c. F.32.

The *French Language Services Act* provides in subs. 5(1) that a person has the right to receive a “service” in French from a “government agency”. Section 1 defines “government agency” broadly enough to include certain charities, namely, those designated as a “public service agency” under the regulations.⁶⁹

Highway Traffic Act, R.S.O. 1990, c. H.8.

The *Highway Traffic Act* requires in subs. 11.1(1) that every person who sells or transfers a used motor vehicle shall provide to the purchaser or transferee a “used vehicle information package”. In turn, subs. 11.1(3) of the statute provides that the purchaser or transferee of a used motor vehicle must provide a copy of the used vehicle information package to the Ministry of Transportation before obtaining a permit for the vehicle. Sections 2 and 3 of O. Reg. 601/93 enacted pursuant to the *Highway Traffic Act* provide an exemption from these requirements where a used vehicle is transferred to a charity for no consideration.

In addition, subs. 177(2) and (4) of the *Highway Traffic Act* provide that it is an offence to stop, attempt to stop or approach a vehicle while it is on a roadway for the purpose of selling a commodity or service to any person in the vehicle. Although the offence is arguably not worded in such a way to catch fundraising activities on roadways, subs. 177(3.1) makes explicitly clear that it is not an offence for registered charities to engage in fundraising on roadways with a maximum speed limit of 50 kilometres per hour.⁷⁰

Human Rights Code, R.S.O. 1990, c. H.19.

Membership and participation in charitable institutions is sometimes restricted on grounds that could be said to be discriminatory at law. A religious charity may, for example, restrict membership to adherents to a specific religion or a

⁶⁸ See subs. 1(1) of *Certificate of Approval Exemptions – Air*, O. Reg. 524/98.

⁶⁹ See O. Reg. 398/93 for a complete list of these institutions.

⁷⁰ A similar provision appears in the *Safe Streets Act, 1999*, S.O. 1999, c. 8 (discussed below) and in subs. 8(1) of the *City of Toronto Act, 1997 (No. 2)*, S.O. 1997, c. 26, which authorizes the Toronto Licensing Commission to establish days on which charities may solicit donations along the highways in Toronto.

denomination thereof. The Ontario *Human Rights Code* contains provisions (see, for example, s. 18) that expressly allow for such practices.

Liquor Licence Act, R.S.O. 1990, c. L.19.

Section 19 of the *Liquor Licence Act* allows for the issuance of a permit – a special occasion permit – authorizing the holder thereof to sell or serve liquor on a prescribed special occasion. Section 3 of O. Reg. 389/91 describes the circumstances that qualify for purposes of s. 19 of the statute as special occasions. Fundraising events and auctions conducted by registered charities under the *Income Tax Act* (Canada) are specifically enumerated. In turn, subs. 3(6) of Ontario Regulation 720 authorizes a manufacturer of liquor to give liquor to a registered charity holding a special occasion permit.

Lobbyists Registration Act, 1998, S.O. 1998, c. 27, Sched.

Ontario’s *Lobbyists Registration Act*, 1998 contains similar provisions to the federal *Lobbyists Registration Act* that apply in relation to lobbying directed at the Ontario government. In particular, certain persons who “lobby” “public office holders” in Ontario are required to file an annual return with the Ontario government. The persons required to file such returns include “consultant lobbyists” – basically, individuals who “lobby” on behalf of others for payment – who lobby on behalf of charities⁷¹ and charities that employ “in house lobbyists” – basically, individuals employed by charities where a significant part of such individuals’ duties involve lobbying.⁷²

In addition to complying with this statute, charities engaged in lobbying activities need to be mindful of the restrictions imposed upon them further to the so-called “doctrine of political purposes”.⁷³

Mining Tax Act, R.S.O. 1990, c. M.15.

The *Mining Tax Act* provides for a special tax payable by the “operator” of a mine. The tax is levied as a percentage of the operator’s profit as determined under the statute. Paragraph 3(5)(f) of the statute allows for the deduction of certain charitable donations for the purposes of calculating the operator’s profit.

Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sched. B.

The *Ontario Energy Board Act*, 1998 provides for unique treatment for certain charities. Subsection 79.1(14), for example, provides that a “distributor” shall make a payment of sorts to each “designated consumer” who held an account with

⁷¹ See s. 4 and the definitions of “lobby”, “organization” and “public office holder” in subs. 1(1).

⁷² See s. 6 and the definitions of “lobby”, “organization” and “public office holder” in subs. 1(1).

⁷³ For a description and critique of the doctrine, see A. Parachin, “Charity, Politics and Public Benefit”, Canadian Bar Association, *Fourth National Symposium on Charity Law* (Toronto: Ontario Bar Association Conference Centre, May 11, 2006).

the distributor on November 25, 2002. “Designated consumer” is defined in s. 56 to include registered charities.

Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A.

The *Personal Health Information Protection Act, 2004* establishes a statutory regime for the protection of “personal health information”. Section 32 of the statute provides that personal health information may be used for the purpose of fundraising activities so long as certain requirements are complied with. Section 10 of O. Reg. 329/04 enacted pursuant to the statute elaborates on these requirements.

Safe Streets Act, 1999, S.O. 1999, c. 8.

The *Safe Streets Act, 1999* has provisions similar to s. 177 of the *Highway Traffic Act* (described above). Subsections 3(2) and 5(1) of the *Safe Streets Act, 1999* make it an offence for a person to “solicit” another person in specific circumstances. The term “solicit” is defined broadly enough in section 1 to include fundraising activities. The specific circumstances in which solicitation is prohibited include along a “roadway”. Similar to subs. 177(3.1) of the *Highway Traffic Act*, subs. 3(3) of the statute makes it explicitly clear that it is not an offence for registered charities to engage in fundraising on roadways with a maximum speed limit of 50 kilometres per hour.⁷⁴

Securities Act, R.S.O. 1990, c. S.5.

Under the *Securities Act*, anyone who “trades” in “securities” is required to comply with various provisions, including a registration requirement. There is a limited exception from the registration requirement set out in paragraph 35(2)7 for securities issued by corporations organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes. This exception may have application to charities that have been incorporated as share capital corporations rather than as member based or non-share capital corporations.

Tenant Protection Act, 1997, S.O. 1997, c. 24.

The *Tenant Protection Act* establishes a legislative framework to regulate landlord-tenant relationships. The statute affords special treatment to certain charities in two ways. First, s. 3 completely exempts certain living accommodations from the scope of the statute. The list of exempted living accommodations includes those that will often be provided by charities in the course of carrying out charitable activities.⁷⁵ Second, subs. 5(1) exempts certain rental units from several of the

⁷⁴ A similar provision appears in subs. 8(1) of the *City of Toronto Act, 1997 (No. 2)*, S.O. 1997, c. 26, which authorizes the Toronto Licensing Commission to establish days on which charities may solicit donations along the highways in Toronto.

⁷⁵ See paragraphs 3(c),(e),(f),(g) and (l).

statute's provisions. The list of exempted rental units includes those that will often be operated in the course of carrying out charitable activities.⁷⁶

Tourism Act, R.S.O. 1990, c. T.16.

The *Tourism Act* establishes various statutory rules applicable to every "tourist establishment", defined broadly in s. 1 to include premises providing sleeping accommodations for the traveling public or for use of the public engaging in recreational activities. In order to exempt certain charities that would otherwise be subject to the *Tourism Act*, the definition of "tourist establishment" explicitly excludes certain charitable camps and not-for-profit clubs.

Others

Statutes Conferring, or Otherwise Facilitating Transfers of, Property to Charity.

A number of statutory enactments confer property to charity or otherwise facilitate such transfers. For example, several statutes depart from the foundational property law rule "*nemo dat qui non habet*" – he who hath cannot give – by authorizing a non-owner to transfer ownership to charity in certain circumstances. These circumstances include instances where statutes authorize the gifting to charity of property in a lost or abandoned article.⁷⁷ Other statutes authorize the gifting to charity of property in forfeited or state confiscated articles.⁷⁸ Certain

⁷⁶ See paragraphs 5(1)4 and 5. See also Part II of O. Reg. 194/98 enacted under the *Tenant Protection Act, 1997* for additional exemptions that could apply to certain charities.

⁷⁷ See, for example, s. 24 of the *Niagara Parks Act*, R.S.O. 1990, c. N.3, s. 15 of the *Provincial Parks Act*, R.S.O. 1990, c. P. 34, s. 27.1 of the *Public Lands Act*, R.S.O. 1990, c. P.43, s. 17 of the *St. Lawrence Parks Commission Act*, R.S.O. 1990, c. S.24, s. 3 of the *Airport Personal Property Disposal Regulations*, C.R.C., c. 1563 (enacted under the *Department of Transport Act*, R.S.C. 1985, c. T-18), and subs. 85(3), and s. 106 and s. 109 of the *Corrections and Conditional Release Regulations*, SOR/92-620 (enacted under the *Corrections and Conditional Release Act*, S.C. 1992, c. 20).

⁷⁸ See, for example, ss. 11 and 27 of the *Ministry of Correctional Services Act*, R.R.O. 1990, Reg. 778, s. 63 of the *Municipal Act, 2001*, S.O. 2001, c. 25, ss. 19 and 20 of the *Repair and Storage Liens Act*, R.S.O. 1990, c. R.25, s. 35 of the *Ontario Fishery Regulations, 1989*, SOR/89-83 (enacted under the *Fisheries Act*, R.S.C. 1985, c. F-14), ss. 28 and 30 of the *Canada Agricultural Products Act*, R.S.C. 1985, c. 20 (4th Supp.) (see also the accompanying regulations: ss. 37 and 38 of the *Egg Regulations*, C.R.C., c. 284, ss. 48 and 48.1 of the *Fresh Fruit and Vegetable Regulations*, C.R.C., c. 285, ss. 59 and 60 of the *Honey Regulations*, C.R.C., c. 287, ss. 81 and 81.1 of the *Dairy Products Regulations*, SOR/79-840, s. 17 of the *Livestock and Poultry Carcass Grading Regulations*, SOR/92-541, ss. 24 and 25 of the *Maple Products Regulations*, C.R.C., c. 289, ss. 28 and 29 of the *Processed Egg Regulations*, C.R.C., c. 290 and ss. 73 and 73.1 of the *Processed Products Regulations*, C.R.C., c. 291), s. 9 of the *Feeds Act*, R.S., 1985, c. F-9 (see also the accompanying regulations: subs. 37(5) of the *Feeds Regulations, 1983*, SOR/83-593), s. 9 of the *Fertilizers Act*, R.S.C. 1985, c. F-10 (see also the applicable regulations: subs. 24(5) of the *Fertilizers Regulations*,

other statutes direct or authorize the transfer of property to charity by way of distribution upon dissolution of certain corporations,⁷⁹ beneficiary designation⁸⁰ or otherwise.⁸¹

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.

C.R.C., c. 666), s. 12.9 of the *City of Ottawa Act, 1999*, S.O. 1999, c. 14, Sched. E. and s. 22 of *City of Toronto Act, 1997 (No. 2)*, S.O. 1997, c. 26.

⁷⁹ See, for example, subs. 58(3) of the *Animal Pedigree Act*, R.S.C. 1985, c. 8 (4th Supp.), s. 122 of the *Canada Co-Operatives Act*, S.C. 1998, c. 1, subss. 5(3.1) and 162(2) of the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35, subs. 2(2) of the *Day Nurseries Act*, R.R.O. 1990, Reg. 262, s. 6 of the *Labour Relations Act, 1995*, O. Reg. 187/93.

⁸⁰ See, for example, subs. 54(3) of the *Canadian Forces Superannuation Regulations*, C.R.C., c. 396 (enacted under the *Canadian Forces Superannuation Act*, R.S.C. 1985, c. C-17) and subs. 31(5) of the *Royal Canadian Mounted Police Superannuation Regulations*, C.R.C., c. 1393 (enacted under the *Royal Canadian Mounted Police Superannuation Act*, R.S.C. 1985, c. R-11).

⁸¹ Subs. 52(1) of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A provides that employees who object to joining a union or paying union dues on religious grounds may be permitted to instead make equivalent donations to a charity. Similar provisions appear in subs. 53(2) of the *Colleges Collective Bargaining Act*, R.S.O. 1990, c. C.15 and subs. 70(2) of the *Canada Labour Code*, R.S.C. 1985, c. L-2. Also, subs. 215(1) of the *Canada Corporations Act*, R.S.C. 1970, c. C-32 provides that certain corporate bodies created otherwise than by letters patent have the power to “subscribe or guarantee money for charitable or benevolent objects”.

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, Sched. the administration of the *Gaming Control Act, 1992* and the regulations enacted 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, Sched. L.

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 *Local Health System Integration Act, 2006*, S.O. 2006, c. 4, the *Public Hospitals Act*, R.S.O. 1990, c. P.40, the *Private Hospitals Act*, R.S.O. 1990, c. P.24, the *Charitable Institutions Act*, R.S.O. 1990, c. C.9, the *Nursing Homes Act*, R.S.O. 1990, c. N.7, the *Independent Health Facilities Act*, R.S.O. 1990, c. I.3, the *Homes for the Aged and Rest Homes Act*, R.S.O. 1990, c. H.13, the *Community Psychiatric Hospitals Act*, R.S.O. 1990, c. C.21, the *Homes for Special Care Act*, R.S.O. 1990, c. H.12, the *Long-Term Care Act, 1994*, S.O. 1994, c. 26, the *Elderly Persons Centres Act*, R.S.O. 1990, c. E.4, the *Medical Radiation Technology Act, 1991*, S.O. 1991, c. 29 and the *Mental Health Act*, R.S.O. 1990, c. M.7

Statutory Regime Relating to Means Tested Public Assistance and Other Government Benefits.

Provincial statutes providing for means tested public assistance contain provisions that outline in detail how eligibility for such public assistance is to be determined. These provisions include formulas for calculating the income of applicants. It will be of interest for many charities to know that several statutes exclude (in whole or in part) from an applicant's income donations received by him or her from a charity. The result is that the receipt by an applicant of assistance from a charity may not disqualify him or her from public assistance. See, for example, s. 43 of the *Ontario Disability Support Program Act, 1997*, O. Reg. 222/98, s. 54 of the *Ontario Works Act, 1997*, O. Reg. 134/98 and s. 50 of the *Social Housing Reform Act, 2000*, O. Reg. 298/01.

In addition, in an apparent effort to remove disincentives associated with participating in foreign charitable work, certain statutes providing for state benefits that

are contingent upon meeting residency requirements waive such requirements where extended absences from the jurisdiction are owing to participation in charitable activities. See, for example, s. 4 of the *Ontario Guaranteed Annual Income Act*, R.R.O. 1990, Reg. 874, which provides that absences from Ontario by a person for the purposes of his or her employment with an international charitable organization will not interrupt that person's residence in Ontario for purposes of determining eligibility for benefits under the *Ontario Guaranteed Annual Income Act*, R.S.O. 1990, c. O.17. See also subs. 21(5) of the *Old Age Security Regulations*, C.R.C., c. 1246, which sets out an analogous rule for purposes of determining eligibility for benefits under the *Old Age Security Act*, R.S.C. 1985, c. O-9.

Statutory Regime Applicable to Government Parks and Waterways.

The statutes regulating government parks and waterways contain various provisions that allow charities privileged access. Regulations enacted pursuant to s. 7.1 of the *Provincial Parks Act*, R.S.O. 1990, c. P.34, for example, allow certain charities to enter provincial parks for either no fee or for a reduced fee.⁸² Similarly, regulations enacted pursuant to the *Public Lands Act*, R.S.O. 1990, c. P.43 relax the rules relating to camping on Crown land as they apply to charities.⁸³ In addition, regulations enacted under the *Department of Transport Act*, R.S.C. 1985, c. T-18 allow for a permit to be issued free of charge authorizing a vessel operated by a charitable organization to pass through certain swing bridges and historic canals.⁸⁴

Certain other regulations make it explicitly clear that charities are not always given favourable treatment in respect of national parks. Regulations enacted under the *Canada National Parks Act*, S.C. 2000, c. 32 provide that no person shall carry on a "business" in a national park in Canada without a licence.⁸⁵ The definition of "business" explicitly includes fundraising and any undertaking – including activities performed on a non-profit basis – carried on in a national park by a charitable organization.⁸⁶

⁸² See ss. 34 and 36 of the *Provincial Parks Act*, R.R.O. 1990, Reg. 952.

⁸³ See subs. 2(1) of the *Public Lands Act*, O. Reg. 326/94. See also subs. 8(3) of the *Conservation Authorities Act*, R.R.O. 1990, Reg. 136.

⁸⁴ See subs. 34(3) and subs. 39(3) of the *Historic Canals Regulations*, SOR/93-220.

⁸⁵ See s. 3 of the *National Parks of Canada Businesses Regulations*, SOR/98-455.

⁸⁶ See s. 1 of the *National Parks of Canada Businesses Regulations*, SOR/98-455.

