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CHARITY & NFP LAW UPDATE

SEPTEMBER 2015

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Updating Charities and Not-For-Profits on recent legal developments and risk management considerations

SEPTEMBER 2015

SECTIONS

HIGHLIGHTS

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RECENT PUBLICATIONS AND NEWS RELEASES

ONCA Proclamation Delayed Yet Again

By Theresa L.M. Man

After having reported for almost a year that there were no updates on the implementation date for the Ontario *Not-for-Profit Corporations Act, 2010* ("ONCA"), we are finally pleased to report that the Ministry has announced a further update on this issue. However, the sad news is that the Ministry announced on September 17, 2015, that the ONCA will not come into effective for at least another 2 years!

Specifically, the Ministry announced that the ONCA cannot come into force until two things have happened "the Legislative Assembly passes a number of technical amendments to the legislation and related acts and (b) technology is upgraded to support these changes and improve service delivery". The Ministry further indicated that the "government is fully committed to bringing ONCA into force at the earliest opportunity and will provide the sector with at least 24 months' notice before proclamation." Once the ONCA is proclaimed, existing Part III *Corporations Act* not-for-profit corporations will have three years to transition under the ONCA.

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 By then, one wonders whether the rules in the ONCA made in light of the corporate landscape in 2010 would be out-of-date and thereby requiring further changes to meet their needs.

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

The recent announcement of the further delay is extremely disappointing to the sector.

With the implementation date being at least 2 years from now, many not-for-profit corporations continue to be left in corporate limbo, having to make the difficult decision whether to update their objects and by-laws as required to further their mission, or to keep waiting for the proclamation of the ONCA. In light of the recent announcement by the Ministry, corporations wanting to amend their by-laws or update their corporate objects should proceed to do so under the OCA, since there is no way of telling with certainty when the ONCA will be proclaimed.

Having the ONCA proclaimed as early as possible is certainly a priority for the sector. It is hoped that the government will move forward with tabling a new bill to amend the ONCA and then proclaim the ONCA as soon as possible. If upgrading Ministry technology to support electronic filing of documents under the ONCA is an issue, the sector would be better served by proclaiming the ONCA sooner rather than later and continuing to use paper filings after proclamation, followed by gradually phasing in the implementation of electronic filing once the system is ready.

Those interested in the progress of the ONCA are encouraged to monitor the Ministry's website for updates at http://www.sse.gov.on.ca/mcs/en/pages/not_for_profit.aspx.

CRA News

By Jacqueline M. Demczur

Syria Emergency Relief

On September 17, 2015 CRA published a notice on its charities page about the Syrian Relief fund. The Syria Emergency Relief Fund link outlines the Federal Government's plan to match each dollar raised by registered charities between September 12 and December 31, 2015. The Federal Government will set aside the funds and distribute them to support "experienced international and Canadian humanitarian organizations using established Foreign Affairs, Trade and Development Canada (DFATD) channels and procedures."

The criteria for individual donations is that they be monetary in nature, donated to a registered Canadian charity that is receiving donations in response to the Syrian crisis, and earmarked for that crisis. For donations made by an individual the donation cannot exceed $100,000.

Each registered charity must complete a Syria Emergency Relief Fund Declaration Form and it must be received by DFATD on or before January 15, 2016 for its donations to be counted. Furthermore, it will be up to the registered charities to prove that the donations comply with the conditions for individual donors, will be used in support of the humanitarian response to the Syrian crisis, and that donations will be declared to DFATD.

The dollar amount that the federal government will match is capped at 100 million dollars and will be set aside in a fund. This means that charities who raise money in support of humanitarian aid for Syria will not necessarily receive money from the federal government to carry out the said humanitarian work. Rather, the money will be administered by the government to its international and Canadian network of humanitarian organizations.

Other pages updated in connection with the Syrian Emergency relief fund are Giving to Charity: Information for Donors, and Applying for Registration (as a charity). The first page, Giving to Charities, provides educational material for donors interested in giving to charities. The second, Applying for Registration, provides educational information for organizations interested in becoming a registered charity. Both pages contain links in connection to assisting with disaster or humanitarian relief.

Fraudulent Tax Preparer Returned to Canada

On September 8, 2015 the CRA announced that Ms. Doreen Tennina, a former tax preparer, was extradited to Canada and is now serving a 10 year sentence for fraudulent evasion of tax. In her absence, Ms. Tennina was found guilty by the Superior Court of Justice (Oshawa) in May, 2015, and sentenced to the maximum of 10 years in jail. Ms. Tennina had fraudulently claimed carrying charges and charitable donations totalling $58,500,000 in 4,200 tax returns prepared on behalf of clients. In addition to her sentence, Ms. Tennina was ordered to pay a fine totalling $699,608.00 for failing to report income received by her company from the tax evasion scheme.

Legislation Update

By Terrance S. Carter

Zero Tolerance for Barbaric Cultural Practices Act

On June 18, 2015, the *Civil Marriage Act* was amended by the *Zero Tolerance for Barbaric Cultural Practices Act* (the "Act") to provide legal requirements for marriage including but not limited to "free and enlightened consent" of the two persons to be spouses. Where federal legislation was previously silent, leaving any restriction on minimum age for marriage open to be legislated for by individual provinces,

the *Civil Marriage Act* now specifies a minimum legal age for marriage of 16 years. Section 2.3 of the Act also now clarifies that no one may enter a new marriage until "every previous marriage has been dissolved." Correspondingly, subsection 5(3) was added to ease dissolution of a marriage by making a court order that declares a marriage to be null take effect on the day it was ordered, whether the court order is made in Canada or elsewhere.

The Act also amends several sections of the *Criminal Code of Canada*. Subsection 295 now makes it an indictable offence for anyone, being lawfully authorized to solemnize a marriage, to knowingly do so "in contravention of federal law or the laws of the province in which the marriage is solemnized." This amendment will be of interest to religious officials of churches, synagogues, temples, mosques and other religious bodies who are licensed to perform marriages. Additionally, newly added sections 293.1 and 293.2 create an indictable offence for "everyone" who celebrates, aids or participates in a marriage rite if one of the persons to be spouses is under 16 or has been forced into the marriage rite. Subsection 810.02 also provides that any person, on reasonable grounds, may lay information before a provincial court judge if they fear that a person has or is going to commit an offence of forced marriage or marriage to a person under 16 years of age.

Proposed Amendment to the Ontario *Public Hospitals Act* Regulation 965

The Ontario Ministry of Health and Long-Term Care (the "Ministry") has released a set of proposed amendments to Regulation 965 (the "Regulation") of the *Public Hospitals Act*. In 2014, in response to concerns expressed by patients and families about the *Quality of Care Information Protection Act*, 2004 ("QCIPA"), which permits information sharing among health professionals with a view to improving care, a QCIPA Review Committee was established and produced a report with 12 recommendations, including amendments to the Regulation.

The proposed amendments are intended to augment the Regulation to promote accountability and transparency in the hospital system. For example, proposed section 1(3.1) would require that hospitals convene committees to review critical incidents as soon as practicable, and that the system established under section 3.1 be composed of at least one staff person responsible for patient relations (s. 1(3.2)). Sections 1(3.3) further specify that critical incident reviews should involve interviews with patients or, where a patient is deceased or incapacitated, with the patient's estate trustee and/or otherwise legally authorized representative. Proposed clause 2(5)(a.1) would also require that committees provide affected persons with descriptions of the causes of the critical incident.

The Ministry has requested that comments about these proposed amendments be submitted no later than November 2, 2015.

Employer Compliance with the Ontario AODA "Employment Standard"

Important compliance deadlines are approaching with regard to Ontario's Accessibility legislation. Pursuant to the *Accessibility for Ontarians with Disabilities Act* ("AODA"), "large" organizations (50 or more employees) must ensure compliance with the "Employment Standards" component of the AODA by January 1, 2016. In contrast, "small" organizations will have until January 1, 2017. These compliance requirements apply to both private sector and not-for-profit organizations and are already in effect for public sector organizations.

The AODA was introduced in 2005 with the goal of involving persons with disabilities while developing, implementing, and enforcing accessibility standards with respects to goods, services, facilities, accommodation, employment, buildings, structures, and premises. The "Employment Standards" component of the AODA focuses on finding, hiring and supporting employees with disabilities and is part of the corresponding *Integrated Accessibility Standards Regulation 191/11* (the "Regulation"). Among other requirements, the "Employment Standards" component of the AODA requires employers to modify hiring practices to accommodate disabilities (s. 23-24) and to document individual accommodation plans for employees with disabilities (s. 28). Section 4(1) of the Regulation also requires that public sector and large organizations "establish, implement, maintain and document multi-year accessibility plans". Failure to have the proper policies and procedures in place by the stipulated deadline may result in court orders, fines or penalties.

Ontario Not-For-Profit Corporations Act (ONCA) Update

On September 17, 2015, the Ontario Ministry of Government and Consumer Services (the "Ministry) released information about the status of the forthcoming Ontario *Not-for-Profit Corporations Act, 2010* ("ONCA"). The Ministry advised that it will give at least 24 months' notice to the sector before the ONCA is proclaimed. For more information, see "*ONCA Proclamation Delayed Yet Again*" by Theresa L. M. Man, above in this *Charity & NFP Law Update*.

CRA's Revocation of Municipal Determination Reasonable

By Linsey E.C. Rains

On June 9, 2015, the Federal Court heard an application by the Union of Municipalities of New Brunswick brought under section 18.1 of the Federal Courts Act for judicial review of a Canada Revenue Agency

("CRA") decision to revoke the applicant's municipal determination pursuant to paragraph 123(1)(b) of the Excise Tax Act ("ETA"). The Court rendered its decision, *The Union of Municipalities of New Brunswick v Canada (National Revenue)*, one week later and dismissed the application.

Paragraph 123(1)(b) of the ETA allows the Minister of National Revenue ("Minister") to determine whether a local authority is a municipality for the purposes of the public service body rebate. Although previously determined to be a municipality by the Minister, the applicant's determination was revoked following a change in CRA's review and oversight process for municipal determinations. The applicant alleged the Minister's determination was erroneous and did not observe the duty of procedural fairness. The standard of review for the former is reasonableness and the latter correctness.

The Minister's determination meet the threshold for reasonableness because "the decision-maker reasonably concluded that UMNB should not obtain a municipal determination in light of the totality of the eligibility criteria and the Minister's tax policy objectives."

The Judge found the applicant's allegations of procedural fairness were "wholly without merit," but gave some credence to its complaint that CRA should have disclosed the changes to its review and oversight process. In particular, the Judge noted that disclosure may well be a "best practice," even though CRA was under no legal obligation to disclose. Accordingly, it will be interesting to watch and see whether CRA will take note of the Court's comment and in the spirit of transparency increase its disclosure when making future changes to its review and oversight processes related to other determinations under the ETA, such as determinations of provincial residency for GST/HST purposes or registered charity status under the Income Tax Act.

CRA Expands Meaning of Partisan Political Activities

By Jennifer M Leddy

In the July/August 2015 *Charity and Not for Profit Law Update*, it was noted that CRA published on August 21, 2015 an Advisory on Partisan Political Activities which reflects an expanding definition of partisan political activities to include "criticising or praising the performance of a candidate or political party."

CRA's 2003 Policy Statement on Political Activities (CPS-022) defined partisan political activities in accordance with sections 6.1 and 6.2 of the *Income Tax Act* as "the direct or indirect support of, or opposition to, any political party or candidate for public office." Subsequent Advisories on partisan

political activities, typically issued prior to election campaigns, provided helpful examples of activities that would be considered partisan activities. To our knowledge, the 2015 Advisory is the first time that the example of "criticising or praising the performance of a candidate or political party" (emphasis added) was included in an Advisory on Partisan Political Activities. However, it was included as an example of partisan political activities at the end of a long informal Charities Program Update posted on the CRA website in April 2015, which provided that "When a charity praises or criticizes the performance of an elected representative, it may be seen as indirectly supporting or opposing the representative's political party" (emphasis added). The Advisory and Charities Program Update have ramifications both for the election and beyond the election campaign, because they apply to both "candidates" and "elected representatives," as well as "political parties."

The CRA 2003 Policy Statement on Political Activities provides in section 7.3 that communicating with an elected representative or public official is considered to be charitable "even if the charity explicitly advocates that the law, policy, or decision or any level of government in Canada or a foreign country ought to be retained, opposed, or changed." In these circumstances, the charity may also release the text of any representation to the elected representative or public official provided the entire text is released and there is no call to political action. It remains to be seen how this section of the Policy Statement will be interpreted in light of the recent Advisory on Partisan Political Activities and Charities Program Update, given that a representation to an elected official may include some criticism or praise of the representative's performance or existing legislation on an issue connected to the charity's purpose. For example, would that criticism or praise of performance be interpreted as direct or indirect support of a political party? To characterize "criticising or praising the performance of a candidate or political party" as a partisan political activity without further nuancing and reference to the Policy Statement provides an incomplete picture of what the Policy Statement and *Income Tax Act* allow charities to do, which could be confusing to charities.

The expanded definition may not be consistent with the *Code of Good Practice on Policy Dialogue* that arose out of the 2001 *Accord Between the Government of Canada and the Voluntary Sector*. The Policy Statement quotes the Code as follows: *The Government of Canada recognizes the need to engage the voluntary sector in open, informed and sustained dialogue in order that the sector may contribute its experience, expertise, knowledge and ideas in developing better policies and in the design and delivery of programs.* If charities may be limited in praising or criticizing the performance of candidates, elected

representatives, or political parties and related legislation to avoid appearing partisan, it raises questions about how they can contribute in a meaningful way to the development of public policy as envisioned by the *Accord* and *Code of Good Practice.*

Ontario Court of Appeal Denies Injunction against Church Homeless Shelter in Sarnia

By Ryan M Prendergast

On July 3, 2015 the Ontario Court of Appeal in *Sarnia (City) v River City Vineyard Christian Fellowship* overturned a Superior Court decision to grant an injunction against River City Vineyard Christian Fellowship ("RCVC") from operating a men's homeless shelter in the church basement. The Court ruled that under the relevant City of Sarnia ("the City") zoning By-law, River City was permitted the operation of a homeless shelter as it fell under "church-sponsored community activities and projects".

In 2006 RCVC began operating a men's homeless shelter known as Harbour Inn Mission in its church basement. Shortly after opening, the City informed RCVC that under its By-laws they were not permitted to operate a homeless shelter. RCVC entered into discussions with the City and a temporary use By-law was passed allowing the use of the operation of the men's shelter until a permanent men's homeless shelter was opened in the community. During that time, RCVC spent $100,000 to renovate its basement to bring the shelter up to proper standards. In 2010 a permanent men's shelter opened setting in motion the termination of RCVC's authorization to operate its shelter.

In 2011 RCVC applied to the City to permanently re-zone its property to allow the shelter which was denied by the council. RCVC, believing it was entitled to operate its shelter as part of the church, continued to run the shelter spurring the City to apply for an injunction. RCVC made a counter-application asking the Court for a declaration that the shelter did not violate the By-law. The applications judge granted the injunction which was overturned at the Court of Appeal.

The Court held that the lower court had erred in citing the City's By-law specifically prohibiting the operation of a "soup kitchen or food bank," as also extending to the operation of a shelter. The Court of Appeal upheld its position from *Lighthouse Niagara Resource Centre v Niagara Falls,* where a homeless shelter was held to be a "community activity." Consequently, the language "church-sponsored community activities and projects" in the City's By-law was, in the Courts view, broad enough to include the operation of the men's shelter. Therefore the operation of Harbour Inn Mission was read to be consistent with the By-law.

Interestingly, the Court was careful to emphasize that the words contained in By-laws, properly interpreted, have internal limits and are not to be read as a license for churches, and arguably other community organizations, to undertake whatever activities or projects they wish. While the application of the decision will likely be narrow given the specific By-law being interpreted, the reasons of the Court will likely be helpful in other municipalities where religious charities might be considering similar issues.

Federal Court Conditionally Certifies Privacy Class Action

By Sepal Bonni

On July 27, 2015, the Federal Court in *Doe v Her Majesty the Queen* conditionally certified a class action commenced on behalf of 40,000 individuals alleging that Health Canada violated their privacy rights. Charities and not-for-profits should consider this decision as a caution regarding how personal information is handled. The unauthorized disclosure of personal information may expose a charity or not-for-profit to significant liability under both common law and privacy legislation.

The proceeding arose from Health Canada's administration of the Marihuana Medical Access Program ("MMAP"). In this regard, Health Canada sent notices to participants of MMAP to advise of changes to regulations regarding the use of medical marijuana in Canada. The plaintiffs claim that they received oversized envelopes from Health Canada in the mail with the words "Marihuana Medical Access Program" included in the return address, visible to individuals. They alleged that this public disclosure had an adverse impact on their lives because it revealed their association with the MMAP and that Health Canada's previous mailings were discreet and made no mention of the MMAP on the outside of the envelope.

Most notably, the Court in this decision not only certified the recently recognized tort of intrusion upon seclusion (or invasion of privacy), but also certified the tort of "publicity given to private life" which the Court held is very novel tort in Canada, but it seems to expand on the tort of intrusion upon seclusion and involves "[o]ne who gives publicity to a matter concerning the private life of another is subject to liability to the other for his invasion of his privacy, if the matter publicized is of a kind that: a) would be highly offensive to a reasonable person, and b) is not of legitimate concern to the public." This tort is recognized in the United States, but remains untested in Canada.

Over the last year, several class actions for privacy breaches have been certified by the Federal Court. This recent trend in privacy class actions confirms that privacy breaches may expose organizations to damages. Whether or not this proceeding will alter the privacy law landscape remains to be seen. As the

area of privacy law is rapidly evolving in Canada, charities and not-for-profits should continue to monitor these litigation trends and take proactive measures to mitigate any potential risks, including employing robust security systems, developing and implementing privacy policies in conjunction with legal counsel, and training employees regarding personal information handling practices.

CRTC Issues Enforcement Advisory and Additional Guidance on CASL

By Ryan M. Prendergast

On September 4, 2015, the Canadian Radio-Television and Telecommunications Commission ("CRTC") issued an enforcement advisory to individuals in the professional training service industry. In this regard, the advisory noted that, "Commission staff has observed that some professional training service businesses are sending commercial electronic messages (CEMs) to lists of emails gathered from public websites." As such, the purpose of the enforcement advisory was to remind those involved in the professional training industry that the requirements are under Canada's Anti-spam Legislation ("CASL").

While an advisory tailored to a specific industry may not necessarily have application to registered charities and other not-for-profits, the CRTC also issued additional guidance in the form of a new webpage on the CRTC's website concerning implied consent. The webpage provides summaries concerning the CRTCs position on the following topics:

- What's the difference between express and implied consent?
- What if the recipient asks to stop receiving CEMs?
- What happens to consent if my business is sold?
- What is an existing business relationship (EBR)?
- Examples of how an existing business relationship can or cannot be used as implied consent
- What is an existing non-business relationship?
- Does an existing business or non-business relationship have to be created before July 1st, 2014 or can it be created at any time between July 1st, 2014 and July 1st, 2017 for the transitional period to apply?
- Can I send CEMs to an email address I find online?
- How can I prove I have consent?
- What records should I be keeping?

While most of the information provided is not new, the examples provided by the CRTC will be very helpful to both commercial enterprises as well as charities and not-for-profits in understanding certain portions of CASL that are less well understood. For example, while many organizations and individuals seek to rely on implied consent arising from an individual having his/her email conspicuously published to send that individual a CEM, it is often forgotten that the CEM must also be relevant to the recipient's business, role, functions, or duties in a business or official capacity. In addition, the summary of records which organizations should be keeping to evidence their compliance with CASL will also be of interest to registered charities and not-for-profits.

Privacy Commissioners Issue "Bring Your Own Device" Guidelines

By Sepal Bonni

In August 2015, the Privacy Commissioners of Canada, British Columbia and Alberta (The "Commissioners") issued a joint guideline entitled, "Is a Bring Your Own Device (BYOD) Program the Right Choice for your Organization? Privacy and Security Risks of a BYOD Program" (The "Guideline"). The Guideline addresses concerns about the protection of sensitive information for organizations that are contemplating BYOD programs for employees and provides assessment plans and protocols for mitigating security risks.

The Guideline describes BYOD as "an arrangement whereby an organization authorizes its employees to use personal mobile devices, such as smartphones and tablets, for both personal and business purposes." The Guideline first addresses the importance of senior management fully committing to risk assessment in order that the proper strategies are implemented from a top down perspective. This is to be accomplished through the implementation of Privacy Impact Assessments and Threat Risk Assessments aimed at the collection, use, disclosure, storage and retention of personal information.

Implementation of a BYOD program is to clearly establish responsibilities and expectations of BYOD users and the Guideline recommends that pilot tests and ample training programming precede this. Moreover, a formal incident management process should be developed for potential security incidents. Among other issues, the Guideline also discusses the importance of implementing encryption practices, application management and containerization, which is a mitigation strategy whereby personal and professional use of devices is divided between different "containers."

BYOD programs may be of particular interest to charities and not-for-profits because budgetary constraints often limit the ability of these organizations to upgrade hardware regularly. As such, charities

and not-for-profits should familiarize themselves with the Guideline and recognize that although the use of personal devices by employees or volunteers may help to overcome budgetary obstacles, there are still significant risks that need to be considered.

Teens awarded compensation for religious discrimination in the workplace

By Barry Kwasniewski, *Charity & NFP Bulletin No. 371*

In *HT v ES Holdings Inc. o/a Country Herbs* ("Country Herbs"), the Ontario Human Rights Tribunal (the "Tribunal") considered the discrimination complaints of two teenaged employees (ages 14 and 16 at the time) who alleged that they were fired for refusing to work on a religious holiday. In its decision released on August 11, 2015, the Tribunal held that Country Herbs failed to reasonably accommodate the teenaged employees' request for time off for religious observance. The two employees were awarded $26,117 in compensation for lost wages and injury to dignity, feelings and self-respect, and reprisal.

There are relatively few cases that deal with discrimination based on religious creed, and the decision of the Tribunal in this case is a reminder to employers of the importance of reasonable religious accommodation. In the absence of proof of undue hardship, employees who are terminated for observing religious holidays without evidence of proper accommodation from their employers may be found to have suffered discrimination under the Ontario *Human Rights Code* ("*Code*"). Should this happen, employers may be liable to substantial monetary awards against them, as well as other orders as permitted by the *Code*.

For more information about this case see *Charity & NFP Bulletin No. 371*.

Rights of Shareholders of Ontario Social Clubs

By Theresa L.M. Man, *Charity & NFP Bulletin No. 372*

On September 14, 2015, the Ontario Court of Appeal released its decision in *Pruner v Ottawa Hunt and Golf Club, Limited*, in which the Court dismissed the appeal by Mr. Pruner, a member of the Ottawa Hunt and Golf Club's (the "Club"). The Court held that Mr. Pruner is not entitled to keep his voting Class B share if he wants to transfer from being a Fully Privileged Golfing Member to a Senior Social Member. Furthermore, the Court dealt with a jurisdictional issue involving orders under the Ontario *Corporations Act* (the "OCA").

For more information about this case see *Charity & NFP Bulletin No. 372*.

Employers could be required to self-audit under Ontario ESA legislation

By Barry Kwasniewski

As of May 20, 2015, employers in Ontario regulated by the *Employment Standards Act, 2000* (the "ESA") can be required by an employment standards officer ("Officer"), to conduct a self-audit of their own ESA compliance. The newly enacted section 91.1 of the ESA authorizes an Officer to issue a notice to employers requiring them to examine and report to an Officer whether or not they comply with the ESA.

The assessments that employers can be required to make under s. 91.1 include: whether or not there are outstanding wages owed to any employees, the amount and to whom the wages are owed, and an explanation of how the wages owed to the employee(s) was determined. Moreover, a notice may require an employer to assess whether or not they are in compliance with the ESA as a whole, and require that the employer pay if the employer's assessment determines that wages are owed to one or more employees.

Further, s. 91.1 (10) stipulates that an Officer may conduct his or her own investigation even if it overlaps the reported period of the self-audit. If an employer reports non-compliance through the self-audit, or an Officer discovers non-compliance through investigation, the employer may be subject to an order for compliance under sections 103 or 108 of the ESA.

A notice received under section 91.1 is a relatively serious matter from an employer's standpoint, as it requires that employers will potentially have to report its own breaches of the ESA to the Ministry of Labour. Section 91.1 (11) also prohibits providing any self-audit report that the employer knows to be false or misleading. Employer actions in violation of s. 91.1 (11) may lead to prosecutions of the employer, including its officers and directors, under s. 131 of the ESA. Such prosecutions could lead to the imposition of substantial fines under the ESA.

With this new section of the ESA now in force, there is one more reason why it is important for charities and not-for-profits to ensure that they are in compliance with ESA minimum standards.

DOF Response to FATF Recommendations

By Terrance S. Carter, Nancy E. Claridge, and Sean S. Carter, *Anti-Terrorism and Charity Law Bulletin No. 43*

Canada's Department of Finance released its Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada (The "Report") on July 31, 2015. The Report is a response to Financial Action Task Force ("FATF") standards and recommendations that encourage member countries to conduct internal assessments of money laundering and terrorism-financing risks. These guidelines are

published in International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations. The FATF is an international organization responsible for setting and monitoring international standards for combatting money laundering and the financing of terrorism. The Report will constitute part of the FATF Mutual Evaluation of Canada, which will take place in October/November 2015, and is also intended to communicate risk information to entities, such as financial institutions, that have reporting requirements pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("PCMLTFA").

See *Anti-Terrorism and Charity Law Bulletin No. 43* for the balance of the discussion on the DOF Report.

United States Partner Vetting System Publishes Final Rule

By Nancy E. Claridge

Effective July 27, 2015, a final rule on Partner Vetting in United States Agency for International Development ("USAID") assistance was published in The Daily Journal of the United States Government. The purpose of the Partner Vetting System's (The "PVS") is to vet "key individuals" of entities applying for USAID or State Department contracts or grants to ensure that USAID and State Department funds do not inadvertently benefit terrorists or their supporters. Under the PVS pilot program, the U.S. government will collect personal information and vet this information against public and U.S. government databases, including secret national security databases. While the initial proposal for the pilot program will be conducted in Kenya, Guatemala, Lebanon, Philippines and Ukraine, USAID reports that it has legal authority to conduct vetting outside of the PVS pilot program in high-risk environments like Afghanistan.

The most notable aspect of USAID's new rule is the definition of key individuals. Key individuals are defined in the rule as principal officers, deputy officers, program managers or chief of the US government financed program and "any other person with significant responsibilities for administration of the activities or resources" funded through US government finances. This includes "key personnel" defined as individuals identified for approval as part of substantial involvement in a cooperative agreement and essential to the successful implementation of an award. What is more, vetting may be conducted on an ongoing basis where key individuals, personnel or circumstances change, widening the ambit of partners vetted by the pilot program.

While the Risk Based Assessment parameters to PVS are left unclear in the rule, it is worth noting that it is not USAID's intention to prevent immediate delivery of goods and services in an humanitarian crisis. Accordingly, following the stabilization of a crisis, vetting may occur on a case-by-case basis. Charities

and not-for-profit organizations seeking out USAID partnerships or funding should be aware that this rule directly affects their employees and any personnel who might have some responsibility in administering the activities involving US government funding.

IN THE PRESS

Charity Law Update – July/August 2015 (Carters Professional Corporation) was featured on TaxNet Pro and is available to those who have login privileges. Future postings of the *Charity Law Update* will be featured in upcoming posts.

Imagine Canada Releases Paper on Charities as an Economic Sector by Jennifer M. Leddy, *AFP eWire Canada* – August 30, 2015.

Rolling Out Now! — Protect Your Online Presence With New Domains by Sepal Bonni, *CSAE Forum Magazine* – June 5, 2015

UPCOMING EVENTS AND PRESENTATIONS

2015 Christian Legal Fellowship (CLF) National Conference will include a session entitled "Charity Law Update" on September 25, 2015, presented by Terrance S. Carter in Mississauga, Ontario.

ATRI Conference 2015 will include two sessions entitled "Preparing for and Surviving a CRA Audit" on September 26 and 27, 2015, presented by Terrance Carter in Saskatoon, Saskatchewan.

2015 Fall Series - Your Guide to Holding Meetings 101: "Learning to Do It Right", a four-part series of webinars hosted by Imagine Canada Sector Source:

- **Getting Ready 101: Considerations Before Calling a Board or Members' Meeting** presented by Terrance S. Carter on October 1, 2015 at 1:00 pm
- **Board Meetings 101: Avoiding Directors' Tribulations** presented by Theresa L.M. Man on October 29, 2015 at 1:00 pm
- **Members' Meetings 101: Avoiding Members' Machinations** presented by Jacqueline M. Demczur on November 26, 2015 at 1:00 pm
- **Meeting Minutes 101: Getting it Down Right and Keeping it There** presented by Ryan M. Prendergast on December 10, 2015 at 1:00 pm

London Estate Planners, London, Ontario will host a session entitled "Legal Issues in Managing Endowed Funds" on Monday, October 19, 2015, presented by Terrance Carter in London, Ontario.

BDO Canada Ltd. will host a morning session on October 21, 2015 with a session entitled "Directors' and Officers' Duties and Liabilities: What You Need to Know" presented by Terrance S. Carter. More details will be available shortly.

Older Adult Centres Association of Ontario (OACAO) Annual Conference will be held on October 27, 2015 with a session entitled "Basic Legal Risk Management for Charities and Non-Profits" presented by Terrance S. Carter in Mississauga, Ontario.

22nd Annual Church & Charity Law™ Seminar hosted by Carters Professional Corporation in Greater Toronto, Ontario, on **Thursday November 12, 2015**
Brochure and online registration available on our website

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Tom Baker - Mr. Baker graduated from Osgoode Hall Law School and commenced his articles at Carters Professional Corporation in 2015. Prior to law school, he completed Bachelor degrees in Classical Studies and Psychology, as well as a Master's degree in Classical literature. He has published several scholarly articles in academic journals and was an associate editor for the *Osgoode Hall Law Journal*. During law school, he completed the mediation intensive program and was an executive member of the Entertainment and Sports Law Association. He also represented Osgoode in trial advocacy competitions at both the provincial and national levels.

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ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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