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CHARITY & NFP LAW UPDATE

JULY/AUGUST 2016

EDITOR: TERRANCE S. CARTER; ASSISTANT EDITOR: NANCY E. CLARIDGE

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

JULY/AUGUST 2016

SECTIONS

HIGHLIGHTS

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RECENT PUBLICATIONS AND NEWS RELEASES

FCA Holds That Prevention of Poverty is Not a Charitable Purpose

By Jacqueline M. Demczur and Terrance S. Carter, *Charity & NFP Law Bulletin* No. 390.

On June 24, 2016, the Federal Court of Appeal ("FCA") released its decision in *the Credit Counselling Services of Atlantic Canada Inc. v Minister of National Revenue* ("*Credit Counselling*") case, which was heard on April 28, 2016. The issue being reviewed in this decision was whether the activities carried on by Credit Counselling Services of Atlantic Canada Inc. (the "Appellant") "related to the 'prevention of poverty'" could be classified as "charitable activities for the purposes of the *Income Tax Act*" ("ITA"). Ultimately, the FCA found that the prevention of poverty object and related activities carried on by the Appellant were not charitable at law and dismissed its appeal, upholding the decision of the Minister of National Revenue ("the Minister") to confirm the annulment of the Appellant's charitable registration. This case is also important because it provides some indication concerning how courts will assess an annulment of charitable registration, as opposed to a revocation, and on what standard of review they will base their decision. Here the FCA confirmed that the Notice of Annulment of Registration (the "Notice of Annulment") issued to the Appellant by the Minister will be assessed by the same standards of review as a revocation of charitable registration.

For the balance of this Bulletin, please see Charity & NFP Law Bulletin No. 390

CRA News

By Esther S.J. Oh

Guidance Issued on the Requirements for Foreign Charities to become Qualified Donees

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

received the gift from Her Majesty. It should be noted that the guidance applies as of June 23, 2015 in accordance with the 2012 Federal Budget.

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

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

The Guideline states, in accordance with the *Income Tax Act*, that "[t]o be eligible for registration as a qualified donee, a foreign charity must:

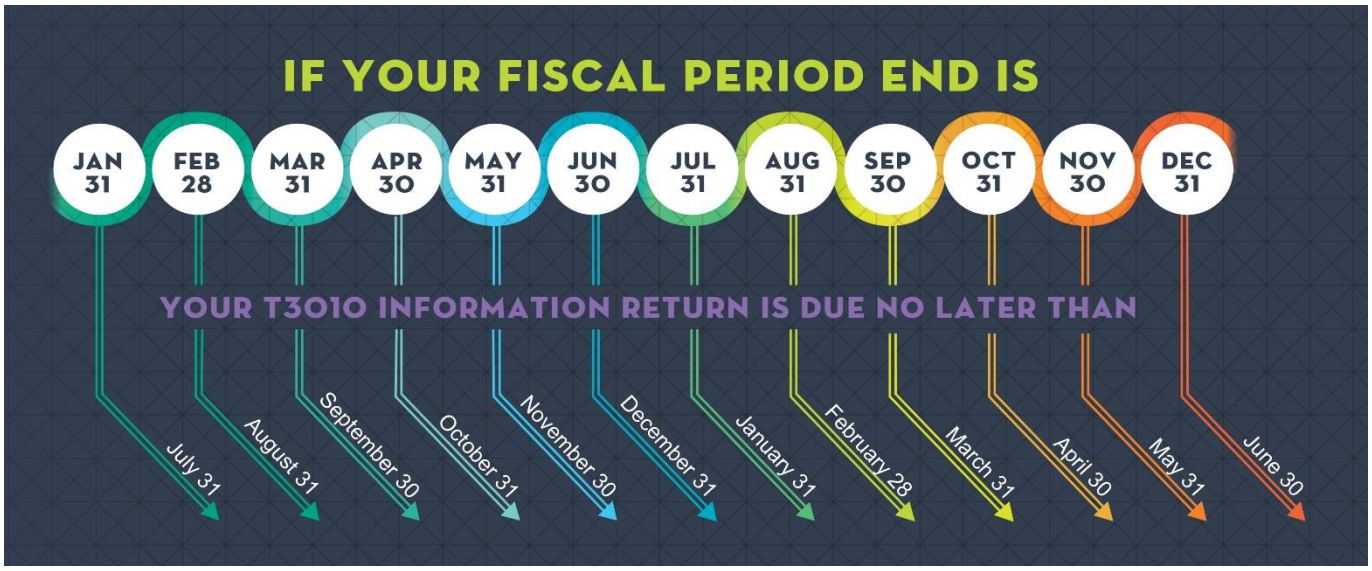
- be established or created outside Canada and not be resident in Canada;
- have exclusively charitable purposes and activities in accordance with applicable common law (i.e. court decisions);
- ensure that its income is not payable or otherwise available for the personal benefit of any owner, member, shareholder, trustee, or settlor of the organization;
- be the recipient of a gift from Her Majesty in right of Canada; and

- be undertaking at least one of the following at the time of the application:
    - relief activities in response to a disaster;
    - urgent humanitarian aid;
    - activities in the national interest of Canada."

For further information regarding the above or to review CG-023 please click here.

New Infographic to assist charities calculate when their T3010 is due each year

All charities are required to file an annual *Registered Charity Information Return* T3010 within six months of their fiscal year end. Late filing of the T3010 can result in loss of charitable status. To assist charities determine their filing deadline, CRA has published an infographic on its website which outlines the filing deadline for T3010 based on the fiscal year end of an organization. The CRA infographic has been reproduced below.



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

To view the new infographic or for further information on where other documents are to be sent reference can be made to the CRA website by clicking here

New Online Questionnaire to Help Potential Charity Registrants

CRA has released a new online questionnaire to guide organizations that may be considering whether or not they should apply for charitable status. The online questionnaire is very brief and general in nature and consists of six simple questions to educate organizations regarding certain basic requirements for charitable status. The questionnaire is intended to provide general information only and does not provide any specific advice.

To view the online questionnaire, please click here.

Length of Retention for Church Offering Envelopes Changes

On July 22, 2016, CRA published a statement outlining CRA's position on church offering envelopes. Effective as of the year 2016 church offering envelopes are now required to be kept for a period of six years from the end of the tax year to which the envelope relates. It should be noted that the new six year requirement also applies to church offering envelopes for the 2015 tax year. CRA's previous position was that church offering envelopes must be kept for two years after the year in which the envelope relates. CRA states that the above change has been made in order to reflect consistency with the provisions of the *Income Tax Act* which relate to retention of source documents. Further information on CRA requirements for charity books and records can be found here.

CRA Revokes Registration of ACTLAP Children's Foundation

CRA revoked the charitable status of the ACTLAP Children's Foundation ("ACF") effective July 9, 2016 following a CRA audit on the operations of ACF. The revocation was issued on the basis that ACF "operated primarily for the non-charitable purpose of furthering a tax shelter donation arrangement, the Pharma Gifts International Inc. program." In that regard, CRA found that ACF improperly issued receipts totalling over $64 million. The CRA audit found that "for the period of June 16, 2012 to June 15, 2014, ACF issued donation receipts for purported donations of cash and pharmaceuticals, which were not legitimate gifts and of the $1,724,814 in cash contributions it received, ACF paid $1,289,385 to the promoters of the tax shelter. Of the $62,315,818 million [*sic*] worth of tax receipts issued for the gifts of pharmaceuticals, CRA determined that the ACF significantly over-reported the value of the property, resulting in grossly inflated tax receipts to participants." In summary, the CRA audit found that ACF "issued receipts otherwise than in accordance with the Act and its Regulations, did not devote all its resources to charitable activities and failed to maintain proper books and records." The above case serves

as yet another warning in a number of cases that charities should have no involvement with tax shelters and promoters of tax shelters. The full news release issued by CRA on this case can be found here.

Legislation Update

By Terrance S. Carter

Draft Legislation Released Concerning Assessment of Taxes

On July 29, 2016, draft legislation was released proposing to amend subsection 152(9) of the *Income Tax Act* ("ITA") to allow the Minister of Revenue ("Minister") to advance an alternative basis or argument in support of "all or any portion of the total amount determined on assessment to be payable or remittable by a taxpayer under this Act." Some qualified donees, non-profit organizations ("NPOs"), and donors who plan to challenge the Minister's assessment might be affected. According to the Explanatory Notes, the proposed change would allow the Minister to increase or adjust "an amount included in the assessment that is under objection or appeal in respect of a particular source of income, provided that the total amount determined on assessment to be payable or remittable by a taxpayer under this Act does not increase." Similar amendments are proposed for the *Excise Tax Act* ("ETA") and *Excise Act, 2001*. The Department of Finance is holding public consultations on the amendments until September 27, 2016.

Draft legislation was also posted to amend subsection 225.1(2) of the ETA, which would alter the formula used to determine the net tax for a charity that is a registrant under the ETA. The Explanatory Notes state that the proposed amendment "sets out a streamlined accounting method by which registrants that are charities … calculate their net tax." Public consultation on this amendment ends on August 31, 2016.

Amendments to the *Ontario Lobbyists Registration Act* Come into Effect

On July 1, 2016, amendments to the *Ontario Lobbyists Registration Act, 1998* ("the Act") took effect, pursuant to the *Public Sector and MPP Transparency and Accountability Act, 2014*, which received Royal Assent on December 11, 2014. These amendments will also have application to charities and not-for-profits. In the Act, lobbying is defined as a paid individual communicating with a public office holder in order to influence a decision with regards to legislation, policy, programs, decisions of the Executive Council, or financial benefits from the Crown. A "consultant lobbyist" is an individual who, for payment, undertakes to lobby on behalf of a client, whereas "In-house lobbyist" is redefined in the Act to include any employee who spends at least 50 hours a year lobbying as part of their employment. The new threshold

for in-house lobbyist is significantly lower than the previous threshold, and corporations who employ someone who meets the threshold must register and file prescribed returns.

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

The timelines and contents of filing a return under the Act have also changed for lobbyists. Whereas in-house lobbyists working for a person or partnerships used to be required to file returns themselves, the duty is now placed on the senior officer of the in-house lobbyist's employer. The timeline for filing returns has also changed, and now must be filed within two months of starting as an in-house lobbyist and within 30 days before or after the six-month period after the last return. The list of information required for the return has also changed for both consultant and in-house lobbyists.

Proposed Ontario EHT Regulation Will Affect Registered Charities

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

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

The notice also indicates that the regulation would "end the preferential administrative practices that allow multiple exemptions at a single qualifying location." As well, registered charities would be required to file an annual return for each of its qualifying locations, and in some situations may be required to make monthly instalments of EHT, although this would not affect the amount of tax that a registered charity

would pay. The regulation, if it comes into force would be effective as of January 1, 2017. The full text of the notice is available online.

Any comments on the proposed regulation can to be submitted to the Ministry of Finance by October 19, 2016.

Liability for Costs for Taxpayers Involved in Donation Schemes Capped by Tax Court

By Linsey E.C. Rains

Following its October 19, 2015 decision in *Mariano v The Queen* (amended on November 23, 2015), the Tax Court of Canada released an Amended Amended Order and Amended Amended Reasons Respecting Submissions on Costs on August 13, 2016. The facts of the case are described in October 2015's *Charity & NFP Law Update* and relate to a charitable donation scheme. The taxpayers who participated in the scheme lost their appeals and the Court awarded costs to the Crown. The specific taxpayers who lost, i.e. the lead cases, five other taxpayers "who agreed to be bound by the decision in this matter" under Rule 146.1 of the *Tax Court of Canada Rules (General Procedure)* ("Rules"), the promoter of the scheme, and the Crown had "the opportunity to address the issue of costs."

As the proceedings were under the Court's General Procedure, the Court reviewed the general principles applicable to awarding costs under Rule 147. The Court also considered the quantum and reasonableness of the legal fees and expert witness fees claimed, who should pay, and how the costs should be allocated. The Court ultimately ordered the Crown's costs to be set at $491,136.95 minus certain expert witness fees that the Court found to be unnecessarily claimed by the Crown. Liability for costs is to be shared "jointly and severally" between the taxpayers and the promoter, i.e. the Crown has the discretion to pursue one or more of the parties for the entire amount. The Court further ordered that the taxpayers' liability would be capped, but "[t]here shall be no limit to the Promoter's liability for costs." Each taxpayer's liability "shall be limited to the proportion that their total Charitable Tax Credits claimed in respect of the Program for all years under appeal herein is to total of all Charitable Tax Credits claimed by all of them combined with respect to the Program for such years under appeal." Accordingly, taxpayers who become involved in similar donation schemes should be forewarned that although their potential liability for costs is not limitless, there is still a significant uncertainty as to the scope of financial risk.

Remember to Keep Consent Records – A CRTC Enforcement Advisory

By Ryan M. Prendergast

On July 27, 2016, the Canadian Radio-television and Telecommunications Commission ("CRTC") issued an Enforcement Advisory - Notice for businesses and individuals on how to keep records of consent ("the Advisory"). The Advisory applies to anyone sending commercial electronic messages ("CEMs") under Canada's anti-spam legislation, which can include registered charities and not-for-profit organizations. The Advisory includes a reminder that section 13 of Canada's anti-spam legislation ("CASL") requires the sender of a CEM to be able to prove that they had consent to send each message, even if the sender is relying on implied consent through an existing non-business relationship, e.g., a donation to a registered charity or membership in a "club, association, or voluntary organization". Because of this, the Advisory cautions senders to keep records of consent. In this regard, CRTC says "Senders of commercial electronic message should consider keeping a hard copy or an electronic record of, among others:

- all evidence of express and implied consent (e.g. audio recordings, copies of signed consent forms, completed electronic forms) from consumers who agree to receive CEMs
- documented methods through which consent was collected
- policies and procedures regarding CASL compliance
- all unsubscribe requests and resulting actions"

The Advisory also provides links to the CRTCs further guidance on corporate compliance programs, and on consent and how to prove consent.

Although many registered charities may be exempt from CASL where their electronic messages have a primary purpose of raising funds, those that do send CEMs need to be aware that it is incumbent on them to prove that they have consent to send a CEM. This means that a registered charity or not-for-profit organization sending a CEM relying on express or implied consent without a record of that consent will not be in compliance with CASL. As such, it is important for registered charities and not-for-profit organizations to review their record keeping requirements in relation to CASL.

Unfair Proxy Form for Members' Meeting Revised by Ontario Court

By Theresa L.M. Man

On August 4, 2016, the Ontario Superior Court of Justice released it decision with respect to the *Jacobs v Ontario Medical Association* ("*Jacobs*") case. This case is an interesting reminder to not-for-profit

corporations of the Court's willingness to intervene on procedural or substantive issues involving members' meetings to enable governance process to proceed in a proper and timely fashion. The case also shows the importance that proxy forms must be carefully drafted in a clear, balance and fair manner, so that it is helpful to members and proxyholders in their consideration of how to cast their votes at the meeting. The Court is also willing to intervene if a proxy would likely compromise the fair conduct of a meeting.

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

The Court disagreed with the Applicant members' submission that notice of the members' meeting contravened OMA' by-laws. The Court also refused the Applicant members' request to obtain a membership list that would include information about members' phone numbers including cellular phone numbers because the OMA has no obligation to provide such information. A membership list containing appropriate membership information (names, addresses and email addresses) had already been provided by the OMA. The Court also refused to appoint a neutral chair to preside over the meeting because a strong case for court intervention had not been made.

However, the Court ordered the proxy form circulated for the meeting be revised because it was "unhelpful, unclear, unbalanced, and unfair" and "is a catalyst for a governance meltdown at the upcoming general meeting." The proxy would likely compromise the fair conduct of the meeting.

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

(a) the proxyholder has been empowered by the proxy "to vote in accordance with the following direction (or if no directions have been given, as the proxyholder sees fit)";

(b) the notes to the proxy indicate that: "if such a direction is not made in respect of any matter and you have not appointed a person other than the persons whose names are printed herein, this proxy will be voted as recommended by OMA Management"; and "this proxy confers discretionary authority in respect of … amendments to matters identified in the Notice of Meeting or other matters that may properly come before the meeting."

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

The Court therefore ordered the proxy be revised by deleting the highlighted recommendation on how to vote on the PSA resolution, providing "for" and "against" options for all three resolutions, adding two directions to make it clear that a vote on one resolution does not preclude a vote on any of the other resolutions; and revising the language so that the proxyholders "are voting on matters of policy and not purporting to make findings of fact, findings of law, or findings of mixed fact and law, which are matters better addressed by a court."

The Court held that it has jurisdiction to vitiate a proxy (that does not allow a meeting to be fairly conducted) and ordered it be revised pursuant to section 297 the Ontario *Corporations Act*, which empowers the court to order a members' meeting and/or section 332 of the Act which provides a process by which members can force a corporation and/or its directors or officers to comply with their obligations under the Act.

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

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

Future Benefit to Charity Not Pertinent to Determination of Taxpayer Advantage

By Linsey E.C. Rains

On July 8, 2016, the Tax Court of Canada issued its decision in the informal procedure case of *Duguay c La Reine* ("Duguay"). The taxpayer appealed the Minister's disallowance of a claim for a charitable tax credit in relation to a receipt issued in the amount of $10,000 by a registered charity. The Minister disallowed the claim because the taxpayer received an advantage in excess of the value of his gift. The Court upheld the Minister's decision.

In particular, the taxpayer rented an apartment belonging to the charity, which he spent over $20,000 renovating. The charity reimbursed him $20,000. The taxpayer immediately donated $10,000 to the charity, pursuant to a verbal agreement with the charity. The agreement was to cover the cost of the renovations he would leave behind. However, because the taxpayer had the right to enjoy the renovations to his apartment at the time of the donation, the Court found that the donation was not given independently of the benefit of living in a newly renovated apartment and was caught by the *Income Tax Act's* ("ITA") rules relating to advantage. Subsection 248(31) of the ITA states that the amount of the gift is "the amount by which the fair market value of the property that is the subject of the gift or monetary contribution exceeds the amount of the advantage, if any, in respect of the gift or monetary contribution." Because the taxpayer had the advantage of living in the renovated space which surpassed the eligible value of the gift, there is no tax credit. Although the decision has no precedential value, it is interesting to note the Court found that the future benefit to the charity was not pertinent to the determination of the taxpayer's advantage.

Workplace Sexual Harassment Laws Soon To Be In Force

By Barry W. Kwasniewski, *Charity & NFP Law Bulletin* No. 389

On March 8, 2016, *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Violence and Harassment), 2016* ("the Act"), formerly Bill 132, received Royal Assent. The Act amends various Ontario statutes, including the *Compensation for Victims of Crime Act, Limitations Act, 2002, Ministry of Training, Colleges and Universities Act, Private Career Colleges Act, 2005* and the *Residential Tenancies Act, 2006*, as part of the Ontario government's plans to address sexual harassment. For employers, the most significant changes are contained in Schedule 4 of the Act, as there are important amendments to the *Occupational Health and Safety Act* ("OHSA") to specifically define and address sexual harassment in the workplace.

For the balance of this Bulletin, please see *Charity & NFP Law Bulletin* No. 389.

Ongoing Conflicting Decisions in Trinity Western Cases

By Jennifer M. Leddy

For the last three years, the accreditation of the proposed law school at Trinity Western University ("TWU") has been the focus of proceedings involving the Nova Scotia Barristers' Society ("NSBS"), the Law Society of Upper Canada ("LSUC") the Law Society of British Columbia (LSBC), before both the superior and appellate courts of those provinces.

TWU is a private evangelical Christian university. Students at TWU must sign a Community Covenant, based on their faith, which requires them to adhere to certain behavior, including abstaining from "sexual intimacy outside of marriage between a man and a woman." On December 16, 2013, the Federation of Law Societies of Canada accredited the TWU Law School. On December 17, 2013, the B.C. Government approved the granting of degrees to graduates of the proposed TWU law school. In December 2014 the B.C. Government revoked its approval of the law school following the decisions of the NSBS, LSUC and LSBC not to accredit the TWU proposed law school on the basis that the Community Covenant was discriminatory.

The decisions of all three Law Societies were appealed and the decisions of the superior courts of the three provinces were given in 2015. The Nova Scotia Supreme Court released its decision first on January 28, 2015 overturning the NSBS decision. The Ontario Superior Court of Justice (Divisional Court) followed on July 2, 2015 with a decision that upheld the LSUC decision to deny accreditation and the British

Columbia Supreme Court rounded out the year on December 12, 2015 quashing the decision of the LSBC to reject TWU's proposed school as an approved faculty of law. All of these decisions were appealed.

The appeal courts of Ontario and Nova Scotia recently released their decisions, with the Ontario Court of Appeal upholding the LSUC decision not to approve the TWU proposed Law School on June 29, 2016 in *Trinity Western University v The Law Society of Upper Canada* and the Nova Scotia Court of Appeal affirming the lower court's decision that the NSBS did not have the jurisdiction to refuse accreditation on July 26, 2016 in *The Nova Scotia Barristers' Society v Trinity Western University.* The British Columbia Court of Appeal heard arguments on June 3, 2016 but has not yet released its decision.

With conflicting decisions in two courts of appeal and another court decision expected soon, this matter is likely headed to the Supreme Court of Canada ("SCC"). Important issues will no doubt be addressed, including freedom of religion of individuals as well as institutions, balancing of equality rights, administrative law issues and whether the *Charter* even applies to a private university. As well, attention will be paid to how the SCC will deal with its previous decision in 2001 *Trinity Western University v British Columbia College of Teachers*, which approved TWU's Faculty of Education, notwithstanding the Community Covenant.

Anti-Terrorism & Money-Laundering Update

By Terrance S. Carter, Nancy E. Claridge and Sean S. Carter

Ontario Court Rules on The Justice for Victims of Terrorism Act

On June 9, 2016, the Ontario Superior Court of Justice released its decision in *Tracy v The Iranian Ministry of Information and Security* ("*Tracy*"), in which it dismissed motions brought by the Iranian Ministry of Information and Security ("MOIS") to stay previously issued orders from the court to seize Ontario-based assets. The property to be seized belonged to the Islamic Republic of Iran, MOIS, and the Islamic Revolutionary Guard Corps ("IRGC"), collectively identified by the court and here as "Iran" or "Iranian State Actors". The orders enforce a U.S. foreign judgment that ordered the seizure of $7 million worth of property belonging to Iran as damages to be paid to victims of terrorist attacks supported by Iran. The enforcement of orders against these types of assets and actors, which to date has failed in the U.S., is made possible by new Canadian legislation, namely the *Justice for Victims of Terrorism Act* ("JVTA"), that lifts the protection of diplomatic immunity for certain state actors involved in terrorism-related offences under the *Criminal Code*. For the balance of this Alert, please see *Anti-terrorism and Charity Law Alert* No. 45.

New Regulations Expand Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime

On June 17, 2016 the Governor General in Council issued an order creating the *Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2016* ("the PCTFA Regulations"), which was later amended by the *Regulations Amending the Regulation Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2016*. The second set of regulations, among other things, corrected an issue with the dates for the PCTFA Regulations to come into force. Different amendments are set to come into force on different dates, ranging from June 30, 2016 to July 17, 2017.

The Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") is Canada's financial intelligence unit which collects and disseminates information it receives from mandatory reporting entities and not only analyzes it, but shares it with domestic and law enforcement and intelligence agencies. FINTRAC has amended its guidelines to mirror and reflect the new PCTFA Regulations through bolstering identification requirements and other amendments.

In addition to the new FINTRAC guidelines and PCTFA Regulations, amendments have been made to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations* ("AMP Regulations"). The AMP Regulations are purportedly designed to improve compliance, monitoring, and enforcement efforts, for example expanding the authority of FINTRAC to impose administrative monetary penalties in addition to increasing the amount of information being shared. Both the AMP Regulations, FINTRAC guidelines and PCTFA Regulations have applicability to charities and not-for-profits, among others, for many reasons, including the increasing administrative penalties for non-compliance and strengthened regulations regarding the conduct of casino fundraisers by registered charities (as under the AMP Regulations).

In light of the burgeoning and robust regulatory regime and legislative initiatives to address terrorist financing and money laundering, charities and not-for-profits need to understand the extent of information which is being recorded, collected and shared regarding financial transactions and the implications that could have when that information is shared with law enforcement and regulatory agencies like Canada Revenue Agency.

Best Lawyers in Canada 2017

Terrance S. Carter, Theresa L.M. Man and Jacqueline M. Demczur of Carters Professional Corporation were again recognized as leaders in the area of Trusts and Estates Law in the Charity and Not-For-Profit Law subspecialty by the 2017 edition of *The Best Lawyers in Canada*. Terrance S. Carter has been recognized since 2006, Theresa L.M. Man has been recognized since 2011, and Jacqueline M. Demczur has been recognized since 2014.

IN THE PRESS

Charity & NFP Law Update – June 2016 (Carters Professional Corporation) was featured on *TaxNet Pro* and is available online to those who have subscription privileges. Future postings of the *Charity & NFP Law Update* will be featured in upcoming posts.

RECENT EVENTS AND PRESENTATIONS

11th Annual CSAE Trillium Chapter Summer Summit was held July 6 to 8, 2016 at Blue Mountain Resort, Ontario. Terrance S. Carter and Theresa L.M. Man presented on the topic "Considerations in Drafting a Books and Records Policy" on Thursday, July 7, 2016.

UPCOMING EVENTS AND PRESENTATIONS

ATRI Conference will be held on September 24 and 25, 2016, in Ottawa, Ontario. The following topics will be presented: *Where are we Headed? Freedom of Religion in the Courts* by Jennifer M. Leddy, and *Legal Issues Involving Investment Policies* by Terrance S. Carter.

The Orangeville Economic Development/SBEC and BDO Canada will host a small business seminar on October 25, 2016. Nancy Claridge will present *The Pros and Cons of Incorporating Your Business*.

Annual Estates and Trusts Summit will be hosted by the Law Society of Upper Canada on November 4, 2016. One of the topics is *Charity Law Update* to be presented by Theresa L.M. Man.

The 2016 Annual Church & Charity Law™ Seminar will be hosted by Carters Professional Corporation in Greater Toronto, Ontario, on **Thursday November 10, 2016**. Click here for the brochure and online registration.

CONTRIBUTORS

Editor: Terrance S. Carter
Assistant Editor: Nancy E. Claridge

Sepal Bonni, B.Sc., M.Sc., J.D., Trade-mark Agent - Called to the Ontario Bar in 2013, Ms. Bonni practices in the areas of intellectual property, privacy and information technology law. Prior to joining Carters, Ms. Bonni articled and practiced with a trade-mark firm in Ottawa. Ms. Bonni represents charities and not-for-profits in all aspects of domestic and foreign trade-mark prosecution before the Canadian Intellectual Property Office, as well as trade-mark portfolio reviews, maintenance and consultations. Ms. Bonni assists clients with privacy matters including the development of policies, counselling clients on cross-border data storage concerns, and providing guidance on compliance isues.

Terrance S. Carter, B.A., LL.B, TEP, Trade-mark Agent – Managing Partner of Carters, Mr. Carter practices in the area of charity and not-for-profit law, and is counsel to Fasken Martineau on charitable matters. Mr. Carter is a co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* (Carswell), a co-editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2016), and co-author of *Branding and Copyright for Charities and Non-Profit Organizations* (2014 LexisNexis Butterworths). He is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*, and is a Past Chair of the Canadian Bar Association and Ontario Bar Association Charities and Not-for-Profit Law Sections. He is editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorismlaw.ca.

Sean S. Carter, B.A., LL.B. – Sean Carter is a partner with Carters and the head of the litigation practice group at Carters. Sean has broad experience in civil litigation and joined Carters in 2012 after having articled with and been an associate with Fasken Martineau DuMoulin LLP (Toronto office) for three years. Sean has published extensively, co-authoring several articles and papers on anti-terrorism law, including publications in *The International Journal of Not-for-Profit Law*, *The Lawyers Weekly*, *Charity Law Bulletin* and the *Anti-Terrorism and Charity Law Alert*, as well as presentations to the Law Society of Upper Canada and Ontario Bar Association CLE learning programs.

Nancy E. Claridge, B.A., M.A., L.L.B. – Called to the Ontario Bar in 2006, Nancy Claridge is a partner with Carters practicing in the areas of charity, anti-terrorism, real estate, corporate and commercial law, and wills and estates, in addition to being the firm's research lawyer and assistant editor of *Charity Law Update*. After obtaining a Masters degree, she spent several years developing legal databases for LexisNexis Canada, before attending Osgoode Hall Law School where she was a Senior Editor of the *Osgoode Hall Law Journal*, Editor-in-Chief of the *Obiter Dicta* newspaper, and was awarded the Dean's Gold Key Award and Student Honour Award.

Bart Danko, B.Sc. (Hons.), M.E.S., J.D. – Mr. Danko was called to the Ontario Bar in 2015 following the successful completion of his articles at Carters. He now practices in corporate and commercial law, anti-terrorism law, real estate law, charity and not-for-profit law, and wills and estates. Mr. Danko obtained his Juris Doctor from Osgoode Hall Law School and a Master of Environmental Studies from York University. Prior to this, he graduated with a Bachelor of Sciences (Honors) from the University of Toronto, with High Distinction. In his free time, Mr. Danko volunteers with Peel Regional Police as an Auxiliary Constable.

Jacqueline M. Demczur, B.A., LL.B. – A partner with the firm, Ms. Demczur practices in charity and not-for-profit law, including incorporation, corporate restructuring, and legal risk management reviews. Ms. Demczur has been recognized as a leading expert in charity and not-for-profit law by *Lexpert* and *The Best Lawyers in Canada*. She is a contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*, and has written numerous articles on charity and not-for-profit issues for the *Lawyers Weekly*, *The Philanthropist* and *Charity Law Bulletin*, among others. Ms. Demczur is also a regular speaker at the annual *Church & Charity Law*™ Seminar.

Barry Kwasniewski, B.B.A., LL.B. – Mr. Kwasniewski joined Carters' Ottawa office in 2008 , becoming a partner in 2014, to practice in the areas of employment law, charity related litigation, and risk management. After practicing for many years as a litigation lawyer in Ottawa, Barry's focus is now on providing advice to charities and not-for-profits with respect to their employment and legal risk management issues. Barry has developed an expertise in insurance law, and provides legal opinions and advice pertaining to insurance coverage matters to charities and not-for-profits.

Jennifer Leddy, B.A., LL.B. – Ms. Leddy joined Carters' Ottawa office in 2009, becoming a partner in 2014, to practice charity and not-for-profit law following a career in both private practice and public policy. Ms. Leddy practiced with the Toronto office of Lang Michener prior to joining the staff of the Canadian Conference of Catholic Bishops (CCCB). In 2005, she returned to private practice until she went to the Charities Directorate of the Canada Revenue Agency in 2008 as part of a one year Interchange program, to work on the proposed "Guidelines on the Meaning of Advancement of Religion as a Charitable Purpose."

Theresa L.M. Man, B.Sc., M.Mus., LL.B., LL.M. – A partner with Carters, Ms. Man practices in the area of charity and not-for-profit law and is recognized as a leading expert by *Lexpert* and *Best Lawyers in Canada*. She is chair of the Executive of the Charity and Not-for-Profit Section of the OBA and an executive member of the CBA Charities and Not-for-Profit Law Section. In addition to being a frequent speaker, Ms. Man is co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* published by Carswell. She has also written articles for numerous publications, including *The Lawyers Weekly*, *The Philanthropist*, *Hilborn:ECS* and *Charity Law Bulletin*.

Esther S.J. Oh, B.A., LL.B. – A partner with Carters, Ms. Oh practices in charity and not-for-profit law, and is recognized as a leading expert in charity and not-for-profit law by *Lexpert*. Ms. Oh has written numerous articles on charity and not-for-profit legal issues, including incorporation and risk management for www.charitylaw.ca and the *Charity Law Bulletin*. Ms. Oh is a regular speaker at the annual *Church & Charity Law*™ Seminar, and has been an invited speaker to the Canadian Bar Association, Imagine Canada and various other organizations.

Ryan Prendergast, B.A., LL.B. - Called to the Ontario Bar in 2010, Mr. Prendergast joined Carters with a practice focus of providing corporate and tax advice to charities and non-profit organizations. Ryan is a regular speaker and author on the topic of directors' and officers' liability and on the topic of anti-spam compliance for registered charities and not-for-profit corporations, and has co-authored papers for the Law Society of Upper Canada. In addition, Ryan has contributed to *The Lawyers Weekly*, *Hilborn:ECS*, Ontario Bar Association *Charity & Not-for-Profit Law Section Newsletter, Charity Law Bulletins* and publications on www.charitylaw.ca.

Linsey E.C. Rains, B.A., J.D. - Called to the Ontario Bar in 2013, Ms. Rains joined Carters Ottawa office to practice charity and not-for-profit law with a focus on federal tax issues after more than a decade of employment with the Canada Revenue Agency (CRA). Having acquired considerable charity law experience as a Charities Officer, Senior Program Analyst, Technical Policy Advisor, and Policy Analyst with the CRA's Charities Directorate, Ms. Rains completed her articles with the Department of Justice's Tax Litigation Section and CRA Legal Services. Ms. Rains is also a student member of STEP Canada and the Ottawa Branch's student representative on the STEP Canada Student Liaison Committee.

Jessica Foote, J.D., B.B.A (Hons) – Ms. Foote graduated from Osgoode Hall Law School in 2016 with a Juris Doctor, and has earned an Honours Baccalaureate in Business Administration from the University of Guelph. Jessica was awarded the Women's Opportunity Award from Soroptimist International, as well as certificates from the Canadian Institute of Management, and for Business Studies with Honours. While attending law school, Jessica furthered her commitment to social justice by volunteering for the Family Law Project, and at a Criminal and Family Law firm. Prior to commencing her articles, Jessica gained legal experience working for a Personal Injury Law firm.

Tessa Woodland, J.D., B.Soc.Sci. (Hons) – Ms. Woodland graduated from Queen's University, Faculty of Law in 2016. While attending Queen's, Tessa interned with the Department of Justice's Judicial Affairs Section where she learned about policy creation, and researched domestic and international legal issues. Tessa completed the International Public Law program at the Bader International Study Centre during the summer between first and second year of law school. Prior to law school she studied in French Immersion at the University of Ottawa graduating magna cum laude with a Bachelor of Social Science (Honours) in Conflict Studies and Human Rights, with a minor in Global Affairs.

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CARTERS PROFESSIONAL CORPORATION
SOCIÉTÉ PROFESSIONNELLE CARTERS

PARTNERS:
Terrance S. Carter B.A., LL.B. tcarter@carters.ca
(Counsel to Fasken Martineau DuMoulin LLP)
Jane Burke-Robertson B.Soc.Sci., LL.B. (1960-2013)
Theresa L.M. Man B.Sc., M.Mus., LL.B., LL.M. tman@carters.ca
Jacqueline M. Demczur B.A., LL.B. jdemczur@carters.ca
Esther S.J. Oh B.A., LL.B. estheroh@carters.ca
Nancy E. Claridge B.A., M.A., LL.B. nclaridge@carters.ca
Jennifer M. Leddy B.A., LL.B. jleddy@carters.ca
Barry W. Kwasniewski B.B.A., LL.B. bwk@carters.ca
Sean S. Carter B.A., LL.B. scarter@carters.ca
ASSOCIATES:
Ryan M. Prendergast B.A., LL.B. rprendergast@carters.ca
Kristen D. Morris B.A., J.D. kmorris@carters.ca
Linsey E.C. Rains B.A., J.D. lrains@carters.ca
Sepal Bonni B.Sc., M.Sc., J.D. sbonni@carters.ca
Bart Danko B.Sc., M.E.S., J.D. bdanko@carters.ca,
STUDENTS-AT-LAW
Jessica Foote, J.D., B.B.A. (Hons) jfoote@carters.ca
Tessa L. Woodland, J.D., B.Soc.Sci. (Hons) twoodland@carters.ca

Orangeville Office
211 Broadway, P.O. Box 440
Orangeville, Ontario, Canada L9W 1K4
Tel: (519) 942-0001
Fax: (519) 942-0300

Ottawa Office
117 Centrepointe Drive, Suite 124
Ottawa, Ontario, Canada K2G 5X3
Tel: (613) 235-4774
Fax: (613) 235-9838

Mississauga Meeting Location
2 Robert Speck Parkway, Suite 750
Mississauga, Ontario, Canada, L4Z 1H8
Tel: (416) 675-3766
Fax: (416) 675-3765

Toronto Meeting Location
Brookfield Place - TD Canada Trust Tower
161 Bay Street, 27th Floor, PO Box 508
Toronto, Ontario, Canada M5J 2S1
Tel: (416) 675-3766
Fax: (416) 675-3765