

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

JANUARY 2017

SECTIONS

Recent Publications and News Releases	2
In the Press	16
Recent Events and Presentations	16
Upcoming Events and Presentations	17
Contributors	18

HIGHLIGHTS

- New CRA Guidance on Charities That Assist the Aged
- CRA News
- Legislation Update
 - ◆ Budget Implementation Act, 2016, No. 2 Receives Royal Assent
 - ◆ Ontario Budget Receives Royal Assent
 - ◆ Amendment to the Ontario Employer Health Tax will Impact Registered Charities
- Ontario Corporations Now Required to Keep Records of Land Ownership
- CRA Releases Trio of GST/HST Rulings Affecting Charities
- CRA Answers Questions on GREs at Gift Planner Conference
- Gross Negligence Penalties Upheld for Misrepresentations on Tax Returns
- CBA Submissions on National Security and on Housing of Interest to Charities and NFPs
- The Pitfalls of Geographic Names as Registered Trademarks
- New Charity and NGO Laws Come into Force in China
- Court of Appeal Affirms City's Liability in Crossing Guard Case
- Amendments Proposed to Child Protection Laws in Ontario
- Anti-Terrorism Law Update
 - ◆ Recommendations for Improving the Implementation of FATF Evaluation Process
 - ◆ FATF President Speaks at UN Security Council Meeting

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on **Thursday February 16, 2017**

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RECENT PUBLICATIONS AND NEWS RELEASES

New CRA Guidance on Charities That Assist the Aged

By [Theresa L.M. Man](#)

On December 8, 2016, Canada Revenue Agency (“CRA”) released a new guidance entitled: [Relieving Conditions Attributable to Being Aged and Charitable Registration \(CG-026\)](#) dealing with charities that provide housing to their beneficiaries (“Guidance”). It replaces CRA’s Policy Statement CPS-002, *Relief of the Aged* that was released on July 6, 1990 (“Previous Policy”). This *Bulletin* provides an overview of the new Guidance.

The new Guidance provides a much needed and helpful update on the Previous Policy, clarifying what CRA considers charitable for Canadian charities serving the aged. For example, almost half of the Previous Policy (paragraphs 9 to 15) are in relation to the provision of housing for the aged, which are now superseded by CRA’s guidance entitled: [Housing and Charitable Registration \(CG-022\)](#) dealing with charities that provide housing to their beneficiaries.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 396](#).

CRA News

By [Linsey E.C. Rains](#)

CRA has recently released a number of new and revised publications over the last few months. The most anticipated publication is the Charities Directorate’s (“Directorate”) [Report on the Charities Program 2015-2016](#) (“Report”), first promised by the Minister of National Revenue (“Minister”) on [January 20, 2016](#) and posted on CRA’s webpage on December 29, 2016. The Report contains messages from the Minister, the Commissioner of CRA, and the Directorate’s Director General, a description of the charitable sector, and key operational information about the Directorate.

In particular, the Report includes:

- a range of statistics on the charitable sector, applications for charitable registration, audit outcomes, revocations of charitable registration, and the objections process;
- a review of the Directorate’s outreach and engagement activities, such as improving its webpages, expanding its use of social media, and developing and reviewing its guidance products; and

- updates on the political activities audit program, compliance initiatives, and the Charities Modernization Project to improve online filing options for applicants for charitable status and registered charities.

Additional new and recently revised CRA guides, forms, and webpages relevant to registered charities and not-for-profits include:

- [T4013, T3 Trust Guide 2016](#), which incorporates changes to reflect the new rules for testamentary trusts, estate donations, and Graduated Rate Estates that were previously discussed in our [October 2016's Charity & NFP Law Update](#) in "Budget Implementation Act, 2016, No. 2 is Released".
- [RC4034, GST/HST Public Service Bodies' Rebate](#) now contains updates on harmonized sales tax rate changes in New Brunswick, Newfoundland and Labrador, and PEI, as well as the end of the point-of-sale rebate on books in Newfoundland and Labrador, and other GST/HST news.
- Registered charities can now advise the Directorate of changes to their directors, trustees, or like officials' information by faxing, emailing, or mailing the changes to the Directorate using this [new form](#).
- The [Sponsorship](#) webpage was updated on October 28, 2016. The webpage contains a definition of sponsorship, information on acknowledgement and receipting, factors to consider in sponsorship situations, and some scenarios as examples.
- [RC191, Qualified Donee: Becoming a Prescribed University Outside Canada](#) was revised to reflect the fact that applications for qualified donee status are now being processed by the Directorate's Assessment, Determinations, and Monitoring Division.

Legislation Update

By [Terrance S. Carter](#)

Budget Implementation Act, 2016, No. 2 Receives Royal Assent

Bill C-29, [A second Act to implement certain provisions of the budget tabled in Parliament on March 22, 2016 and other measures](#), received Royal Assent on December 15, 2016. For more information on the Act see "Budget Implementation Act, 2016, No. 2 is Released" from the October 2016 [Charity & NFP Law Update](#).

Ontario Budget Receives Royal Assent

On December 8, 2016, [*Bill 70 – Building Ontario Up for Everyone Act \(Budget Measures\), 2016*](#) received Royal Assent. Of interest to charities are the amendments to the [*Municipal Act, 2001*](#) and the [*City of Toronto Act, 2006*](#). These amendments provide for, among other things, charity rebates of at least 40 per cent of municipal tax for property in the commercial and industrial classes, as well as creating the ability for “the Minister of Finance to make regulations providing that the sections may apply to additional property classes not already prescribed under the Act”.

Amendment to the Ontario Employer Health Tax will Impact Registered Charities

As a matter of background concerning amendments that recently came into force, as of January 1, 2014, the amount of annual remuneration that may be exempt from Ontario’s Employer Health Tax (“EHT”) is \$450,000, up from the previous \$400,000. EHT is a payroll tax that all employers in Ontario are required to pay on the total remuneration paid to employees in a given year. The basic rule is that eligible employers are exempt from EHT on the first \$450,000 of their total annual remuneration paid out. The amount of tax that employers are required to pay varies depending on the amount of remuneration paid. Currently the tax rates vary between 0.98% - 1.95%. Employers cannot claim the EHT exemption, though, if their annual payroll (including payroll of associated employers) is above \$5 million. Eligible employers who are registered charities, however, can claim the EHT exemption even if their annual payroll is above \$5 million.

As of January 1, 2017, amendments to the *Employer Health Tax Act Regulations* came into force whereby registered charities with two or more qualifying “charity campuses” are now permitted to claim an EHT exemption for each qualifying “charity campus”. What qualifies as a “charity campus” is summarized on the Ministry of Finance’s website and is stated as including, “all of a registered charity’s locations that are in one building, or on one parcel of land (property), or on contiguous properties (properties that touch along a boundary or at a point). If a registered charity has branches, sections, parishes, congregations or other divisions (internal divisions), a “charity campus includes all of the locations of the registered charity and all of the locations of any of its internal divisions that are in one building, or on one property or on contiguous properties.”

An “associated employer” is any employer “who is connected by ownership by a combination of ownership and relationships between individuals” (e.g. relatives, blood, marriage, adoption). Because there is only one available EHT exemption for an employer in any given year, associated employers, whether they are associated for the entire year, or only for a specific period of time throughout the year,

must consider their combined total remuneration paid to determine whether they qualify for the EHT exemption. Employers that are associated with a registered charity, however, are not required to include the registered charity's total annual remuneration to determine whether they qualify for the EHT exemption, and are not required to share its EHT exemption with the registered charity.

For more detailed information visit the Ministry of Finance website by clicking [here](#).

Ontario Corporations Now Required to Keep Records of Land Ownership

By [Ryan M. Prendergast](#)

On December 10, 2016, certain provisions of Bill 144, the [Budget Measures Act, 2015](#) ("Bill 144"), which enacted the *Forfeited Corporate Property Act, 2015* ("FCPA") and the *Escheats Act, 2015* ("EA"), came into force creating new record keeping obligations for Ontario corporations.

In this regard, while Bill 144 not only addressed situations where corporations, including charities and not-for-profits, dissolve without having properly disposed of all of their assets, but new recordkeeping obligations for both new and existing Ontario corporations were also introduced by way of amendments to the *Ontario Business Corporations Act* ("OBCA"), the *Ontario Corporations Act* ("OCA"), and the *Ontario Not-for-profit Corporations Act* (when it comes into force). These amendments provide that Ontario corporations are now required to maintain a register of ownership interests in land in Ontario at its registered office. This includes:

- The identity of each property in Ontario in which the corporation possesses an "ownership interest";
- The date on which the corporation acquired the property and, if applicable, the date on which it disposed of it; and
- A copy of any deed, transfers or similar documents that contain the municipal address, the registry or land titles division and the property identifier number, the legal description, and the assessment roll number of each property listed on the register, if any.

"Ownership interest" is an undefined term thereby implying that these measures could extend to both legal and beneficial ownership in real property. These may also include where the corporation has an interest in property by way of lease or other arrangement. These requirements are unique to Ontario, as currently other jurisdictions in Canada in which charities and not-for-profits might incorporate are not required to

maintain such registers. While for some corporations the creation and maintenance of such registers will likely be straightforward, it is anticipated that corporations with a history in the province will need time and effort in order to review all prior documentation dealing with its ownership interests in land.

Corporations incorporated after December 10, 2016 must comply with the new recordkeeping requirements immediately. For corporations that were incorporated prior to December 10, 2016, they will have two years, i.e., until December 10, 2018, to comply with the new requirements.

As both the FCPA the EA and the corresponding amendments to other acts may have application to incorporated charities and not-for-profit corporations in Ontario, it will be important for these corporations to consult with their legal counsel to determine the impact of these new acts and recordkeeping requirements.

For more information on the changes under the FCPA and the EA see the [January 2016 edition of our Charity & NFP Law Update](#).

CRA Releases Trio of GST/HST Rulings Affecting Charities

By [Linsey E.C. Rains](#)

CRA recently released three rulings clarifying whether certain supplies by charities are exempt from Good and Services Tax (“GST”) and Harmonized Sales Tax (“HST”). The three rulings relate to specific fact scenarios and offer some clarity to charities who make similar supplies. In particular, the documents deal with fees charged by a charity to employers/sponsors for apprentice training, tournament registration fees, supplies of educational and consultancy services, annual conference registrations, and product sales.

Ruling #1

Document #158637 addresses whether GST/HST applies “to a commitment fee and cancellation fee charged by a charity to the employer/sponsor of an apprentice in relation to training services.” After reviewing the specific facts of the arrangement, CRA ruled that the organization, which is a charity and registrant under the [Excise Tax Act](#) (“ETA”), should not charge GST/HST on fees paid by the employer/sponsor or apprentice in relation to training services nor should it charge GST/HST on the cancellation fee when there is withdrawal from training. CRA also noted that if a charity has erroneously collected GST/HST on such exempt supplies, that 100% of the GST/HST amount collected is still required to be remitted to CRA. The charity can choose to “adjust, refund or credit the excess tax within two years after the day the amount was so charged or collected” by issuing a credit note in accordance with the ETA.

Other options include accounting for the error in its net tax calculation or having the person who paid the GST/HST in error apply for a rebate using [Form GST 189, General Application for Rebate of GST/HST](#).

Ruling #2

Document #152989r was issued by CRA to correct a previously issued ruling. In this scenario, the organization was also a charity for the purposes of the ETA and charged registration fees for its fundraising tournaments. CRA ruled “that the supply of a right to participate in” the charity’s tournament was an exempt supply. In its explanation of the ruling, CRA stated that the registration fees were distinguishable from fees charged “on admissions to a place of amusement” and that the previous ruling had mischaracterized the fact scenario. In contrast to the supply of a right to participate in a tournament, most fees charged on admissions to a place of amusement are likely not exempt under the ETA even if made by a charity.

Ruling #3

Document #127947r is another revised ruling, which was issued by CRA to reflect changes to its interpretation of a previously issued ruling involving an organization that is a charity and registrant for the purposes of the ETA. The charity requested a ruling on whether its supplies of educational services, educational consultancy services, registrations to its annual conference, and sales of certain products were exempt from GST/HST. The revised ruling only made changes to CRA’s previous comments on the sales of certain products, as its interpretations of the taxability of the supplies of the educational services, educational consultancy services, and registrations remained unchanged. In this regard, the latter three supplies continued to be exempt supplies, but the sales of certain products were a mix of zero-rated, i.e. taxable at the rate of zero, and taxable at the GST/HST rate applicable “depending on the province in which the supply is made.” Unfortunately, because the rulings are redacted by CRA prior to issuance, the detail on the types of products sold and zero-rated are limited to the fact that they were found by Health Canada to be drugs under the federal *Food and Drugs Act*. The types of products sold that were taxable, but not at a rate of zero, were not found to be drugs under the federal *Food and Drugs Act* and did not further qualify as exempt under other provisions of the ETA. However, CRA did note that supplies of these products could potentially be exempt if the charity “were to charge less than direct cost” on future sales.

Although these CRA documents certainly help clarify how the GST/HST might apply in certain situations, if your organization makes supplies similar to those referenced above, it is always a good idea to seek further guidance from your accounting or legal professionals.

CRA Answers Questions on GREs at Gift Planner Conference

By [Ryan M. Prendergast](#)

At the 2016 conference for the association de planification fiscale et financière held on October 7, 2016, the CRA answered several questions on graduated rate estates (“GREs”) during a round table session, which it has now made available in writing through commercial databases (CRA documents #2016-0651731 and 2016-0652821). The questions asked at the conference concerning GREs include:

- 1) For the application of clause (c)(ii)(B) of the definition “total charitable gifts” in subsection 118.1(1), does an estate need to qualify as a GRE in the taxation year in which the gift is made or in the taxation year in which the eligible amount of the gift is deducted in computing the individual’s tax payable?
- 2) Based on proposed legislation released by the Department of Finance on January 15, 2016, can a former GRE that makes a gift more than 36 months after the death of an individual, but within 60 months after the individual’s death, claim the gift in the first three taxation years of the estate?

Referring to the wording of clause (c)(ii)(B) of the definition of “total charitable gifts” in subsection 118.1(1), CRA stated that the answer to question 1 is “[i]n the taxation year in which the gift is made.” With regard to question 2, CRA answered in the negative, stating a “gift made by an estate that is not a GRE is only available to the estate in the taxation year in which the gift is made or in any of the next five taxation years from the year in which the gift is made (clause 118.1(1)(ii)(A)).”

In a separate document, CRA responded to the question of whether “... clause (c)(ii)(A) of the definition of ‘total charitable gifts’ in subsection 118.1(1)” applies to a GRE? The answer in this regard is yes, because “[a] GRE or a former GRE is a trust.”

Gross Negligence Penalties Upheld for Misrepresentations on Tax Returns

By [Jacqueline M. Demczur](#)

On December 1, 2016, the Tax Court of Canada released [Amoako-Boatey v. R.](#), a decision in which the Court upheld an earlier decision by the Minister of National Revenue (the “Minister”) to apply gross negligence penalties against a husband and wife who had made misrepresentations on their tax returns.

For the taxation years 2003 to 2006, Mr. Amoako-Boatey made claims for several thousands of dollars in charitable donations on his tax returns. Likewise, in 2004, Mrs. Amoako-Boatey claimed that she made a significant charitable donation, amongst other things. The Minister denied all of the claims on the basis that they were not made by Mr. or Mrs. Amoako-Boatey and applied gross negligence penalties to the

resulting adjustments made to each of their incomes. Mr. and Mrs. Amoako-Boatey then appealed the decisions to the Tax Court of Canada. Ultimately, the Court upheld the Minister's decisions, in part, including the decision to apply gross negligence penalties to the adjustments.

The Court noted that Mrs. Amoako-Boatey's 2004 tax return, along with Mr. Amoako-Boatey's 2003 to 2005 tax returns, were statute-barred. However, despite this, the Court found that the Minister had satisfied the onus imposed on her to show misrepresentation in order to be able to reassess these taxation years. As a result, it was the Court's view that the Minister could deny the donations claimed by the couple on their respective returns.

In support of this finding, the Court indicated, among other things, that the couple were not credible, no donation receipts or supporting bank records were produced, no witnesses were called, and no other evidence to support their position was ever put forward. These findings by the Court, coupled with the fact that the couple had had their tax returns prepared by a man who had been convicted of fraud for claiming false charitable donations involving the very same charities to which Mr. and Mrs. Amoako-Boatey apparently donated, was enough to satisfy the Court on a balance of probabilities that the couple had knowingly made misrepresentations on their tax returns. Accordingly, because the Court had concluded that Mr. and Mrs. Amoako-Boatey had knowingly submitted false donations, the Court then indicated that it had "no difficulty concluding that the gross negligence penalties assessed against them should be upheld."

CBA Submissions on National Security and on Housing of Interest to Charities and NFPs

By [Terrance S. Carter](#)

The Canadian Bar Association ("CBA") has recently made submissions to the federal government on National Security and Housing that are of interest to charities and not-for-profits.

The [National Security Submission](#) was in response to the Justice and Public Safety Ministers' study of national security in Canada, and is a response to "[Our Security, Our Rights: National Security Green Paper, 2016](#)". The CBA makes 23 recommendations for changes to the existing national security framework, including amendments to [Bill C-51](#), the [Security of Canada Information Sharing Act](#), the [Charities Registration \(Security Information\) Act](#), and provisions of the [Criminal Code](#), as well as policy and operational changes for agencies involved in national security. Of specific interest to charities is CBA recommendation number 20 on terrorist financing. The recommendation says:

The CBA recommends that the federal government:

- amend section 83.19(2) of the *Criminal Code* on facilitation, to eliminate the strict liability element of the offence and require the Crown to prove criminal intent.
- create an exception for the delivery of humanitarian aid that incidentally supports a member of a terrorist group (for example, a charity that delivers medical supplies to a hospital that treated a member of a terrorist group would not be subject to prosecution).
- institute a clear *mens rea* requirement to the *Charities Registration (Security Information) Act*.
- amend the *Charities Registration (Security Information) Act* so the Federal Court judge to whom a certificate is referred shall not find the certificate to be reasonable where an applicant or registered charity establishes that it has exercised reasonable due diligence to avoid the improper use of its resources.
- amend the *Charities Registration (Security Information) Act* to allow an appeal to the Federal Court of Appeal of a decision by a Federal Court judge that a referred certificate is reasonable.
- develop Canadian guidelines for charities operating abroad or domestically so those charities can show due diligence in complying with anti-terrorism legislation.

As charities operating internationally have reported that complying with Canada's anti-terrorism and money laundering laws can be challenging, this recommendation is designed to ease some of the tensions that exist between the law and the practical operational necessities of charities operating abroad.

The [Submission on Housing](#) provides input on CRA's [Guidance CG-022, Housing and Charitable Registration](#) (the "Guidance"). Suggestions from the CBA include defining some of the terms used in the Guidance, such as "comfortable", "modest", "aged", "conditions associated with the aged", "additional issues" and "providing housing, shelter, or accommodation can further other charitable purposes", and asks that important information be made part of the body of the Guidance rather than being part of the footnotes. The CBA points out that this Guidance does not reference another commentary by the CRA, [CPC-004, Housing for Seniors \(Life-Tenancy Agreement\)](#), and goes on to suggest that a complete discussion of the topic of Housing and Charitable Registration should include "whether providing housing to seniors under different arrangements is considered charitable." The CBA suggests that the Guidance should be cross-referenced with other related guidances and commentaries by CRA. The CBA also suggests that CRA should provide a guidance on "mixed use" housing projects that combine a "charitable"

housing component (and other charitable uses) with below-market rental housing, and occasionally a commercial or market housing component to be sold or leased to provide the necessary financial means to develop the charitable and below market rental housing.”

The Pitfalls of Geographic Names as Registered Trademarks

By [Sepal Bonni](#)

On November 8, 2016, the Canadian Intellectual Property Office (CIPO) published a new [Practice Notice](#) to help clarify its position regarding applications to register geographic names as trademarks that will be of interest to charities and not-for-profits. The *Trademarks Act* precludes the registration of trademarks that are either “clearly descriptive” or “deceptively misdescriptive” of the place of origin of the goods and services.

The Practice Notice explains that CIPO will consider a trademark to be clearly descriptive of the place of origin of the associated goods and services if the trademark, whether depicted, written, or sounded, is a geographic name and the associated goods and services originate from that geographic location. As an example, the trademark SWITZERLAND would likely not be registrable in association with chocolate that originates from Switzerland.

CIPO will determine if a trademark is deceptively misdescriptive using a two-step process. First, CIPO will consider the trademark misdescriptive if “the trademark is a geographic name and the associated goods or services do *not* originate from the location of the geographic name.” Second, once this determination has been made, further analysis is required to determine if the trademark is deceptive, since a misdescriptive trademark is registrable, but a “deceptively” misdescriptive trademark is unregistrable. In determining if the trademark is deceptive, CIPO will consider “whether the ordinary consumer would be misled into the belief that the associated goods or services had their origin in the location of the geographic name in the trademark.” If the ordinary consumer would not be misled, then the trademark is likely registrable.

In order for a mark to be unregistrable because it is clearly descriptive or deceptively misdescriptive of the place of origin of the goods and services, the trademark must actually be a “geographic name”. The Practice Notice clarifies that a trademark will be considered a geographic name “if research shows that the trademark has no meaning other than as a geographic name.” In addition, a trademark will be determined to be a geographical name if the trademark, despite having multiple meanings, has a primary

or predominant meaning as a geographic name. The Practice Notice says that, “[t]he primary or predominant meaning is to be determined from the perspective of the ordinary Canadian consumer of the associated goods or services.”

This new Practice Notice suggests that CIPO is very likely to consider a trademark to be unregistrable if it is a geographic place where the associated goods and services emanate from. As such, charities and not-for-profits should proceed with caution in registering trademarks that contain geographic places and obtain legal advice prior to proceeding.

New Charity and NGO Laws Come into Force in China

By [Terrance S. Carter](#)

On January 1, 2017, new legislation in China came into force that will significantly impact charities and not-for-profits wanting to operate in China, namely the [Law of the People’s Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China](#) (“Overseas NGO Law”). The *Overseas NGO Law* came into force after China’s new [Charity Law](#) came into effect on September 1, 2016.

Although these laws are complicated and involve technical interpretation, a high level overview of the *Overseas NGO Law* sets out that they apply to all overseas nongovernmental organizations (“NGOs”) operating in mainland China, including foundations, social groups, think tanks, and other NGO social organizations. Further, it allows NGOs to carry out activities that benefit the public in the areas of “economy, education, science, culture, health, sports, environmental protection [...] poverty and disaster relief.” However, overseas NGOs are not permitted to “engage in or finance profit-making or political activities [...] nor] illegally engage in or finance religious activities,” or “solicit donations in the mainland of China.”

In order for overseas NGOs to engage in permitted activities, they are required to register an established representative office in China, even where the NGO wishes to carry on temporary activities. To apply to establish a representative office, NGOs will need to satisfy several requirements including being legally established overseas, having the ability to bear civil liability, and having existed and engaged in substantive activities overseas for more than two years.

It is important to note that China’s new *Charity Law* also provides for a special designation for “non-profit organisations” operating with a charitable purpose in China. According to the *Charity Law*, in order for

an organization to apply to be designated as a “charitable organization”, they must be carrying on charitable activities, which include: helping the poor and the needy; assisting the elderly, orphans, the ill, the disabled, and providing special care; alleviating losses incurred by natural disasters, accidents, public health incidents and other emergencies; promoting the development of education, science, culture, health, sports and other causes; preventing and alleviating pollution and other public hazards; protecting and improving the eco-environment; and other public interest activities.

Although these laws were passed pursuant to a stated effort to strengthen China’s “social sector,” in the process they also increase barriers for overseas NGOs wanting to operate in mainland China and prohibit certain activities, including engaging in or financing religious activities. In this regard, it is important for charities and not-for-profits in Canada contemplating carrying on or funding operations in China to consult with legal counsel in order to determine the impact of these new laws and to ensure they are able to satisfy all of the necessary requirements prior to proceeding.

Court of Appeal Affirms City’s Liability in Crossing Guard Case

By [Barry W. Kwasniewski](#)

On November 14, 2016, the Court of Appeal for Ontario (the “Court”) released its decision in [Saumur v Antoniak](#) (“*Saumur*”). Affirming the decision of the Ontario Superior Court of Justice, the Court addressed the subject of contributory negligence by a minor who was hit by a car when crossing an intersection with the crossing guard absent. The minor, Dean Saumur (“Dean”), and his litigation guardian were the Respondents in the appeal by the City of Hamilton (the “City”). At trial, negligence was apportioned equally as between the City and Luba Antoniak, who was the driver of the vehicle which struck Dean, with no contributory negligence being found as against Dean. On appeal, the City argued that Dean was contributorily negligent in that he failed to look both ways before crossing the intersection. The Court disagreed and dismissed the appeal, affirming the [trial court decision](#). For charities and not-for-profits that deal with children, the *Saumur* decision is an important reminder that negligent acts or omissions resulting in injury to children could result in substantial liability, and that courts may be reluctant to reduce such liability even in cases where the child arguably contributed to his or her own harm.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 395](#).

Amendments Proposed to Child Protection Laws in Ontario

By [Esther S.J. Oh](#)

On Thursday December 8, 2016, the Minister of Children and Youth Services, Michael Coteau, introduced [Bill 89, *Supporting Children, Youth and Families Act, 2016*](#) (the “New Act”), which also received first reading on the same day. If passed the New Act would replace the [Child and Family Services Act](#) that has been in place since 1985. In the press conference, Minister Coteau referred to the proposed legislation as “the biggest game-changer in child protection in decades”, as the New Act would provide children with the ability to participate in the decisions related to their care in accordance with their age and level of maturity, as well as implement a number of other changes.

The New Act incorporates and builds upon a private members bill, “[Katelynn’s Principle](#),” that was tabled in November 24, 2016, and stemmed from the inquest into the death of Katelynn Sampson, a 7 year old Indigenous girl in the child protection system who was killed by her court appointed legal guardians in 2008.

The New Act proposes a number of changes to the existing child protection laws in Ontario, some of which include: increasing the age of children protected under the Act from under 16 to under 18 years old in certain circumstances; procedures that seek to show respect for the culture of the children under protection, including Indigenous children, by keeping children in their home communities as much as possible; and providing greater accountability and oversight over child protection service providers, such as children’s aid societies

Minister Coteau advised that several amendments under the New Act would result in immediate changes within the first year of the Act being proclaimed, including helping approximately 1,600 youth avoid dangerous situations, such as homelessness or human trafficking when the age of protection is increased to 18 years of age under the New Act. The Ontario government has stated that it plans to establish a committee of experts with experience in child welfare, residential services and mental health to assist with the implementation of the New Act.

Charities and not-for-profits working with children and youth in Ontario will want to monitor the progress of the proposed New Act so that they can take steps to update their child protection policies and procedures accordingly.

Anti-Terrorism Law Update

By [Terrance S. Carter](#), [Nancy E. Claridge](#) and [Sean S. Carter](#)

Recommendations for Improving the Implementation of FATF Evaluation Process

A group of international non-governmental organizations that monitor changes in non-profit law and policy globally met recently to discuss the effects of changes to the [Financial Action Task Force](#)'s ("FATF") Recommendation 8 and its interpretive note on the FATF evaluation process. As a matter of background, the FATF is an inter-governmental body responsible for setting and monitoring international standards for combating money laundering and financing of terrorism and proliferation. Information and commentary on the changes to the FATF's Recommendation 8 and its Interpretive Note can be found in our [Anti-Terrorism and Charity Law Alert No. 46](#). The meeting of international NGOs took place on September 21, 2016 and the [meeting outcomes and recommendations are publically available](#).

The purpose of the gathering was "to address the evaluation process from a government, non-profit and FATF perspective in light of the recent revision of FATF Recommendation 8 [...] and its Interpretive Note". The main recommendation from the meeting was a need for a "genuine and continuous dialogue between the various stakeholders and NPOs, and concrete guidance for governments and evaluators" to allow countries to prepare for evaluation processes and for NPOs to engage with both the evaluation and with the risk assessment performed by the country. The document also offers a list of recommendations to encourage this, as well as a list of main points and takeaways from the discussions. Some of the recommendations include developing a standard approach for evaluators engaging with the non-profit sector, "[d]evelop[ing] clearer guidance for governments and evaluators about the effectiveness review," and making national risk assessments of the non-profit sector public.

FATF President Speaks at UN Security Council Meeting

The President of the Financial Action Task Force ("FATF"), [spoke at a meeting](#) of the United Nations Security Council on December 15, 2016 about recommendations on countering terrorist financing (collectively, "FATF U.N. Recommendations"). The FATF is an inter-governmental body responsible for setting and monitoring international standards for combating money laundering and financing of terrorism and proliferation. During the FATF U.N. Recommendations, the President of the FATF said that the important challenges facing the global community include the fact that "some countries simply do not have the capacity to exercise effective controls", and that countries may not understand the potential links between business intelligence and countering terrorist financing. The President recommended that the global community support capacity building for those countries that need it, ensure that more work is done

to “link-up the relevant authorities in each country”, and ensure that emerging financial technologies are not exploited for terrorist financing or other criminal purposes.

The actions of the FATF are increasingly relevant to charities and non-profits around the world as this policy making body sets broad goals and recommendations for implementations of actions to counter money laundering and terrorist financing nationally, and charities and non-profits have been specifically identified by the FATF as a specific potential conduit for illicit funding. The information sharing and regulatory regimes recommended by the FATF will have a real impact on member nations (like Canada) and charities and non-profits need to keep themselves aware as they operate domestically and internationally.

IN THE PRESS

[Charity & NFP Law Update – November 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.

“**Older Employees Deserve More**” by Sarah Dobson is an article that was featured in *Canadian Human Resources Magazine* in which Barry W. Kwasniewski was quoted for his legal opinion.

“**[How-To Incorporate a Not-for-Profit Corporation](#)**” by Theresa L.M. Man was published by the Law Society of Upper Canada in November 2016.

“**[Preventing Poverty Not a Charitable Activity](#)**” by Terrance S. Carter and Jacqueline M. Demczur was published in *The Lawyers Weekly* on December 2, 2016.

“**[Charities at Risk](#)**” by Terrance S. Carter and Nancy E. Claridge was published in *The Lawyers Weekly* on December 9, 2016.

RECENT EVENTS AND PRESENTATIONS

Legal Check-up For Owners & Operators was hosted by Child Development Resource Centre Peel and Carters Professional Corporation on December 1, 2016, in Mississauga, Ontario. The following topics were covered:

- Legal Check-Up: 10 Tips to Effective Legal Risk Management by Terrance Carters

- The Top Ten Human Resources Mistakes Employers Make (And How to Avoid Them) by Barry Kwasniewski
- Legal Issues in Social Media and Related Policies by Terrance Carter
- Hiring, Firing and Employment Contracts by Barry Kwasniewski
- Human Rights Challenges in the Workplace by Barry Kwasniewski
- Identifying and Managing Risk When Working With Children by Sean Carter

Orchestra Canada hosted a workshop and discussion on the topic of “Changing Legal and Policy Responsibilities of the Board of Directors” on January 14, 2017 in Toronto presented by Theresa L.M. Man.

[Going into Business? The Social Enterprise Spectrum for NPOs and Charities](#) was presented by Terrance S. Carters at the **CSAE Winter Summit** in Hamilton on January 19, 2017.

UPCOMING EVENTS AND PRESENTATIONS

[OBA Institute](#) will be hosted by the Ontario Bar Association Charity & Not-for-Profit Law Section CLE on February 7, 2017 in Toronto. Theresa Man will present on the topic *Real Estate Issues Unique to Charities*.

[The Ottawa Region Charity and Not-for-Profit Law™ Seminar](#) hosted by Carters Professional Corporation will be held at the Centurion Conference Center in Ottawa, Ontario, on **Thursday February 16, 2017**. Guest Speakers include **Tony Manconi, Director General of the Charities Directorate of the CRA and Ken Goodman, Public Guardian and Trustee of Ontario**. Click here for the [brochure](#) and [online registration](#).

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Nancy E. Claridge, B.A., M.A., LL.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 & NFP 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.



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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 & NFP Law Bulletin*.



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ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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