

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

## MAY 2017

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Healthcare Philanthropy Check-Up 2017  
Spring 2017 Carters Charity & NFP Webinar Series  
24<sup>th</sup> Annual Church and Charity Law Seminar – Save the Date

### [Healthcare Philanthropy Seminar](#)

Co-hosted by Carters and Fasken Martineau in Toronto on Thursday, June 1 2017.

Click here for [Details and online registration](#).

### [Spring 2017 Carters Charity & NFP Webinar Series](#)

Hosted by Carters Professional Corporation on Thursdays from April 20 to June 22, 2017

Click here for [online registration](#) and for [On Demand/Replay](#).

### **24th Annual Church & Charity Law™ Seminar**

**SAVE THE DATE - Thursday November 9, 2017**

Hosted by Carters Professional Corporation in Greater Toronto, Ontario.

Guest speakers include **Justice David Brown**, Ontario Court of Appeal  
and **Tony Manconi**, Director General, Charities Directorate, Canada Revenue Agency

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## **RECENT PUBLICATIONS AND NEWS RELEASES**

### **Sweeping Changes Recommended in Report on Political Activities**

By [Terrance S. Carter](#), [Jennifer M. Leddy](#) and [Ryan M. Prendergast](#)

On May 4, 2017, the Canada Revenue Agency (“CRA”) published on its website the excellent and very readable [Report of the Consultation Panel on the Political Activities of Charities](#) (the “Report”), prepared after the CRA’s consultation with the charitable sector that was launched in September 2016 and concluded in December 2016 (the “Consultation”). In conjunction with the release of the Report, the Minister of National Revenue announced on the same day the Liberal government’s suspension of all remaining CRA audits of charities for political activities originally initiated through the 2012 Federal Budget. The suspension is to remain in place pending the implementation of the Report’s recommendation.

The Report, states that the “legislative framework for regulating charities is out-dated and overly restrictive” and calls for changes to the current administrative and legislative framework governing “political activities” by charities. In doing so, the Report provides four recommendations, including the immediate suspension of the political activity audits that was acted upon by the Minister of National Revenue. The CRA has committed to providing a formal response to the Consultation Panel’s recommendations by the end of June 2017.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 403](#).

### **Corporate Update**

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

#### **Corporations Canada Increases Online Services**

On May 17, 2017, Corporations Canada announced that it is providing a new service to allow not-for-profit corporations incorporated under the *Canada Not-for-profit Corporations Act* to submit requests online to amend their articles of incorporation. The service is provided through its [Online Filing Centre](#) for a fee of \$200. The service standard for the amendment is “Same day/Next Day Service”. The Online Filing Centre already allows federal not-for-profit corporations to incorporate, file annual returns, and file by-laws online, among other services.

## **BC Releases Guide for Transitioning Societies**

With the new British Columbia *Societies Act* having come into effect on November 28, 2016, all pre-existing societies in B.C. must transition to the new Act by November 28, 2018 under Part 16 of the new Act. This is done by filing online with the registrar a transition application consisting of a constitution, by-laws (consolidating all by-laws into a single set of by-laws) and a statement of directors and registered office of the society. The British Columbia Corporate Registry's [website](#) contains many helpful resource tools to help societies to transition to the new Act. In particular, [Preparing for B.C.'s New Societies Act: A Guide to the Transition Process](#) and [Filing Guide: How to file a Transition Application in Societies Online](#) are most helpful.

## **CRA Issues a Technical Interpretation of Charities Returning Gifts**

By [Ryan M. Prendergast](#)

On May 17, 2017, CRA released document 2016-0630351, which is composed of a letter dated March 31, 2017. In the view, CRA provided its response to the questions “1) Can a registered charity return a gift of a life insurance policy to a donor?” and “2) If so, what are the tax consequences to the registered charity and to the donor?” In 1981, the donor gifted a life insurance policy to a foundation which supports a college. The gift was intended to form a scholarship for a specific program. That program, though it existed at the time of the gift, no longer exists. The donor therefore believed that a condition of the gift was not fulfilled, and requested that the gift be returned. The foundation would be willing to do so if CRA could assure the donor there would be no “negative impact on its registered status”.

The technical interpretation first refers the donor to [Guidance CG-016 Qualified donees – Consequences of returning donated property](#), and notes that in most cases a charity cannot return a gift. It then says that there are some cases in which a charity may be obligated to return gifts due to trust law, but that those are ultimately a decision for the court, rather than CRA, to make as those scenarios do not fall under the *Income Tax Act* (“ITA”). As to the tax consequences, the letter points to the rules under the ITA which apply in situations where there was no gift at law or there was a gift at law that needed to be returned, and the charity had given the donor a charitable donation receipt. In such a case, the donor cannot retain the tax benefit of such a receipt.

For the potential impact on a qualified donee, the letter refers to Guidance CG-016 and to the [Returning a gift to a donor webpage](#). It recommends that “before returning gifted property, qualified donees should determine if other provincial or federal legislation might affect their ability to legally return donated

property.” It further warns that “a registered charity that returns gifted property could be regarded as making a gift to a non-qualified donee or providing an undue benefit, which are contraventions of the Act and could result in sanctions that include revocation of registered status.” The letter ends by saying that the determination of whether the gift can be legally returned is beyond the scope of the technical interpretation. The view is an important reminder that when donors and charities are discussing the potential return of charitable property, the common law and provincial jurisdiction should also be considered in addition to any potential income tax consequences.

## **Income Tax Treatment for Monies Paid to Support Refugees**

By [Jacqueline M. Demczur](#)

On March 3, 2017, CRA released technical interpretation 2016-0651661E5 – Payments to Syrian refugees by a church. This technical interpretation was in response to a letter received by CRA from a church inquiring about the income tax treatment of payments made by the church to support a Syrian refugee family (the “family”). Specifically, the church asked whether the said money received by the family was to be included as income in the family’s tax returns, and whether there are any special rules for refugees for income tax purposes.

In terms of background, the inquiring church is a private sponsor that has established a fund to support a particular Syrian refugee family, and has provided support to the family since they arrived in Canada. The monies provided by the church were to assist the family with their living expenses. The family also has received money through the Resettlement Assistance Program provided by the government.

In response to the questions asked, CRA noted that paragraph 56(1)(u) of the ITA requires social assistance payments received in the year and made on the basis of a means, needs, or income test are to be included in a taxpayer's income, unless they are included in the taxpayer's spouse's or common-law partner's income. CRA further noted that income included under paragraph 56(1)(u) will be offset by a matching deduction under paragraph 110(1)(f) of the ITA. As such, there will be no income tax implications, other than potentially affecting certain income-tested benefits. Accordingly, CRA indicated that “if the payments made by the church are assistance made on the basis of “means, needs or income test,” then they are likely social assistance payments for purposes of paragraph 56(1)(u)” of the ITA.

“Social assistance” is not defined under the ITA, but, with reference to paragraph 56(1)(u), CRA indicated that it is generally understood to mean “aid provided by a government or government agency, although it

can be provided by other organizations (such as a church), on the basis of need.” With respect to the means, needs, or income test, CRA advised that it considers them to be financial tests and describes them as follows: “1. [a]n “income” test, which is a test based solely on the income of the applicant, 2. [a] “means” test, which is similar to an income test, but also takes into account the assets of the applicant, [and] 3. [a] “needs” test, which takes into account the income, assets and financial needs of the applicant.”

In its response, CRA also noted that subsection 233(1) of the *Income Tax Regulations* requires organizations providing social assistance to report such assistance on Form T5007- Statement of Benefits, unless expressly exempted.

This technical interpretation is helpful to those organizations providing assistance to refugees in Canada, as well as all organizations, including not-for-profits and charities that provide assistance based on a means, needs or income test.

Further information on the provision of social assistance, the resulting reporting requirements and form T5007 can be found on the CRA website by clicking [here](#), as well as in CRA’s pamphlet [T4055 Newcomers to Canada](#).

## **Administrative Penalty Assessed for False Statements on Donation Receipts**

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

On April 25, 2017, the Tax Court of Canada (the “Court”) released its decision in [Ploughman v The Queen](#) (the “Ploughman Decision”), an appeal by Glenn Ploughman (“Ploughman”), from CRA’s assessment under section 163.2 of the ITA, often referred to as the third-party penalty provision.

The Court found that Ploughman participated in the making of, or assented to or acquiesced in the making of, false statements by 135 participants in a charitable donation program. The background facts of this case are complex and it is beyond the scope of this article to describe in detail. However, in general terms, the Court found Ploughman was a creator or promoter of a charitable donation program (“Donation Program”) that was based on the creation of a timeshare property and the donation of vacation ownership weeks to registered charities by participants in the Donation Program. However, timeshare units were never created and therefore vacation ownership weeks were never actually donated by any participants. Each of the 135 official receipts issued to participants in the Donation Program, which stated that each donor had made an in-kind donation of a specified number of “Biennial Weeks Vacation Ownership at Arawak Inn & Beach Resort”, contained a false statement.

Based on the evidence, the Court found that when Ploughman sent a letter to the participants in the Donation Program recommending that they submit their charitable receipts to CRA, he knew or would reasonably be expected to have known but for circumstances amounting to culpable conduct, that each of the official receipts contained a false statement. Further the Court found that Ploughman's indifference concerning the non-existence of the timeshare units, the failure to implement other transactional steps on which the Donation Program was based, and his indifference as to whether his recommendation in that letter was well founded, showed an indifference concerning whether the ITA was complied with and thus constituted culpable conduct.

Subsection 163.2(6) of the ITA provides a safe harbour for an advisor who relies, in good faith, on information provided by or on behalf of a person who makes a false statement. However, the Court found that Ploughman's reliance on the legal opinion letter of Ms. Guindon (the lawyer who had provided the legal opinion concerning the Donation Program as described below) did not satisfy the statutory criteria of subsection 163.2(6) of the ITA. The Court noted that subsection 163.2(6) of the ITA applies only where the advisor is acting on behalf of the person who makes the false statement, but the Donation Program involved a number of participants who were clients of other canvassers, such that Ploughman may not have been acting on behalf of those participants. In addition, the Court found Ploughman was not acting in good faith.

The Donation Program was previously at the centre of the case involving [Guindon v R](#), as discussed in the [August 2015 Charity & NFP Law Update](#). In that case, Guindon, a lawyer without expertise in tax law, provided a legal opinion on the tax consequences of a leveraged donation program and signed 135 charitable receipts totalling \$3,972,775 in her capacity as the president of a registered charity. Guindon was found liable under s. 163.2(4) of the ITA for knowingly assisting another taxpayer with making false statements or omissions in a tax return.

## July 1st CASL Deadline Looms

By [Ryan M. Prendergast](#)

On July 1, 2017, an important provision of Canada's anti-spam legislation, ("CASL") will end while another one will come into force.

- 1) The transition period in section 66 of CASL will end; and
- 2) The private right of action will come into force.

Of particular interest to charities and not-for-profits is the ending of the transition period under section 66 of CASL.

When CASL came into force on July 1, 2014, section 66 of CASL provided a three-year transition period for implied consent for organizations to have been able to send commercial electronic messages arising out of existing business or non-business relationships. Implied consent under CASL, *e.g.*, donations to registered charities or membership in non-profit organizations, is generally tied to a statutory time limit of two years or less. However, during the transition period, implied consent arising from existing business or non-business relationships created prior to July 1, 2014 were effective until the end of the three-year period. The intention of the transition period was to permit organizations to which CASL applies to obtain express consent from these individuals. As of July 1, 2017, this transition period will end. As a result, charities and not-for-profits relying on implied consents arising from existing business or non-business relationships created prior to July 1, 2014 have only a brief window to obtain express consent from these individuals prior to July 1, 2017. Of course, implied consent obtained after July 1, 2014 will still be valid, though such implied consent will be subject to the normal time limitations under CASL and were not impacted by the transition period.

In addition, the ability for an individual to bring a claim against an organization that is non-compliant with CASL, or its directors and officers, under a private right of action will also come into force on July 1, 2017. Many practitioners recently have written on the private right of action and the potential for class action law suits. Whether this is an area of concern for charities and not-for-profits remains to be seen. However, it is an important reminder that charities and not-for-profits impacted by CASL should ensure they can demonstrate due diligence in the event of potential claims.

## **Electronic Liability Release Held Enforceable**

By [Barry W. Kwasniewski](#)

On January 12, 2017, the Court of Queen's Bench for Saskatchewan released its summary judgment decision in [Quilichini v Wilson's Greenhouse & Garden Centre Ltd. and Velocity Raceway Ltd.](#) (the "decision"). The decision focuses on the enforceability of an electronic liability waiver. Aaron Quilichini ("Quilichini"), the plaintiff, claimed damages for negligence causing bodily injuries and/or breach of contractual obligations against Wilson's Greenhouse & Garden Centre Ltd. and Velocity Raceway Ltd.

(“Velocity”) (collectively the “defendants”). The injuries were suffered during a go-kart race which took place in a venue operated by Velocity. Quilichini claimed that the throttle on the go-kart he was operating did not work, which caused him to crash into a cement barrier at full speed. The defendants sought a summary judgment dismissing the claim of Quilichini on the basis that he executed an electronic liability waiver. The judge determined that the executed electronic liability waiver was as binding as a signed hard copy. As many organizations, including charities and not-for-profits, are using electronic forms of liability waivers instead of traditional hard copy forms, the decision upholding the enforceability of the electronic format waiver is an example of the law adapting with use of technology.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 404](#).

## **Ontario Medical Assistance in Dying Legislation Receives Royal Assent**

By [Esther Shainblum](#)

On May 10, 2017, Ontario [Bill-84, Medical Assistance in Dying Statute Amendment Act, 2017](#) (the “MAID Act”) received royal assent and came into force. On May 9, 2017, the Ministry of Health and Long-Term Care (the “Ministry”) issued a [news release](#) explaining the legislation. The legislation makes changes to various pieces of provincial legislation in order to align provincial law with the federal legislation that came into force in June 2016 through [amendments to the Criminal Code \(Canada\)](#), and to address areas that fall under provincial jurisdiction. The MAID Act amendments include:

- Ensuring that benefits, such as insurance payments and workplace safety and insurance benefits, are not denied only because a person received medical assistance in dying
- Protecting physicians and nurse practitioners, those who assist them, and care provider institutions from civil liability when lawfully providing medical assistance in dying, except in cases of negligence
- Preventing identifiable information about individuals and facilities that provide medical assistance in dying from being disclosed under access to information requests
- Ensuring that there is effective ongoing reporting and monitoring by the Chief Coroner of Ontario for cases of medical assistance in dying.

The MAID Act also requires the Ministry to establish a care coordination service to assist patients and caregivers to access additional information and services for medical assistance in dying and other end-of-life options.

## **Court Awards Damages in Internet Photo Copyright Infringement**

By [Sepal Bonni](#)

On April 4, 2017, the Ontario Superior Court of Justice (“Court”) rendered a decision in a copyright case, [Trader Corp. v CarGurus Inc](#) that will be of interest to charities and not-for-profits. Trader Corporation (“Trader”) and CarGurus, Inc. (“CarGurus”) are competitors in the marketplace and both operate “digital marketplaces”, which include listings of vehicles on their respective websites that are available for sale from vehicle dealers. Trader operates the popular auto trading website, Autotrader.ca and related websites and mobile applications, including a service for dealers called “Capture Service”, which involves Trader’s photographers going to the dealerships and taking photos of the vehicles to include in the listings of cars that are for sale. CarGurus is new to the Canadian market, but is one of the largest digital marketplaces in the United States. When CarGurus came to Canada they used the same methods for sourcing information as they had in the US, including using computer software to crawl the internet and extract or “scrape” data relating to vehicle listings from other dealers’ websites and posting it on their website. This resulted in CarGurus displaying 196,740 photos that Trader alleged infringed its copyright in the photos taken and owned by Trader for its Capture Service.

Trader sought \$98,370,000 in statutory damages for the copyright infringement of the 196,740 photos. That is \$500 per photo, which is the statutory minimum under the *Copyright Act*. The Court determined that Trader owned the copyright in 152,532 of those photos. Even with the Court-reduced number of 152,532 photos, damages under the statutory minimum would amount to \$76,266,000. The Court exercised its discretion to award fewer damages on the basis of section 38.1(3) of the *Copyright Act*, which allows the Court to award a lower amount if “[t]here is more than one work or subject matter in a single medium” and “the awarding of even the minimum amount referred to in that paragraph or that subsection would result in a total award that, in the Court’s opinion, is grossly out of proportion to the infringement.” In this case, the Court determined that this section applied and awarded statutory damages of \$2.00 per photo, for a total of \$305,064 in damages.

This case is a good reminder for charities and not-for-profits that using photos from the internet can have serious consequences. As a result, charities and not-for-profits should be careful not to reproduce photos

extracted from the internet on their websites without obtaining the requisite consent. It is best to first consult with legal counsel.

## **Supreme Court of Canada Refused Leave to Appeal in Crossing Guard Case**

By [Barry W. Kwasniewski](#)

On May 4, 2017, the Supreme Court of Canada [refused leave to appeal](#) in the case of *Saumur v Antoniak* (“*Saumur*”). The City of Hamilton (the “City”), which was one of the defendants, sought leave to appeal from a November 2016 Ontario Court of Appeal [decision](#) affirming the decision of the Ontario Superior Court of Justice. In the Court of Appeal decision, the Court addressed the subject of alleged contributory negligence by a minor (Dean Saumur) who was hit by a car when crossing an intersection with the crossing guard absent. 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. In the Court of Appeal, the City argued that Dean was contributorily negligent in that he failed to look both ways before crossing the intersection. The Court of Appeal disagreed and dismissed the appeal, affirming the [trial court decision](#). With leave to appeal to the Supreme Court refused, the *Saumur* decision by the Court of Appeal remains an important reminder for charities and not-for-profits that deal with children, 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 an in depth discussion of *Saumur* see [Charity & NFP Law Bulletin No. 395](#).

## **Court Resolves Disputes between Struggling “Factions” of a Non-Profit Club**

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

The July 20, 2016 decision of the Court of Queen’s Bench of Alberta (“Court”) in [Colgan v Canada’s National Firearms Association](#) is an interesting case illustrating how corporate disputes involving a corporation under the *Canada Not-For-Profit Corporations Act* (“CNCA”) were dealt with by the Court.

The dispute arose between two factions of the Club fighting for control of Canada’s National Firearms Association (“Club”) – the “Colgan Faction”, who are five first-time directors and the “Clare Bloc”, who are a group of re-elected long serving directors. The fight between the two factions included carrying on an “unsuccessful coup” to replace the president of the Club, revoking membership of directors of the Club,

thereby removing them from their board seat, passing new by-laws prohibiting membership proxy voting and restricting membership to certain persons.

In reviewing whether the Court should intervene in the Club's internal affairs, the Court stated that, "[c]ourts do not intervene in a club's affairs unless the club is guilty of breaching its rules or the rules of natural justice, or if there is bad faith in decision-making." Consistent with the case of *Street v BC School Sports* (2005 BCSC 958), the Court held that the "Courts have no interest in the day-to-day activities of voluntary associations" and "[t]hat certainly includes internal politics and inter-factional sniping." However, the Court rejected the request of the Colgan Faction to direct the Club to comply with the laws of Canada and the Club's own by-laws because the Club is already required to comply with them. As such, if the Club chooses not to do so and the grievance meets the threshold for intervention, then the Court will intervene.

The Court held that three board seats were validly vacated when the board revoked the membership of three directors of the Colgan Faction, who were thereby disqualified to be directors because the bylaw states that a director resigns "if he or she ceases to be a member." The Court was satisfied that subsections 130(1) and (3) and section 132 of the CNCA (which deal with removal of directors by membership vote) were not applicable in this situation. However, the Court held that the appointment of three replacement directors by the board at that same meeting was not valid because the by-laws of the Club required a by-election to be held to fill the vacancies.

The Court rejected the argument that the revocation of membership of the three directors were not valid because a proxy vote was counted, presumably at the board meeting. The Court held that subsection 126(3) of the CNCA (which provides that "No person shall act for an absent director at a meeting of directors") is not "a ban on proxy votes." It is not clear from the judgement whether a director voted by proxy at the board meeting, nor is the basis of the Court's ruling, because it is settled law that voting by proxy is an improper delegation of a director's powers and it is not possible for a director to discharge his/her fiduciary duties by appointing a proxyholder to vote in his/her stead.

Although a by-election was required to fill the vacancies on the board, the Court refused the request of the Colgan Faction to appoint an investigator. The Court held that in order to appoint an investigator under section 242 of the CNCA, there must be evidence of actions that are "oppressive or unfairly prejudicial to

or that unfairly disregards the interests of a member or debt obligations holder.” The Court pointed to the decision of the Supreme Court of Canada in *BCE Inc v 6796508 Canada Inc.* (2008 SCC 69), which “interpreted the almost identical language in the *Canada Business Corporation Act* oppression provision, and set out a two-step test to determine if oppression is established: i. determine if the evidence supports the reasonable expectation asserted by the claimant; and ii. determine if the reasonable expectation was violated by conduct falling within the terms ‘oppression’, ‘unfair prejudice’ or ‘unfair disregard’ of a relevant interest?” As such, the Court refused to appoint an investigator because “suspicion and distrust, not evidence [drove] the contention that the Clare Bloc will stoop to using ‘dirty tricks’ to win the next election.”

Lastly, the Court held that two new bylaws that were passed after the Colgan Faction was purged require membership approval before the board can act upon them because subsection 197(1)(e) of the CNCA requires member approval of an amendment if it changes “a condition required for being a member.” These new bylaws removed membership proxy voting, restricted Club membership to only “moral” members, and restricted members to “natural persons” having “legal capacity” and thereby eliminated non-voting memberships that were previously available to corporations and minors.

## **Jedi Order Denied Charitable Status for Advancement of Religion**

By [Terrance S. Carter](#) and [Jennifer M. Leddy](#)

On December 19, 2016, the Charity Commission for England and Wales (the “Commission”) [published its decision](#) to reject an application for charitable registration by The Temple of the Jedi Order (“Jedi Order”). The application was made, in part, on the basis that Jediism is a religion. In its application, the Jedi Order cited its charitable purpose as “to advance the religion of Jediism, for the public benefit worldwide, in accordance with the Jedi Doctrine”. In England and Wales, advancement of religion is described as a charitable purpose in section 3(1)(c) of the [Charities Act, 2011](#) and religion is partially defined in section 3(2) of the Act as including i) a religion which involves belief in more than one god, and ii) a religion which does not involve belief in a god. However, the *Charities Act, 2011* also preserved the common law meaning of religion for the purposes of charity law subject to the partial definition in section 3(2). It is the Commission’s treatment of the common law that is of particular interest to Canadian religious organizations, as there is no corresponding statutory definition of religion in Canada. The decision also sets out the elements of the charitable purpose of promoting moral or ethical improvement.

For the balance of this Bulletin, please see [Church Law Bulletin No. 48](#).

## OBA Proposes Changes to Investment Powers in the Trustee Act

By [Terrance S. Carter](#)

On May 1, 2017, the Ontario Bar Association (“OBA”) made a [submission to the Attorney General of Ontario](#) for changes to the *Trustee Act* concerning investment powers by trustees. The OBA has recommended two changes to the *Trustee Act* to better address the ability of trustees to delegate investment decision making to agents (such as delegated investment managers) as provided for under ss. 27.1 and 27.2 of the *Trustee Act*. Because the proposed changes are of a technical nature, the submission’s introduction explains each of the proposed changes in non-technical language as follows:

Our first recommendation is to permit a trustee’s agent (such as a delegated investment manager) to sub-delegate the investment power of trust property. Practically speaking, this will allow for the investment manager of a charity, who works for “Bank A,” to invest in a wider range of products, such as those managed by “Bank B” (such as Bank B’s mutual or pooled funds). This is not currently permitted and therefore unduly restricts investment options for charities that work with delegated investment managers.

The second recommendation requests clarity with respect to the classes of persons or qualifications of persons who are eligible to act as agents relating to the investment of trust property. Our recommendation is that the Attorney General either set out those classes and qualifications, or remove the power to do so that is currently contained in the Act, thereby clarifying the legislative and regulatory framework for the sector.

The implementation of these recommendations would help to clarify when sub-delegation of investment decision making by agents is permitted, as well as clarifying the qualification requirements of agents. The first recommendation would establish an exemption from the prohibition of sub-delegation in s.27.2(2) of the *Trustee Act* to allow an agent (e.g. a delegated investment manager) to invest in mutual funds, pooled funds or segregated funds under variable insurance contracts in accordance with s. 27(3) of the Act. As well, given the current lack of regulations that govern and restrict classes and qualifications of eligible agents as authorised by s. 30 of the *Trustee Act* with regard to the selection of agents in accordance with s. 27.1(5)(a) of the Act, the second recommendation calls for the Attorney General to either adopt relevant regulations concerning the restriction of class and qualification of agents in accordance of s. 30 of the Act, or for s. 30 and its corresponding s. 27.1(5)(a) of the Act to be repealed. Although of a technical nature, the proposed changes by the OBA would help to clarify the role of delegated agents in investment decision making for charities in Ontario.

## Anti-Terrorism Law Update

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

### U.S. and Saudi Arabia to Co-Chair New Terrorist Financing Targeting Center

On May 21, 2017, the United States of America (“U.S.”) and Saudi Arabia [announced](#) an intention to establish and co-chair the Terrorist Financing Targeting Center (“TFTC”). The TFTC is intended to increase and formalize cooperation between the U.S., Saudi Arabia, and partners in the Gulf Cooperation Council, as it pertains to countering terrorist financing. The stated goals of the TFTC are to:

1. Identify, track, and share information regarding terrorist financial networks;
2. Coordinate joint disruptive actions, and;
3. Offer support to countries in the region that need assistance building capacity to counter terrorist finance threats.

States involved in the new TFTC include Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates and the U.S (the “Participants”). These states put together a Memorandum of Understanding on Countering the Financing of Terrorism (the “MOU”), a non-legally binding document that states the intentions of the participating states. The MOU states that it does not replace or modify “existing bilateral information sharing and operational relationships among the Participants.” The MOU also specifically references “establishing workshops on best practices in line with Financial Action Task Force (“FATF”) standards.” 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. Organizations operating in the Persian Gulf region or with a particular interest in countering terrorist financing measures should keep an eye on the developments around the new TFTC.

### New Study on the Impact of International Counter-Terrorism on Civil Society Organisations Released

In April 2017, the Brot für die Welt (English translation: Bread for the World) released a [study](#) entitled “The impact of international counterterrorism on civil society organisations: Understanding the role of the Financial Action Task Force.” [Bread for the World](#) is a German civil society organization, acting on behalf of the Protestant Churches in Germany, which is globally active in development and relief projects. The organization observed issues encountered by partner organizations around the world and decided to look into the matter. The report “examines the impact of international counterterrorism frameworks on the work of civil society organisations.” It particularly focuses on the impact of the Financial Action Task Force (the “FATF”). This resource may be useful to organizations operating internationally, to help them gain

an understanding of the impacts of counter-terrorism measures globally. The report covers such topics as: “How the international counterterrorism framework affects the work of INGOs and their partners on the ground”, “The FATF and the worldwide proliferation of restrictive non-profit laws”, “how due diligence and ‘de-risking’ is limiting civil society’s access to financial services”, and the effect of terrorist blacklisting on the sector.

## Healthcare Philanthropy Check-Up 2017

The Healthcare Philanthropy Check-Up 2017 will be co-hosted by Carters and Fasken Martineau in Toronto on June 1, 2017. Click here for [registration](#). This seminar will focus on a number of timely topics:

- “Essential Charity Law Update” by Jacqueline M. Demczur
- “Practical Problems with Gift Planning” by M. Elena Hoffstein
- “Critical Issues Concerning Investment by Charities” by Terrance S. Carter
- “When Charities Go To Court: Is Your Charity Ready? Tips and Traps” by Jonathan F. Lancaster

## Spring 2017 Carters Charity & NFP Webinar Series

Hosted by Carters Professional Corporation on **Thursdays** that started on April 20, 2017, [online registration](#) and [On Demand/Replay](#) are available for the following topics:

- “Implications of the Patients First Act in Ontario” presented by Esther Shainblum on April 20, 2017
- “Youth Programs: Identifying and Managing the Risks” by Sean S. Carter on April 27, 2017
- “Allocation Issues and CRA: The Importance of Getting it Right” by Theresa L.M. Man on May 4, 2017
- “Legal Check-Up: 10 Tips to Effective Legal Risk Management” by Terrance S. Carter on May 18, 2017
- “Do’s and Don’ts of Donor Information” by Ryan M. Prendergast & Terrance S. Carter on May 25, 2017
- “Copyright Issues for Charities and NFPs in the Digital Era by Sepal Bonni on June 8, 2017
- “The Top Ten Human Resources Mistakes Employers Make (And How to Avoid Them)” by Barry W. Kwasniewski on June 15, 2017

- “Importance of Corporate Documents in Governance Disputes” by Esther S. Oh on June 22, 2017

## **24<sup>th</sup> Annual Church and Charity Law Seminar – Save the Date**

The upcoming 24<sup>th</sup> Annual *Church & Charity Law*<sup>TM</sup> Seminar hosted by Carters in Greater Toronto, Ontario, will be held on **Thursday November 9, 2017**. Guest speakers include Justice David Brown, of the Ontario Court of Appeal who will speak on the topic of “Governance Disputes involving Charities and Not-for-profits: The View from the Bench”, as well as Tony Manconi, Director General, Charities Directorate, Canada Revenue Agency. Details and online registration will be available soon

## **IN THE PRESS**

[Charity & NFP Law Update – April 2017 \(Carters Professional Corporation\)](#) 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.

[Patients First Act Becomes Law in Ontario](#) written by Esther Shainblum was published in *The Lawyer’s Daily* on May 4, 2017.

## **RECENT EVENTS AND PRESENTATIONS**

[Implications of the Patients First Act in Ontario](#) was presented by Esther Shainblum on April 20, 2017. Links to the [Webinar Materials](#), [Resource Materials](#) and [On Demand/Replay](#) are available on our website.

[Youth Programs: Identifying and Managing the Risks](#) was presented by Sean S. Carter on April 27, 2017. Links to the [Webinar Materials](#) and [On Demand/Replay](#) are available on our website.

[Allocation Issues and CRA: The Importance of Getting it Right](#) was presented by Theresa L.M. Man on May 4, 2017. Links to the [Webinar Materials](#) and [On Demand/Replay](#) are available on our website.

**Practice Tips: Voluntary Disclosure for NPOs and Charities** was presented by Terrance S. Carter as part of a panel discussion at the CBA Charity Law Symposium held in Toronto on May 12, 2017.

[Legal Check-Up: 10 Tips to Effective Legal Risk Management](#) was presented by Terrance S. Carter on May 18, 2017. Links to the [Webinar Materials](#) and [On Demand/Replay](#) are available on our website.

[Do's and Don'ts of Donor Information](#) was presented by Ryan M. Prendergast & Terrance S. Carter on May 25, 2017. Links to the [Webinar Materials](#) and [On Demand/Replay](#) are available on our website.

## **UPCOMING EVENTS AND PRESENTATIONS**

[Spring 2017 Carters Charity & NFP Webinar Series](#) will be hosted by Carters Professional Corporation on **Thursdays** starting April 20, 2017. [Online registration](#) is available for the following topics:

- “Copyright Issues for Charities and NFPs in the Digital Era by Sepal Bonni on June 8, 2017
- “The Top Ten Human Resources Mistakes Employers Make (And How to Avoid Them)” by Barry W. Kwasniewski on June 15, 2017
- “Importance of Corporate Documents in Governance Disputes” by Esther S. Oh on June 22, 2017

[Healthcare Philanthropy Check-Up 2017](#) is co-hosted by Carters and Fasken Martineau in Toronto on Thursday, June 1, 2017. This seminar will focus on a number of timely topics:

- “Essential Charity Law Update” by Jacqueline M. Demczur
- “Critical Issues Concerning Investment by Charities” by Terrance S. Carter

[19<sup>th</sup> National STEP Conference](#) will be held on June 12, 2017 in Toronto. Terrance S. Carter and Ruth MacKenzie will co-present on the topic of “Charitable Giving – Pitfalls in Drafting Gift Agreements and Implementing Your Clients’ Philanthropic Goals.”

[PAVRO \(Professional Association of Volunteer Leaders Ontario\)](#) will host a seminar by Carters on June 23, 2017. The topics will include:

- “10 Key Tips to Effective Risk Management for Charities and Not-for-Profits” – Terrance S. Carter
- “Volunteer Agreements: Managing Relations and Reducing Risk” – Terrance S. Carter
- “Youth Programs: Identifying and Managing the Risks” – Sean S. Carter

[CSAE Trillium 2017 Summer Summit Conference](#) will be held on July 13, 2017 in Alliston, Ontario. Terrance S. Carter will present on the topic of “Social Media and Privacy Pitfalls Involving NPOs and Charities”.

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**Adriel N. Clayton**, B.A. (Hons), J.D. - Called to the Ontario Bar in 2014, Adriel Clayton rejoins the firm to manage Carters' knowledge management and research division, as well as to practice in commercial leasing and real estate. Before joining Carters, Adriel practiced real estate, corporate/commercial and charity law in the GTA, where he focused on commercial leasing and refinancing transactions. Adriel worked for the City of Toronto negotiating, drafting and interpreting commercial leases and enforcing compliance. Adriel has provided in-depth research and writing for the *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations*.



**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 & NFP Law Bulletin*, among others. Ms. Demczur is also a regular speaker at the annual *Church & Charity Law*<sup>TM</sup> 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 (CCCCB). 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.”



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**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 & NFP Law Bulletins* and publications on [www.charitylaw.ca](http://www.charitylaw.ca).



**Esther Shainblum, B.A., LL.B., LL.M., CRM** - From 2005 to 2017 Ms. Shainblum was General Counsel and Chief Privacy Officer for Victorian Order of Nurses for Canada, a national, not-for-profit, charitable home and community care organization. Before joining VON Canada, Ms. Shainblum was the Senior Policy Advisor to the Ontario Minister of Health. Earlier in her career, Ms Shainblum practicing health law and corporate/commercial law at McMillan Binch and spent a number of years working in policy development at Queen's Park. Ms. Shainblum practices in the areas of charity and not-for-profit law, health law, privacy law and lobbyist registration.



**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.



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## ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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