

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

## APRIL 2018

### SECTIONS

Recent Publications and News Releases	2
In the Press	12
Recent Events and Presentations	13
Upcoming Events and Presentations	13
Contributors	15

### HIGHLIGHTS

Special Senate Committee Begins Study on Charitable Sector
CRA News <ul style="list-style-type: none"><li>◆ Guide RC4082, GST/HST Information for Charities Updated</li><li>◆ New CRA Video and Webpage on Issuing Donation Receipts for Golf Tournament Fundraisers</li></ul>
Legislation Update <ul style="list-style-type: none"><li>◆ New Data Breach Reporting Regime under PIPEDA in Force on November 1, 2018</li><li>◆ Draft Regulations under Ontario's <i>Health Sector Payment Transparency Act, 2017</i></li><li>◆ BC's Bill 2, <i>Budget Measures Implementation Act, 2018</i></li></ul>
Tax Court of Canada Rules on Split Receipting and Donative Intent
Implications of the EU's <i>General Data Protection Regulation</i> in Canada
Court Finds Charity Liable to its President for Demand Loan and Value of Other Benefits
Proposed Regulations under the <i>Police Record Checks Reform Act, 2015</i>
Human Rights Tribunal Awards \$75,000 in Damages to Intern
Government of Canada Provides Response to CASL Report

### [Spring 2018 Carters Charity & NFP Webinar Series](#)

Hosted by Carters Professional Corporation on various Wednesdays during May and June.

Click [here](#) to register for each webinar individually.

### **Healthcare Philanthropy Seminar**

**SAVE THE DATE – Friday, June 8, 2018**

Co-hosted by Carters and Fasken in Toronto. Registration details will be available on our website soon.

### **Get on Our Mailing List:**

To automatically receive the free monthly *Charity Law Update*,

Click [here](#) or send an email to [info@carters.ca](mailto:info@carters.ca) with "Subscribe" in the subject line.

## RECENT PUBLICATIONS AND NEWS RELEASES

### **Special Senate Committee Begins Study on Charitable Sector**

By [Terrance S. Carter](#)

As reported in the [January 2018 Charity & NFP Law Update](#), the Senate of Canada debated and adopted a motion to appoint a Special Committee on the Charitable Sector (“Special Committee”) on January 30, 2018. Since its appointment, the Special Committee began its study on “the impact of federal and provincial laws governing charities [and not-for-profits], and [...] the impact of the voluntary sector in Canada” as per its mandate.

In order to better understand key policy issues for the charitable and not-for-profit sector and to better focus its studies, the Special Committee has begun discussions with witnesses and stakeholders in the charitable and not-for-profit sector. In this regard, on April 16, 2018, the Special Committee [discussed](#) the impact of public policy on charities, not-for-profits, and the voluntary sector with three witnesses, professors Peter Elson, Rachel Laforest, and Susan Phillips. On April 23, 2018, it also [discussed](#) the impact of federal and provincial laws and policies governing charities and not-for-profits, as well as the impact of the voluntary sector in Canada, with five witnesses from the Department of Finance Canada and the Canada Revenue Agency (“CRA”).

In this regard, witnesses have so far identified various issues affecting the charitable and not-for-profit sector in Canada in order to provide the Special Committee with a clearer direction and better understanding of the sector as it continues its study. These issues so far have included, for example, the non-uniformity of the discourse and political dynamics across Canadian provinces and territories, the looming demographic shifts affecting organizations, internally through retirement, as well as externally through decreased donations and volunteer numbers, the need for better data about trends in giving and volunteering, the need for clarification on political activities (of which a report was published by the Consultation Panel on Political Activities of Charities in May 2017, outlined in [Charity & NFP Law Bulletin No. 403](#)), and coordination between the CRA, provincial regulators, and the charitable and not-for-profit sector.

Charities and not-for-profits will want to carefully follow the Special Committee’s study of the sector as it works toward completing its study and preparing its report to be submitted by their own deadline date of December 31, 2018.

## CRA News

By [Jennifer M. Leddy](#)

### **Guide RC4082, GST/HST Information for Charities Updated**

On April 12, 2018, the CRA updated [Guide RC4082, GST/HST Information for Charities](#) to reflect changes to the GST/HST rebate for tour packages. Guide RC4082 discusses common tax situations for charities, and outlines the calculation of net tax remittances for charities that are GST/HST registrants, stating that 60% of the total of the GST/HST adjustments, including the GST/HST rebate for short-term accommodation in tour packages, can be included in the calculation. As proposed in the 2017 Federal Budget, the GST/HST rebate available to non-residents for the Canadian accommodation portion of eligible tour packages under the Foreign Convention and Tour Incentive Program was repealed in relation to accommodations supplied after March 22, 2017. In this regard, Guide RC4082 has been updated to specify that short-term accommodation in tour packages can be included in the GST/HST adjustment calculation if such tour packages were purchased on or before March 22, 2017.

The update to Guide RC4082 also clarified that while supplies of paid parking spaces at public hospitals made by charities or public sector bodies to patients, visitors, and hospital volunteers are exempt from GST/HST, parking supplied to hospital staff and medical professionals is generally taxable.

### **New CRA Video and Webpage on Issuing Donation Receipts for Golf Tournament Fundraisers**

With the golf season about to begin, charities that host golf tournaments will be pleased to know that on April 24, 2018, the CRA added a [new video](#) to its online [charities video gallery](#) on golf tournament fundraisers. In this new video, the CRA provides guidance to charities hosting golf tournament fundraisers with respect to issuing donation receipts. The video explains the process for charities in three-steps. The first step is for the charity to identify and determine the fair market value of any benefit, which the CRA refers to as an advantage, such as door prizes, a round of golf, the use of a golf cart, dinner, refreshments, and other small value items (*e.g.* t-shirts or hats), that a participant/donor will receive in exchange for the registration fee to participate in the golf tournament. The video clarifies that it is not an advantage to include “a chance to win a prize for a hole-in-one” which is deemed to be too small and can be ignored.

The second step is to determine the donative intent of the participant/donor, *i.e.* if the value of the advantage is more than 80% of the registration fee, the donor will be considered not to have made a gift. The third step is to determine the eligible amount of the donation for receipting purposes, which is done by subtracting all advantages received by each participant/donor from the amount of their registration fee.

The CRA also has a [new webpage](#) with additional information for charities hosting golf tournaments. The webpage contains a graphic educational tool as well as general information about how to determine the value of certain advantages, such as cart rentals, meals, complimentary items, and raffle tickets. It also provides an example illustrating how to calculate the eligible amount of the donation for which a receipt may be issued.

## Legislation Update

By [Terrance S. Carter](#)

### **New Data Breach Reporting Regime under PIPEDA in Force on November 1, 2018**

On March 26, 2018, Order in Council [PC 2018-0369](#) fixed November 1, 2018 as the day on which several provisions of the [Digital Privacy Act](#), amending the [Personal Information Protection and Electronic Documents Act](#) (“PIPEDA”), will come into force. The most significant aspect of the amendments to PIPEDA is the addition of Division 1.1, which will impose certain obligations on organizations that experience a “breach of security safeguards.” In particular, such organizations will be required to notify affected individuals and report to the Privacy Commissioner of Canada if the breach poses a “real risk of significant harm to an individual.” Also on March 26, 2018, Order in Council [PC 2018-0368](#) ordered the publication of the *Breach of Security Safeguards Regulations*, which will complement the implementation of the statutory regime under Division 1.1 of PIPEDA as discussed in the [September 2017 Charity and NFP Law Update](#), and which will also come into force on November 1, 2018.

### **Draft Regulations under Ontario's Health Sector Payment Transparency Act, 2017**

On February 21, 2018, Ontario’s Ministry of Health and Long-Term Care released [new draft consultation regulations](#) (the “Draft Regulations”) under the *Health Sector Payment Transparency Act, 2017* (the “HSPTA”), which was part of omnibus Bill 160, *Strengthening Quality and Accountability for Patients Act, 2017*. As discussed in the [October 2017 Charity and NFP Law Update](#), when the new HSPTA comes into force, it will make it mandatory for “recipients”, such as health care professionals and organizations, to disclose payments and other transfers of value of any kind they receive and to make that information available to the public.

The Draft Regulations add meat to the bone of the HSPTA by specifying a lengthy list of the categories of individuals and organizations that will be considered to be “recipients” under the HSPTA. These include members of regulated health professions, hospitals, long-term care homes, community health centres,

community mental health and addiction service providers, palliative care providers, advocacy organizations, as well as foundations and other charitable corporations established to raise funds for prescribed recipients. The Draft Regulations also set out the categories of payments and benefits that will constitute a “transfer of value” under the HSPTA. These include cash, securities and other investment interests, honoraria, membership fees, hospitality, travel, rental payments, leasehold improvements, referral fees, in-kind items or services, event sponsorships, personal gifts, as well as charitable contributions made in the name of a “recipient”, as defined in the Draft Regulations. The Draft Regulations also set out a number of exemptions to the mandatory reporting regime under the HSPTA, including transactions with a dollar value of less than \$10.00 and medical products to be provided to patients free of charge.

## **BC’s Bill 2, *Budget Measures Implementation Act, 2018***

On March 15, 2018, British Columbia’s [Bill 2, \*Budget Measures Implementation Act, 2018\*](#) (“Bill 2”) received Royal Assent. Bill 2 amends section 20.1 of the *Income Tax Act* (BC), extending the farmer’s food donation tax credit in British Columbia until January 1, 2020, previously until January 1, 2019. The farmers’ food donation program provides a tax credit that is in addition to any charitable tax credit claimable by the donor and is meant to encourage agricultural producers in the province, either individuals or corporations, to donate their products to registered charities such as food banks or school meal programs.

## **Tax Court of Canada Rules on Split Receipting and Donative Intent**

By [Ryan M. Prendergast](#)

On April 9, 2018, the Tax Court of Canada (the “TCC”) delivered its decision in [Markou v The Queen](#), an appeal from an assessment made under the *Income Tax Act* (Canada) (“ITA”) for the 2001 and 2002 taxation year filings of a group of individuals (the “Appellants”). The Appellants participated in the same leveraged donation program that was rejected by the TCC, which court’s ruling was later upheld by the Federal Court of Appeal, in *Maréchaux v The Queen* (“*Maréchaux*”), discussed in [Charity Law Bulletin No. 184](#) and in the [November/December 2010 Charity & NFP Law Update](#). The Appellants argued that this case could be distinguished from *Maréchaux*.

The leveraged donation program in *Maréchaux*, the same as in this case, worked by issuing donation tax receipts to participants whose transfer to the charity was mainly funded with a loan obtained from parties

related to the sponsor of the program. In some cases, the loans were up to 85% of the total amounts transferred to the charity, with the remainder being paid by the participants with their own funds. In *Maréchaux*, the TCC found the leveraged donation scheme disentitled the participants to any donation tax credits from the program on the basis that there was no gift under section 118.1 of the ITA. The TCC held there was no gift because the benefits received by the participants of the program showed a lack of donative intent on their part.

The first argument of the Appellants, in support of their claim that *Maréchaux* could be distinguished, was that the Appellants were unaware of the circular flow of funds in the program and that, according to a previous TCC decision which found that the Appellants “did not have any legal or beneficial interest in the loan proceeds prior to the transfer”, the obligation to transfer the loans to the charity was sufficient to conclude that the Appellants had the required donative intent and should, therefore, be entitled to charitable donation tax credits for the entire amount of their transfers. The TCC rejected the Appellants’ interpretation and, following the Federal Court of Appeal’s decision in *Maréchaux*, held that the benefit to the Appellants arose from the manner in which they had contracted for the delivery of the loans.

The second argument of the Appellants was that any benefit they received did not vitiate the entire gift and, therefore, a portion of the tax credits should be allowed under the split receipting rules previously recognized by either the common law or Quebec’s Civil Code and later contained in subsection 248(30) of the ITA, which was added in 2013 and applies to gifts made after December 20, 2002. The Appellants argued that the portion of the transfers that was composed of their own funds, *i.e.* not including the loans, was transferred with donative intent and should, therefore, be entitled to donation tax credits.

In rejecting this second argument, the TCC canvassed the common law of gifts, both outside the tax law context and in tax jurisprudence, in order to determine whether a split gift could have been made for the purposes of the ITA as it read when the facts of this case arose, prior to the addition of the split receipting rules for gifts made after December 20, 2002. In this regard, but without deciding whether a split gift could have been made before subsection 248(30) of the ITA came into force, the TCC concluded that:

Split gifts require that the gift portion of a transaction be separated from the non-gift portion, and that the gift portion be supported by donative intent. In *Maréchaux*, Woods J. found that it would not be appropriate to allow a charitable donation tax credit for the taxpayer’s cash outlay because the transfer to the Foundation could not be split into two transactions and no part of the transfer was made with donative intent.

[...]

In light of the contractual arrangements entered into by the Appellants, it cannot be said that any portion of their donations to the Foundation was made with donative intent.

This case confirms that the 80% threshold in subsection 248(30) of the ITA, allowing charitable donation tax credits for transfers to qualified donees in the presence of a benefit or consideration to the donor, will only be considered where the CRA, and ultimately the courts, are able to split the transfer into two transactions and identify the appropriate donative intent. Charities should carefully review, and ensure compliance with, the CRA's multiple guides on split receipting, such as [Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value](#).

## **Implications of the EU's *General Data Protection Regulation* in Canada**

By [Esther Shainblum](#) & [Sepal Bonni](#)

The European Union's ("EU") [Regulation 2016/679, General Data Protection Regulation](#) ("GDPR") will be implemented across the EU as of May 25, 2018. The GDPR harmonizes data protection and privacy laws across all EU jurisdictions and has been referred to by the House of Commons Standing Committee on Access to Information, Privacy and Ethics, as well as the Office of the Privacy Commissioner of Canada, as a point of comparison for Canadian legislation. Of particular note, while the GDPR will apply to organizations with a physical presence in the EU, it has also been given an extraterritorial scope, applying also to organizations that are not established in the EU if they process personal data of EU residents to offer them goods or services (whether or not a fee is charged) or to monitor their behaviour within the EU. Therefore, in certain circumstances, organizations in Canada, including charities and not-for-profits, may be subject to the GDPR and must comply with it, including its breach notification requirements, because of the strict sanctions for non-compliance. Breaches of the GDPR can attract fines as high as €20 million, or up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher. Additionally, the ramifications of the GDPR's extraterritorial scope are so broad that trademark enforcement, particularly as it regards domain names and "WHOIS data" of EU residents, may be affected. This Bulletin provides a brief outline of the more prominent changes introduced to privacy law through GDPR, and discusses its application to Canadian charities and not-for-profits, as well as its potential impact on trademark enforcement globally.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 419](#).



## **Court Finds Charity Liable to its President for Demand Loan and Value of Other Benefits**

By [Jacqueline M. Demczur](#)

On March 8, 2018, the Ontario Superior Court of Justice released its decision in *Barton v Kingston Flying Club*, concerning a claim arising from a loan made to a registered charity, the Kingston Flying Club (“Club”), by its past president (“President”), as well as for the value of other benefits provided to the President by the Club in exchange for his services over the years. While not explicitly stated in the decision, it appears that the President was an officer and employee of the Club, but not a director.

The President claimed that he had loaned money to the Club by personally paying fees that it owed to a contractor for installation work, which he classified as a demand loan. He also claimed the value of 14 months’ rent for storage of his aircraft, which he indicated the Club agreed to provide for three years given his past contributions of time and materials. In response, the Club argued that its debt to the President should be set off against the hangar rental fees that he owed, as well as the value of the personal credit card points that he earned in making past purchases for the Club. Since the value of these items exceeded the monies owed to the President, the Club sought the dismissal of the President’s claim. Interestingly, the Club also argued that, as a charity, the *Charities Accounting Act* (Ontario) (“CAA”) prohibited directors, officers and employees of registered charities from receiving a benefit, and therefore, the President, as an officer and an employee, was not entitled at law to free hangar rent or to retain the credit card points for his personal use.

The court found that the President made a demand loan to the Club, and that the hangar rent and credit card points were not connected to the said loan but were only put forward by the Club as legal set-offs against the debt owed to the President. However, as legal set-offs, the court indicated that they were subject to the two-year limitation period under the *Limitations Act*, which the Club had not complied with. As a result, the court allowed the President’s full claim. The court’s decision did not address the Club’s argument that the CAA prohibited the President from being entitled to benefits, save and except to indicate that “there is no such provision in the Act preventing a benefit being extended.”

The case is a good reminder of the importance for charities to always ensure there is proper loan documentation in place so that the terms of any loans are clearly understood by all of the parties to the transactions and in order to avoid any future disputes over such loans. This case also shows the importance of charities being aware of limitation periods when making claims for legal set-offs.



## Proposed Regulations under the *Police Record Checks Reform Act, 2015*

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

On March 28, 2018, the Ministry of Community Safety and Correctional Services introduced [Proposal No. 18-CSCS006](#) (the “Proposal”) for public review and feedback until April 9, 2018. The Proposal contains a summary of a draft *Exemptions Regulation* and draft *Operational Requirements Regulation* under the Ontario [Police Record Checks Reform Act, 2015](#) (the “PRCRA”). While the PRCRA received Royal Assent on December 3, 2015, it has not yet been proclaimed in force. As previously discussed in the [January 2016 Charity & NFP Law Update](#), the PRCRA implements a new standardized regime governing police record checks across Ontario. The Proposal outlines the draft regulations necessary for the proclamation of the PRCRA.

The draft *Exemptions Regulation* outlines circumstances where a police record check would not have to comply with certain requirements under the Act. In that regard, the draft *Exemptions Regulation* proposes to exempt from the information disclosure restrictions under the PRCRA for employees, volunteers and service providers who come into direct contact with students in schools and child care settings for a period of one year from after the PRCRA comes into force in order to provide a transition period to permit organizations subject to the PRCRA to comply.

The draft *Exemptions Regulation* proposes to exempt police record checks conducted by organizations that have direct access to police databases from the PRCRA requirement to provide the police record checks to the individual before it is seen by the organization making the screening decision. This is because in some cases, the organization conducting a police record check is the same organization that intends to use the check to make a screening decision and it is therefore not possible to have the individual be the first to review the information. Examples of such organizations include the police services (who carry out police checks for internal hiring purposes), the Financial Services Commission of Ontario (which carries out police checks prior to licensing insurance agents) and others.

The draft *Exemptions Regulation* proposes to exempt caregivers, employees, volunteers, and students in licensed residential care settings providing care or services directly to children or youth, as well as prospective adoptive families and others from the PRCRA. This exemption is proposed in order to allow for a higher level of screening for the individuals outlined above.

The draft *Operational Requirements Regulation* specifies operational procedures that must be followed by police record check providers when they conduct police record checks. In relation to the disclosure of

youth records, the draft *Operational Requirements Regulation* provides that records involving findings of guilt under the *Youth Criminal Justice Act* (YCJA) must be disclosed in a “separate record.” This ensures that an individual can receive their youth records, review them, and remove the separate page(s) when providing the remainder of the police record check to others, including prospective employers.

One of the three standard types of checks under the PRCRA is a vulnerable sector check (“VSC”), which is used to determine an individual’s suitability to work or volunteer in a position of trust or authority over vulnerable persons. The PRCRA defines a “vulnerable person” as a person who, because of his or her age, a disability or other circumstances, whether temporary or permanent, (a) is in a position of dependency on others, or (b) is otherwise at a greater risk than the general population of being harmed by a person in a position of trust or authority towards them.

Under the PRCRA, the VSC is the only type of check in which a “non-conviction record” may be considered for potential disclosure. In determining whether a non-conviction record should be released as part of the VSC, a police service must ensure that the charge that resulted in the non-conviction record (1) relates to an offence specified in regulation(s); (2) the alleged victim of the charge was a child or vulnerable person; and (3) a review of police entries relating to the individual, based on specific factors (e.g., the number of incidents, why the incident did not result in a conviction), provides reasonable grounds to believe the individual has been engaged in a pattern of predation and presents a risk of harm to a child or vulnerable person.

The draft *Operational Requirements Regulation* also provides for reconsideration of disclosure of non-conviction records when an individual’s “non-conviction record” is included in a police record check. In that regard, the PRCRA provides that an individual can submit a request for reconsideration which could result in either the original decision being overturned and the non-conviction being removed from the police record check result; or the original decision being upheld and the non-conviction record remaining in the police record check result.

It is now industry standard for charities and not-for-profits that carry out programs involving vulnerable persons (including children, the elderly and other vulnerable adults) to require a VSC to help screen prospective volunteers, employees, and directors. The VSCs are an important screening measure to help to screen potential predators who may have previous convictions or charges, from working with vulnerable persons. The VSCs are also required by most insurers as a condition of abuse coverage.

As the new regime for police record checks is implemented in Ontario over the coming years, charities and not-for-profits should monitor those developments so that they can make the appropriate adjustments to their own policies and protocols used to screen individuals who will work with vulnerable persons. It should be noted that the VSCs are merely one step and on their own are inadequate as a screening tool, especially since some predators are first time offenders with no prior criminal records or charges. As such, VSCs should always be used in conjunction with other measures, such as a child protection policy or vulnerable persons' policy that is consistently implemented within the organization's programs.

## **Human Rights Tribunal Awards \$75,000 in Damages to Intern**

By [Barry W. Kwasniewski](#)

On February 26, 2018, the Human Rights Tribunal of Ontario (“HRTO”) released its decision in [G.M. v X Tattoo Parlour](#). The applicant was an unpaid intern/volunteer (the “Applicant”), who alleged discrimination with respect to employment because of sex, sexual harassment, sexual solicitation or advances, gender identity and age, contrary to the Ontario *Human Rights Code* (the “Code”). The discrimination was alleged to have occurred when the Applicant was a 15 year-old high school student. In its decision, the HRTO ordered the business and its owner to pay the Applicant “the sum of \$75,000.00 as monetary compensation for injury to dignity, feelings and self-respect.” This decision is relevant to Ontario charities and not-for-profits, as it indicates that an employment relationship for purposes of the Code may be found to exist even in situations that would otherwise not be thought of as employment, such as with unpaid interns or volunteers. Consequently, unlawful discriminatory conduct contrary to the Code may give rise to substantial potential liability to volunteers and interns.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 420](#).

## **Government of Canada Provides Response to CASL Report**

By [Ryan M. Prendergast](#)

As reported in the [January 2018 Charity & NFP Law Update](#), the Standing Committee on Industry, Science and Technology (the “Committee”) conducted a statutory review of Canada’s anti-spam legislation (“CASL”) and on December 13, 2017 presented its findings in its report “[Canada's Anti-Spam Legislation: Clarifications are in Order](#)” (the “Report”). On April 16, 2018, the Honourable Navdeep Bains, Minister of Innovation, Science and Economic Development, presented [a response](#) (“Response”)

to the Report on behalf of the Government of Canada (“Government”). The Response states that the Government will need to work with stakeholders in order to identify solutions that minimize compliance costs and administrative burdens for Canadian businesses, charities and not-for-profits.

Given the length of CASL’s long title, the Response states that the Government agrees with the Committee’s recommendation to consider adopting a short title for CASL. In response to various recommendations from the Committee to clarify certain definitions and provisions under CASL, including recommendation 8 pertaining specifically to charities and non-profit organizations, the Government noted the concerns and stated its intention to work with stakeholders to make improvements. With regard to the Committee’s recommendation to increase education and transparency related to CASL, the Government stated that it had begun engaging with CASL enforcement agencies, including the Canadian Radio-television and Telecommunications Commission (“CRTC”), to improve education and transparency. Pertaining to the Committee’s recommendation to further investigate the impact of implementing the private right of action which is currently suspended, as reported in the [June 2017 Charity & NFP Law Update](#), the Government agreed to further investigation and consideration of implementation options as part of its broader consultations with stakeholders. The Government also agreed with the Committee’s recommendation to consider how the CRTC can share information with domestic law enforcement agencies in order to best enforce CASL, stating that “additional information sharing and collaboration between federal departments and agencies could serve to enhance the privacy and security of Canadians, especially in an active online environment.”

The Response concludes with the Government’s stated commitment to facilitating innovation and an efficient marketplace, and to considering further how best to improve CASL. As the Response contains no commitments to timeframes, charities and not-for-profits should continue to monitor further responses and action taken by the Government to refine CASL.

## **IN THE PRESS**

[Charity & NFP Law Update – March 2018 \(Carters Professional Corporation\)](#) was featured on *Taxnet Pro*<sup>TM</sup> and is available online to those who have OnePass subscription privileges.

## RECENT EVENTS AND PRESENTATIONS

At the CAGP 25<sup>th</sup> National Conference on Strategic Philanthropy, held in Winnipeg, Manitoba, on April 11 and 12, 2018, the following topics were included:

- **Due Diligence In Gift Documentation** by Theresa L.M. Man and Terrance S. Carter on April 11, 2018
- **Legal Issues In Fundraising On Social Media** by Terrance S. Carter on April 12, 2018

[The Expanding Investment Spectrum for Charities, Including Social Investments](#) was presented by Terrance S. Carter on Wednesday, March 28, 2018. This is the first session of six in the [Spring 2018 Carters Charity & NFP Webinar Series](#) and is available “on demand” by clicking [here](#).

[The Impact of Bill 148 on Charities and Not-for-Profits](#) was presented by Barry W. Kwasniewski on Friday, April 6, 2018. This is the second session of six in the [Spring 2018 Carters Charity & NFP Webinar Series](#) and is available “on demand” by clicking [here](#).

[Recent Changes in Corporate Law Affecting Federal and Ontario Corporations](#) was presented by Theresa L.M. Man on Wednesday, April 25, 2018. This is the third session of six in the [Spring 2018 Carters Charity & NFP Webinar Series](#) and is available “on demand” by clicking [here](#).

## UPCOMING EVENTS AND PRESENTATIONS

[Spring 2018 Carters Charity & NFP Webinar Series](#) will be hosted by Carters Professional Corporation on Wednesdays starting March 28, 2018. Click [here](#) to register for each webinar individually. Topics to be covered are as follows:

- [Critical Privacy Issues Involving Children’s Programs](#) will be presented by Esther Shainblum, B.A., LL.B., LL.M. CRM on Wednesday, May 9th - 1:00 - 2:00 pm ET
- [Remuneration of Directors of Charities: What’s New?](#) will be presented by Ryan M. Prendergast, B.A., LL.B. on Wednesday, May 30th - 1:00 - 2:00 pm ET
- [Drafting Bylaws: Pitfalls to Avoid](#) will be presented by Esther S.J. Oh, B.A., LL.B. on Wednesday, June 13th - 1:00 - 2:00 pm ET

[CBA Charity Law Symposium](#) will be held on May 11, 2018 in Toronto, Ontario. Ryan Prendergast will be presenting on the topic of “Tax Issues on the Wind-up of Charities: Budget 2018 Expansion of Eligible Donees and Beyond.”

**SAVE THE DATE - Healthcare Philanthropy Seminar** is co-hosted by Carters Professional Corporation and Fasken and will be held on **Friday, June 8, 2018** in Toronto. Registration details will be available on our website soon.

- Due Diligence In Gift Documentation by Theresa L.M. Man, Partner, Carters Professional Corporation
- Tips from a Former Justice Tax Litigator on CRA Audits by Jenny Mboutsiadis, Partner, Fasken
- Legal Issues In Fundraising On Social Media by Terrance S. Carter, Managing Partner, Carters Professional Corporation
- The *Health Sector Payment Transparency Act, 2017*: Implications for Healthcare Institutions and their Foundations by Laurie M. Turner, Associate, Fasken

## CONTRIBUTORS

Editor: Terrance S. Carter

Assistant Editors: Nancy E. Claridge, Ryan M. Prendergast and Adriel N. Clayton



**Michelle E. Baik**, i.B.B.A., J.D. - Called to the Ontario Bar in 2015, Michelle has joined Carters' Litigation Practice Group. Michelle has broad experience in civil litigation having articulated and been an associate with an insurance defence boutique law firm in Toronto. She worked as Legal Counsel for one of the largest banks in Canada. Michelle obtained a degree in International Bachelor of Business Administration from the Schulich School of Business, and her J.D. degree from the University of Windsor. Michelle's practice areas include general civil, commercial and not-for-profit related litigation, administrative law, insurance defence litigation, loss transfer claims, and personal injury litigation.



**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 articulated 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 issues.



**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 on charitable matters. Mr. Carter is a co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* (Thomson Reuters), a co-editor of *Charities Legislation and Commentary* (LexisNexis Butterworths, 2017), 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](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca) and [www.antiterrorism.ca](http://www.antiterrorism.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 articulated with and been an associate with Fasken (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 & NFP Law Bulletin* and the *Anti-Terrorism and Charity Law Alert*, as well as presentations to the Law Society of Ontario 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 & 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.





**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™ Seminar*.



**Barry W. 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."



**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*. 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 Thomson Reuters. She is an executive member of the Charity and Not-for-Profit Section of the OBA and the CBA Charities and Not-for-Profit Law Section. Ms. Man has also written articles for numerous publications, including *The Lawyers Weekly*, *The Philanthropist*, *Hilborn:ECS* and *Charity & NFP 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](http://www.charitylaw.ca) and the *Charity & NFP 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 M. Prendergast, B.A., LL.B.** - Mr. Prendergast joined Carters in 2010, becoming a partner in 2018, with a practice focus of providing corporate and tax advice to charities and non-profit organizations. Ryan has co-authored papers for the Law Society of Ontario, and has written articles for *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). Ryan has been a regular presenter at the annual *Church & Charity Law™* Seminar, Healthcare Philanthropy: Check-Up, Ontario Bar Association and Imagine Canada Sector Source.



**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 and privacy law.



**Luis R. Chacin, LL.B., M.B.A., LL.M.** - Luis graduated from Osgoode Hall Law School in 2017 with a Master of Laws in Canadian Common Law. Prior to this, he worked in the financial services industry in Montreal and Toronto for over 9 years, assisting both individual and institutional clients. Having previously worked as legal counsel in Venezuela, Luis has a broad perspective on both the civil and the common law traditions. He is involved in fundraising activities for various organizations and is interested in real estate, investments and taxation issues, particularly as they pertain to charities and non-profit corporations.

## ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

**Links not Working:** If the above links do not work from your mail program, simply copy the link text and paste it into the address field of your internet browser.

**Get on Our E-Mailing List:** If you would like to be added to our electronic mailing list and receive regular updates when new materials are added to our site, click [here](#) or send an email to [info@carters.ca](mailto:info@carters.ca) with “Subscribe” in the subject line. Feel free to forward this email to anyone (internal or external to your organization) who might be interested.

**Privacy:** We at Carters know how important your privacy is to you. Our relationship with you is founded on trust and we are committed to maintaining that trust. Personal information is collected solely for the purposes of establishing and maintaining client lists; representing our clients; and to establish and maintain mailing lists for the distribution of publications as an information service. Your personal information will never be sold to or shared with another party or organization. For more information, please refer to our [Privacy Policy](#).

**Copyright:** All materials from Carters are copyrighted and all rights are reserved. Please contact us for permission to reproduce any of our materials. All rights reserved.

**Disclaimer:** This is a summary of current legal issues provided as an information service by Carters Professional Corporation. It is current only as of the date of the summary and does not reflect subsequent changes in the law. The summary is distributed with the understanding that it does not constitute legal advice or establish the solicitor/client relationship by way of any information contained herein. The contents are intended for general information purposes only and under no circumstances can be relied upon for legal decision-making. Readers are advised to consult with a qualified lawyer and obtain a written opinion concerning the specifics of their particular situation.

## CARTERS PROFESSIONAL CORPORATION SOCIÉTÉ PROFESSIONNELLE CARTERS

### PARTNERS:

Terrance S. Carter B.A., LL.B. (Counsel to Fasken)	tcarter@carters.ca
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
Ryan M. Prendergast B.A., LL.B.	rprendergast@carters.ca

### ASSOCIATES:

Esther Shainblum, B.A., LL.B., LL.M., CRM	eshainblum@carters.ca
Kristen D. Morris B.A., J.D. (on parental leave)	kmorris@carters.ca
Sepal Bonni B.Sc., M.Sc., J.D.	sbonni@carters.ca
Adriel N. Clayton, B.A. (Hons), J.D.	aclayton2@carters.ca
Michelle E. Baik, i.B.B.A., J.D.	mbaik@carters.ca

### STUDENT-AT-LAW

Luis R. Chacin, LL.B., M.B.A., LL.M.	lchacin@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 350  
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