

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

NOVEMBER 2018

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RECENT PUBLICATIONS AND NEWS RELEASES

Exciting Proposed Changes in Federal Government 2018 Fall Economic Statement

By [Terrance S. Carter](#) and [Theresa L.M. Man](#)

On November 21, 2018, the Department of Finance released the [2018 Fall Economic Statement](#) (“Economic Statement”) proposing changes to maintain and develop the economic health of the country. In particular, the Economic Statement introduces a number of important proposed changes benefiting the charitable and not-for-profit sector. These proposals include changes to the regulation of charities to enhance public policy development; the creation of a social finance fund; and several initiatives to better support the non-profit journalism and news sector. These are welcome changes, and the charitable and not-for-profit sector will want to keep an eye out for upcoming legislation that will bring the Government’s proposals into effect.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 435](#).

CRA News

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

Peel and Stick Bar Code Labels No Longer Provided with T3010 Package

The Canada Revenue Agency (“CRA”) has [announced](#) that, as of November 14, 2018, it has stopped providing charities with peel and stick bar code labels with their T3010 annual information return packages. The CRA will, however, continue to provide charities with Form TF725, Registered Charity Basic Information Sheet. Charities will continue to be able to make changes to their information through Form TF725. This form should be submitted along with the T3010, even where charities have not made any changes.

Changing Your Fiscal Year-End Infographic

On November 15, the CRA released a graphic educational tool (“infographic”), [Changing Your Fiscal Year-End: What a registered charity needs to do](#). The infographic indicates that the T3010 must be filed no more than 12 months apart, even when a charity changes its fiscal year-end. When a charity changes its fiscal year-end, it will therefore need to file a transitional return for the brief period between its old and new fiscal year-ends before filing full-year returns thereafter. To change a fiscal year-end, the infographic states that charities must first determine their new fiscal year-end and then send a letter to the CRA

(separate from the T3010), asking for permission to make the fiscal year change. The letter must contain the following information: the proposed new fiscal year-end, the proposed effective year of the change, and must be signed by an authorized representative currently on file. Upon receipt of confirmation of permission to change the fiscal year-end from the CRA, the charity must then file its transition return before filing its regular return with the new fiscal year-end.

New Draft Legislation Permits Public Policy Dialogue by Charities Without Limitation

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

On October 25, 2018, the Department of Finance Canada tabled in the House of Commons a [Notice of Ways and Means Motion](#), which contained a number of amendments to the *Income Tax Act* (“ITA”) and other legislation to implement certain provisions previously announced in Budget 2018 and other measures, including amendments to the ITA to modify the rules governing political activities (now referred to as “public policy dialogue and development activities”) by registered charities and registered Canadian amateur athletic associations in Canada. The proposed amendments were introduced as [Bill C-86, Budget Implementation Act, 2018, No. 2](#), (“Bill C-86”), which received first reading on October 29, 2018, and is included as an appendix to this *Charity & NFP Law Bulletin* for ease of reference. Bill C-86 significantly improves upon the draft legislation released on September 14, 2018 by the Department of Finance Canada, discussed in last month’s [Charity & NFP Law Bulletin No. 428](#).

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 434](#). Please note that this Bulletin was published on November 2, 2018. Since its publication, Bill C-86 passed second reading on November 6, 2018 and is currently being debated at the report stage in the House of Commons.

Update on Special Senate Committee on the Charitable Sector

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

In November, 2018, the Special Senate Committee on the Charitable Sector (the “Committee”) continued its study of the impact of laws and policies on the charitable and not-for-profit sector and the impact of the voluntary sector in Canada. During November, the Committee met on November 5, 19, and 26 (“November Meetings”) to hear from witnesses with respect to the study. Videos of each meeting are available on the [Committee website](#) and minutes of each meeting are normally made available a few days after the meeting, although delays can occur.

Terrance S. Carter Presents on Bill C-86 on November 26, 2018

Among the two witnesses who presented on November 26, 2018, Terrance S. Carter spoke with respect to the support of Bill C-86 and the ability of charities to engage in public policy dialogue and development activities without limitation, which is discussed in the November 2018 [Charity & NFP Law Bulletin No. 434](#). The written text of [Mr. Carter's presentation](#), along with an [unofficial transcript](#) of his submission and the question and answer session with the Committee are available on the Carters website. While official transcripts will be posted to the [Committee's website](#) at a later time, a [video link](#) to Mr. Carter's testimony before the Special Senate Committee is currently available at the Committee's website, with Mr. Carter's testimony beginning at 21:13:12.

Summary of other Testimonies from November Meetings

The meeting of the Committee on November 5, 2018 focused on definitions as they pertained to charities and non-profit organizations. The witnesses discussed issues such as: the need to codify the Canadian definition of charity and other matters involving charities with legislation in order to supplement the existing common law that applies to charities; amending the appeal process to permit tax court appeals for CRA decisions on registration and revocation; implementing a process that provides for regular legislative review of the ITA provisions that relate to charities; and the need to facilitate broader cultural funding as well as increased tax incentives to donors to promote donations to smaller charities.

The November 19, 2018 meeting focused on the practical challenges for charities and non-profit organizations. In this meeting, witnesses highlighted issues including: the obstacles that prevent many charities from fully serving the needs of their communities; the suggestion that non-profit organizations that are member-focused organizations (such as private clubs and condominiums) be distinguished from public benefit organizations (such as non-profit housing organizations) in the ITA so that Canadian public policy regarding all organizations to further the public good can be developed accordingly; allowing registered charities and public benefit non-profit organizations to work together and replacing the CRA's existing requirement that charities must exercise modify direction and control with an expenditure responsibility test; and the need to review the *Canada Not-for-profit Corporations Act* to remove impractical provisions that impede the governance and operations of charities.

Corporate Update

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

B.C. Societies Act Transition Period Has Expired

November 28, 2018 was the final day for societies in B.C. to transition from the old B.C. *Society Act* to the new B.C. *Societies Act*. The new Act, which allows for more flexibility with the operation of societies in B.C., as outlined by [B.C. Registries](#), came into force on November 28, 2016. Societies have therefore had two full years to complete the transition. As reported in the [September 2017 Charity & NFP Law Update](#), the transition process required societies to complete an online Transition Application and re-file their constitution and by-laws with the Corporate Registry electronically. The CRA also [indicated](#) that specific clauses were required to be included in a societies' bylaws, and that new governing documents were to be mailed to the Charities Directorate. Similar to the requirements for transitioning from the *Canada Corporations Act* to the *Canada Not-for-profit Corporations Act*, those that failed to transition would be dissolved. In the case of registered charities, dissolution could lead to the revocation of their registration as a charity.

New Ontario Government Makes Major Changes to ESA

By [Barry W. Kwasniewski](#)

After being introduced by the Ontario Government only one month ago on October 23, 2018, [Bill 47, Making Ontario Open for Business Act, 2018](#) ("Bill 47"), received Royal Assent on November 21, 2018, making amendments to the *Employment Standards Act, 2000* ("ESA") and other legislation. The passing of Bill 47 represents a significant roll-back of certain amendments to the ESA passed by the former Ontario Liberal government in 2017 pursuant to Bill 148, *Fair Workplaces, Better Jobs Act, 2017*, which increased employee entitlements with respect to minimum wage, leaves of absences, scheduling, and more. Since almost all the latest ESA amendments introduced in Bill 47 will come into effect January 1, 2019, charities and not-for-profits have only a month to modify their policies and practices so as to bring them into compliance. As such, the focus of this *Charity & NFP Bulletin* is to provide a summary of the ESA changes made by Bill 47.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 436](#).

Corporate Registers of Real Property Interests Mandatory as of December 10, 2018

By [Jennifer M. Leddy](#)

Charities and other not-for-profit corporations incorporated under the Ontario *Corporations Act* (the “Act”) are reminded that as of December 10, 2018 they are required to keep at their head office a register of their ownership interests in real property in Ontario. According to subsection 300.1(2) of the Act, the register must identify each property and show the date it was acquired and, if applicable, the date it was disposed of. Subsection 300.1(3) of the Act requires the following supporting documents to be kept with the register: a copy of any deeds, transfers or similar documents that contain certain information with respect to each property listed in the register, including the municipal address, if any; the registry or land titles division and the property identifier number (PIN); the legal description; and the assessment roll number, if any.

The register must be available for inspection during normal business hours by the members of the corporation and by creditors or their agents or legal representatives and any of them may make extracts therefrom.

These new provisions in the Act were made pursuant to the *Forfeited Corporate Property Act*, which came into effect on December 10, 2016. They were made to assist the Crown in locating land that reverts to the Crown if a corporation is dissolved while owning land. Corporations are expected to be compliant with these new provisions by December 10, 2018, failing which they and their directors and officers could face fines.

Other Legislation Update

By [Terrance S. Carter](#)

Ontario Bill 48, *Safe and Supportive Classrooms Act, 2018*

On November 12, 2018, the Legislative Assembly of Ontario began second reading of [Bill 48, *Safe and Supportive Classrooms Act, 2018*](#) (“Bill 48”). If passed, Bill 48 would amend the *Early Childhood Educator’s Act, 2007* and *Ontario College of Teachers Act, 1996* to include “prescribed sexual acts” under the definition of “professional misconduct” for teachers. The amendments would provide mandatory revocation of teachers’ certificates where they have been found guilty of professional misconduct consisting of sexual abuse of a child, child pornography, or prescribed sexual acts. Additionally, these acts, along with the *Teaching Profession Act*, would also be amended to clarify that touching or other

actions “necessary for the purposes of diapering, toileting, washing or dressing a child as part of [a teacher’s] professional responsibilities”, and “remarks that are pedagogically appropriate” do not constitute sexual abuse of a child or student. Bill 48 would also amend the *Ontario College of Teachers Act, 1996* to require new teachers to pass a math content knowledge test prior to being granted a teaching certificate.

BC Bill 44, *Budget Measures Implementation (Employer Health Tax) Act, 2018*

On November 8, 2018, British Columbia’s [Bill 44, *Budget Measures Implementation \(Employer Health Tax\) Act, 2018*](#) (“Bill 44”) received royal assent and will come into force on January 1, 2019. Bill 44 introduces the employer health tax (“EHT”) in B.C., an annual tax collected by the province from employers on remuneration paid to their employees and former employees, beginning January 1, 2019. Employers in B.C. will be required to pay EHT where their total remuneration exceeds \$500,000 in a calendar year. However, Bill 44 exempts charitable and non-profit employers with permanent establishments in B.C. from paying the EHT if their total remuneration paid is not greater than \$1.5 million. EHT is payable at a rate of 2.925% for any remuneration amount exceeding \$1.5 million but not greater than \$4.5 million. Similar EHT exemption provisions are available to charitable or non-profit employers with two or more qualifying locations in B.C. The same EHT rate is to be paid for each “qualifying location” where remunerations at each qualifying location is between \$1.5 million to \$4.5 million. Additionally, such employers whose paid remuneration at a qualifying location exceeds \$4.5 million are subject to only a flat EHT rate of 1.95% for those qualifying locations.

Procedural Fairness and Oppression Claim Upheld Against Hockey League

By [Ryan M. Prendergast](#)

On October 12, 2018, the British Columbia Superior Court released its decision in [Surrey Knights Junior Hockey v The Pacific Junior Hockey League, 2018 BCSC 1748](#). In this decision, the court held that an amateur hockey league had violated the principles of procedural fairness by failing to provide sufficient notice to one of its teams of its risk of expulsion, instituting proceedings against the team in an untimely manner, and failing to provide an unbiased tribunal during the hearing regarding the possible expulsion of the team. Further, the court found that the league’s conduct was oppressive to the team contrary to subsection 102(1) of the British Columbia [Societies Act](#) (“Act”).

The coach of the Surrey Knights Junior Hockey team (the “Team”), Mr. Craighead, had been disciplined by BC Hockey for improper conduct during a game during which Mr. Craighead entered the opposing team’s bench and allegedly assaulted the opposing coach (“the Incident”). Soon after, the Pacific Junior Hockey League (“PJHL”), of which the Team was a member, moved to expel the Team as a result of Mr. Craighead’s conduct. There were two issues at hand with respect to the decision to expel the Team: 1) whether PJHL had breached the rules of procedural fairness, and 2) whether PJHL had conducted itself in an oppressive manner, violating section 102 of the Act.

In determining its jurisdiction over the matter, the court referenced *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 (“Wall decision”), discussed in [Church Law Bulletin No. 54](#), and affirmed that it would only interfere with decisions of voluntary associations where legal rights were at stake. The court agreed that legal, contractual rights were at issue. It stated that the right of a member to procedural fairness lies on a spectrum, “depending upon the nature of the society that the court is examining. The proceedings of a purely social club lie at the one end of the spectrum and a member risking loss of employment or livelihood lies at the other.” Since PJHL’s decision to expel the Team would financially impact the team’s owners, deprive the coach of his livelihood, and interfere with the players’ opportunity to play junior hockey, the court employed a “more rigorous ‘natural justice’ standard of procedural fairness”.

The court found that PJHL had breached the requirements of procedural fairness by failing to provide sufficient and timely notice with respect to the possible expulsion of the Team and an unbiased decision-maker with respect to the hearing. As a result, the Team and its owners were deprived of the opportunity to respond to the complaint despite the fact that the PJHL bylaws provide the member with such an opportunity before the decision is made. Further, the president of PJHL, who himself acknowledged having a conflict of interest in the matter, was involved in various decisions that the court found “significant to the hearing itself”, and gave rise to an objective perception of bias. As such, the court found that PJHL had breached the requirements of procedural fairness under common law.

The court also held that PJHL had conducted itself in an oppressive and unfairly prejudicial manner in violation of section 102 of the Act. To prove oppressive conduct, the Team was required to establish that there had been a breach of their reasonable expectations in the context of the relationship between the Team and PJHL and in the circumstances of the dispute. The court accepted the following expectations of the Team as reasonable in the circumstances, both of which were violated: 1) that its players could

participate in the league “free of unfair interference” from PJHL; and 2) that PJHL would conduct itself in accordance to its bylaws and the principles of natural justice, as discussed above.

The court was clear that PJHL was permitted to expel its team as provided for in its bylaws. However, the court held that PJHL had engaged in oppressive and unfairly prejudicial conduct towards the Team and its owners for several reasons: the wrongdoer, Mr. Craighead, had already received a “significant penalty” for his conduct; the stakes at interest of the owners, coach, and players; the reasonable expectation of the Team; and because PJHL owed its obligation to act fairly towards the Team and not just its owners.

This case highlights that courts will scrutinize the bylaws of a society when claims are made with respect to oppressive conduct or breaches of procedural fairness. Where a charity or not-for-profit has their own bylaws, the courts are apt in recognizing a legal, contractual right and can exercise its jurisdiction over the matter. As such, charities and not-for-profits should maintain current bylaws, and ensure that their conduct is in line with the principles of procedural fairness as it relates to the bylaws.

Ontario Court Permits Charity to Keep “No Strings Attached” Donation

By [Jacqueline M. Demczur](#)

On October 30, 2018, the Ontario Superior Court of Justice released its decision in [The McKay Cross Foundation v ICSS](#), concerning a motion for summary judgment dismissing an action by The McKay Cross Foundation (the “Foundation”), CAM 88 Inc., and Ann Cross (collectively the “Plaintiffs”) claiming the return of a \$100,000 donation to a registered charity, Innovative Community Support Services (“ICSS”). In this case, the court considered the agreement between both parties in order to determine whether the donated funds were specific purpose charitable funds.

In late 2011, Ms. Cross sought to purchase or build a residence where her developmentally disabled grandson and two other disabled men could receive quality care. After approaching ICSS about this, a draft agreement was proposed in June 2012, whereby Ms. Cross would provide \$300,000 to purchase a house to be held by ICSS on the condition that ICSS would obtain certain government funding. While not explicitly stated in the decision, it does not appear that the agreement was signed by the parties. In a subsequent email, ICSS suggested that Ms. Cross donate \$100,000 “no strings attached,” and that she donate \$50,000 each year for the following three years. Ms. Cross responded that she could give \$100,000 before Christmas 2012 and \$100,000 after Christmas 2012 but before June 30, 2013. On September 19, 2012, ICSS received a \$100,000 cheque from Ms. Cross marked “Donation”.

By November 2012, ICSS temporarily placed the three men in a separate residence that it managed until another house could be found. Although ICSS continued to make efforts to find funding, it informed Ms. Cross by September 2013 that government funding would not be available for some time. Ms. Cross subsequently informed ICSS that she would purchase a house, and did so under The McKay Cross Foundation's name. This was then rented to ICSS to manage. The three men moved into this house in 2014 and have lived there under ICSS' care since then. However, on December 1, 2014, The McKay Cross Foundation wrote to ICSS demanding the return of Ms. Cross' \$100,000 donation.

At court, the Plaintiffs argued that there was an agreement for Ms. Cross to donate funds in exchange for a tax receipt, but that the donated funds were restricted to the specific purpose of purchasing a home for the men. They further claimed that ICSS had breached its fiduciary obligations when it did not ensure that the donation was applied in accordance with the alleged restricted purpose. ICSS, on the other hand, claimed there was no genuine issue requiring a trial, as the Plaintiffs had no evidence to support their arguments. Further, it argued that Ms. Cross' donation was made with no strings attached.

In examining the evidence, the court found that the donation was made with no strings attached. Throughout email exchanges between Ms. Cross and ICSS concerning Ms. Cross' purchase of the house, it found that Ms. Cross never asked or mentioned that the \$100,000 donation should be applied to the purchase. Rather, it stated that "she communicated quite cooperatively with [ICSS] seeking their assistance to help fund required renovations." The court also noted that the contract alleged by the Plaintiffs would have been "too vague to be enforceable," as it did not address the parties, the terms, legal title to the house, how the parties were to be bound by it, or the required circumstances for a return of the donation or a portion thereof. Therefore, any potential breach of contract claim would have failed. Given the communication between both parties, the court therefore held that there was no evidence that the donation was restricted to being used for a down payment for a house for the three men, and found that there was no genuine issue requiring trial. Accordingly, the court dismissed the Plaintiffs' action, assessed costs of \$24,280 against the Plaintiffs and allowed ICSS to keep the \$100,000 donation.

This case provides a good illustration of the importance for charities and donors of drafting and entering into proper gifting agreements before donations are made. This is particularly important where the donor wishes to restrict their donation to a specific purpose. Without such an agreement, the intention of either or both parties may be misunderstood. In such circumstances, as was the case here, unnecessary money and time in court may need to be spent in order to determine the true intention of the parties.

Why Charities and Not-for-Profits Should Comply with PIPEDA

By [Esther Shainblum](#)

There is a growing global emphasis on and regulation of privacy as well as increasing stakeholder awareness and expectations with respect to how organizations handle their personal information. For example, the *General Data Protection Regulation*, which harmonizes data protection and privacy laws across all European Union jurisdictions, was implemented across the European Union on May 25, 2018. Further, on September 30, 2018, the negotiations were completed for the US-Mexico-Canada Agreement, which contains significant provisions on the transfer of personal information and data localization.

As well, in May 2018, the Office of the Privacy Commissioner of Canada (“OPC”) published two guidances for organizations subject to the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”), Canada’s federal private sector privacy legislation – one regarding the concept of [meaningful consent](#) (which is to come into effect on January 1, 2019) and one on [inappropriate data practices](#) (which came into effect on July 1, 2018). Most recently, on November 1, 2018, the new data breach reporting and recordkeeping regime under PIPEDA came into force.

In light of these changes, many charities and not-for-profits have asked whether, and how, PIPEDA impacts them. As such, this bulletin provides a brief discussion on the intersection between PIPEDA and charities and not-for-profits, and recommends that charities and not-for-profits bring their policies and procedures into compliance with PIPEDA’s breach reporting and recordkeeping rules, even in circumstances where compliance may be voluntary.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 437](#).

Date Set for New Trademark Law in Canada

By [Sepal Bonni](#)

After much anticipation and uncertainty, changes to Canada’s trademark law have been set to take effect on June 17, 2019. The coming into force of the new law will result in significant changes to Canadian trademark law of which charities and not-for-profits will need to be well aware. Some of the main changes to trademark law have been discussed in [Charity Law Bulletin No. 360](#), and are further outlined below, together with some recommendations that charities and not-for-profits will want to consider prior to the coming into force date.

The key changes that will impact charities and not-for-profits are the following:

- Trademark applicants will no longer be required to indicate if the trademark has been used in Canada and, if so, the date of first use.
- The requirement that a trademark be in use before it proceeds to registration will be eliminated.
- The definition of “trademark” will be greatly expanded to include non-traditional trademarks, including colours, holograms, moving images, sounds, scents, tastes, and textures.
- Canada will become a member of the Madrid Protocol that will allow applicants and registrants to obtain international registration of trademarks in any of the 102 member countries through a streamlined process without the need to file national applications in each country.
- The Nice Classification of goods and services will be adopted and, as a result, applicants will be required to classify goods and services in accordance with the classification system.
- A class-based government fee system will be introduced for filing and for renewal.
- Trademarks will be examined for distinctiveness which will make it harder to register trademarks.
- The term of registration will be reduced from 15 years to 10 years.

Charities and not-for-profits should consider the following *prior* to the implementation of the new law on June 17, 2019:

- Proactively file trademark applications before the class-based government fee system is implemented which will result in an increase in government fees.
- Renew registrations prior to June 17, 2019 to take advantage of the 15 year renewal period and to save on fees, as it will be much more expensive to renew registrations after the new law is in force.
- Consider expanding goods and services in existing registrations before the increase of government filing fees.
- Beware of trolls. Until now, trademark trolls in Canada were not really an issue. However, because it will now be possible to obtain registration of a trademark without use, trademark trolls in Canada have already arrived. The Canadian Intellectual Property Office has reported that over 500 trademark applications have been filed covering all 45 classes of goods and services and nearly 100% of those applications were filed by trolls, likely with the intent to extort money from legitimate trademark owners that have not filed applications. This will likely continue and become an even more prevalent problem as we approach the implementation date. As a result, charities and not-for-profits must be proactive in filing for new trademark registrations and expanding existing registrations now in order to avoid falling victim to trademark trolls.
- Given the increase of trademark trolls and the expected increase in Canadian trademark filings from applicants around the world, it will be even more important to monitor trademark filings through trademark watching services in order to enforce trademark rights.

CRTC Releases New Bulletin on CASL Compliance

By [Ryan M. Prendergast](#)

On November 5, 2018, the Canadian Radio-television and Telecommunications Commission (“CRTC”) released its [Compliance and Enforcement Information Bulletin CRTC 2018-415](#) (the “CRTC Bulletin”). The stated purpose of the CRTC Bulletin is to provide general compliance guidelines as well as best practices with regard to section 9 of Canada’s anti-spam legislation (“CASL”), including examples of what the CRTC considers as non-compliant activities and measures for managing risks. The CRTC Bulletin also refers to the guidelines regarding the development of corporate compliance programs in [Compliance and Enforcement Information Bulletin CRTC 2014-326](#).

While sections 6 to 8 of CASL generally prohibit direct action, section 9 of CASL is meant to extend the prohibitions in sections 6 to 8 to any intermediaries who receive direct or indirect financial benefit from a contravention of CASL by others. As examples of intermediaries to which this section would apply, the CRTC Bulletin lists advertising brokers, electronic marketers, software and application developers, software and application distributors, telecommunications and internet service providers, and payment processing system operators.

The CRTC Bulletin states that it will consider “a variety of factors” on a case-by-case basis to assess the role of individuals, businesses and other entities with regard to a section 9 violation. Examples of such factors are the level of control over the activity that constitutes a contravention of section 9 and what could have been done to prevent or stop that activity, the degree of connection between the actions of the intermediary and the entity contravening section 9, and any evidence of precautions and safeguards to prevent or stop violations from being committed.

However, the CRTC Bulletin states that it is possible for an individual or organization to be held liable and face administrative monetary penalties, “even if they did not intend to do so or were unaware that their activities enabled or facilitated contraventions of sections 6 to 8 of CASL by a third party.” The preventative measures recommended by the CRTC Bulletin for all individuals and organizations subject to CASL are comparable to the due diligence requirements of financial institutions with regard to know-your-client (KYC) requirements. In this regard, individuals and organizations are required to validate the identity of clients, avoid dealing with parties using P.O. boxes as mailing addresses or dealing in cryptocurrencies.

The CRTC Bulletin reinforces that charities and not-for-profits that are subject to CASL need to evidence due diligence in working with online marketing businesses that assist in emailing campaigns or with, for example, payment processing system operators in the sale of online services or tickets. Because of the different kinds of arrangements and technologies which may be caught by the CRTC's interpretation of section 9 of CASL, charities and not-for-profits with an online presence should review their existing counterpart due diligence policies as well as the terms of service with third parties that provides technological services to the organization to ensure adequate measures for compliance with the CRTC Bulletin are in place and that protections for the charity or not-for-profit are also in place.

Industrial Design Amendments Facilitate Canada's Accession to the Hague Agreement

By [Sepal Bonni](#)

Industrial designs are a form of intellectual property that protect the visual design of objects, such as shapes, configurations or ornaments applied to a finished article. Traditionally, industrial designs have been used to protect innovative designs, such as furniture, lighting, accessories, kitchen utensils, and appliances. However, what often remains overlooked is the role industrial design rights play in protecting the design features (*i.e.*, the "look and feel") of virtual designs, including websites, platforms, and mobile applications. As a result, charities and not-for-profits that have unique websites and platforms or that are creating mobile phone applications should consider industrial design registration in order to protect the design elements of these interfaces. For example, if a website offers a visually appealing layout, a streamlined experience, or unique icons, text, and graphics it may be protectable as an industrial design. Industrial designs offer a unique set of exclusive rights that charities and not-for-profits should be mindful of when considering their intellectual property rights.

Interestingly, on November 5, 2018 major changes to Canada's industrial design regime were implemented. The new legislation aligns Canada's industrial design regime with international practice in various aspects. One key change that may impact charities and not-for-profits is that Canada joined the [Hague System](#), an international registration system for industrial designs that allows an applicant in one member country to obtain protection of an industrial design in all 69 member countries based on one single international application. Accordingly, charities and not-for-profits can now register industrial designs in all member countries simultaneously through one application. Another important change is that the term of protection for industrial designs has increased to the later of 10 years from registration or 15 years from the publication date. Previously, owners of protected designs were entitled to ten years of exclusive rights

to the protected designs from the date of registration. Lastly, prior to the amendments, an organization that disclosed its design publicly had only 12 months to file an application for protection of its disclosed design. Now applicants essentially have an additional six months to file industrial designs.

Many within the sector are speculating that these changes will lead to an influx in industrial design applications in Canada. As a result, these changes serve as a timely reminder to charities and not-for-profits to consider industrial design registration when assessing their intellectual property portfolios.

House Committee Report on Money Laundering and Terrorist Financing

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

The House of Commons Standing Committee on Finance (the “Committee”) presented its report on November 8, 2018, entitled: “[Confronting Money Laundering and Terrorist Financing: Moving Canada Forward](#)” (the “Report”). The Report was prepared pursuant to subsection 72(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“PCMLTFA”), which requires that the administration and operation of the PCMLTFA be reviewed by a committee of Parliament every five years. In this regard, the Report provides thirty-two (32) recommendations for consideration by the House of Commons and the Government of Canada to improve Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime. This *Alert* provides a summary of the recommendations in the Report.

For the balance of this Alert, please see [AML/ATF and Charity Law Alert No. 48](#).

Legal Risk Management Checklists for Ontario-based Charities and Not-for-Profits

By [Terrance S. Carter](#) and [Jacqueline M. Demczur](#)

The annual [Legal Risk Management Checklist for Ontario-Based Charities](#), as well as the [Legal Risk Management Checklist for Ontario-Based Not-for-Profits](#) updated as of November 2018 are now available through our website at <http://www.carters.ca/>.

The 25th Annual Church & Charity Law Seminar™ Materials – November 8, 2018

The 25th Annual Church & Charity Law Seminar™ hosted by Carters Professional Corporation in Mississauga, Ontario, on November 8, 2018, had 982 registered from the charitable and not-for-profit sector, including leaders of charities and churches, as well as accountants and lawyers. Designed to assist churches and charities in understanding developing trends in the law in order to reduce unnecessary

exposure to legal liability, the Church & Charity Law™ Seminar has been held annually since 1994. All handouts and presentation materials are now available at the links below in the order as presented, with the web links being Power Point slide shows.

- [Introduction, Agenda and Speaker Details](#)
- [Essential Charity and NFP Law Update](#) by Jacqueline M. Demczur
- [The Coming of the ONCA \(WE HOPE\) and What to Start Thinking About](#) by Theresa L.M. Man
- [Charities and Politics: Where Have We Been and Where Are We Going](#) by Ryan M. Prendergast
- [Drafting By-laws: Pitfalls to Avoid](#) by Esther S.J. Oh
- [Critical Privacy Law Update](#) by Esther Shainblum
- [Clearing the Haze: Managing Cannabis in the Workplace in Ontario](#) by Barry W. Kwasniewski
- [Recent Freedom of Religion Decisions from the Supreme Court of Canada](#) by Terrance S. Carter and Jennifer M. Leddy
- [What is Happening in Church & Charity Law in Australia? Sharing Ideas from Down Under](#) by Murray Baird, Australian Assistant Commissioner General Counsel
- [Lessons Learned from Claims to the Courtroom](#) by Kenneth Hall and Sean S. Carter
- [The Evolution and Empowerment of Charities in Ontario from the Perspective of the PGT](#) by Kenneth Goodman, The Public Guardian & Trustee of Ontario
- [Tips for Avoiding Common Errors: A Charities Directorate Perspective](#) by Arlene Proctor, Manager of the Assisted Compliance Section, Charities Directorate of the CRA

New Toronto Office Now Open

Carters is pleased to announce the opening of its new Toronto office as of November 30, 2018 to support its growing team in providing expanded services for our clients in Toronto. The new office is located at 67 Yonge Street, Suite 1402, Toronto, Ontario.

The new office can be reached by phone at (416) 594-1616.

IN THE PRESS

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

[New Draft Legislation Permits Public Policy Dialogue by Charities without Limitation](#), an article written by Terrance S. Carter and Ryan M. Prendergast was published in TaxNet Pro on November 2, 2018. This article is available online for those who have OnePass subscription privileges.

RECENT EVENTS AND PRESENTATIONS

The Top Ten Human Resources Mistakes Employers Make (And How to Avoid Them) was presented by Barry W. Kwasniewski at the CSAE 2018 National Conference in Ottawa on October 26, 2018.

[25th Annual Church & Charity Law SeminarTM](#) was hosted by Carters Professional Corporation in the Greater Toronto Area, Ontario on Thursday November 8, 2018.

Legal Considerations When Structuring a Legacy Gift was presented by Terrance S. Carter at the Professional Advisors Luncheon hosted by the Sinai Health Foundation in Toronto on November 16, 2018.

Legal Issues in Social Media was presented by Terrance S. Carter at the Orangeville Economic Development / SBEC on November 22, 2018.

UPCOMING EVENTS AND PRESENTATIONS

ICD West GTA Conference will include a session on NFP Amalgamations and is being held on January 24, 2019. Theresa L.M. Man will moderate the panel discussion. More details will be available soon.

[OBA Institute](#) will be held by the Ontario Bar Association Charity & Not-For-Profit Law Section and the theme is entitled “Privacy, Land Development, And Other Key Updates In Charity And Not-For-Profit Law” on Tuesday, February 5, 2019. Esther Shainblum will be presenting on the topic of “Privacy Issues Affecting Charities.”

[CPA Canada Not-for-Profit Forum 2019](#) by Chartered Professional Accountants Canada on February 6 and 7, 2019. Terrance S. Carter will present on February 6, 2019 on the topic of “Essential Charity and NFP Law Update.”

[The 12th Annual Ottawa Region Charity & Not-for-Profit Law Seminar](#) will be held on Thursday February 14, 2019, and is hosted by Carters Professional Corporation in Ottawa, Ontario. Guest Speakers include Tony Manconi, Director General of the Charities Directorate of the CRA, and Kenneth Goodman, Public Guardian and Trustee of Ontario. [Brochure](#) and [online registration](#) are available on our website.

[CSAE Trillium 2019 Winter Summit](#) is being held on February 15, 2019 in Burlington, Ontario. Theresa L.M. Man and Terrance S. Carter will present on the topic of “Maintaining NPO Tax Exempt Status: What You Need to Know and Why it Matters.”

CONTRIBUTORS

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Assistant Editors: Adriel N. Clayton and Ryan M. Prendergast



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, 2018), and co-author of *Branding and Copyright for Charities and Non-Profit Organizations* (2014 LexisNexis). He is recognized as a leading expert by *Lexpert*, *The Best Lawyers in Canada* and *Chambers and Partners*, and is a Past Chair of the Canadian Bar Association and Ontario Bar Association Charities and Not-for-Profit Law Sections. He is editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorismlaw.ca.



Sean S. Carter, B.A., LL.B. – Sean Carter is a partner with Carters and the head of the litigation practice group at Carters. Sean has broad experience in civil litigation and joined Carters in 2012 after having 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.



Luis R. Chacin, LL.B., M.B.A., LL.M. - Luis was called to the Ontario Bar in June 2018, after completing his articles with the firm. Prior to joining the firm, Luis worked in the financial services industry in Toronto and Montreal for over nine years, including experience in capital markets. He also worked as legal counsel in Venezuela, advising on various areas of law, including government sponsored development programs, as well as litigation dealing with public service employees. His areas of practice include Corporate and Commercial Law, Real Estate, and Wills and Estates.



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



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 advice pertaining to insurance coverage matters to charities and not-for-profits.



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



Theresa L.M. Man, B.Sc., M.Mus., LL.B., LL.M. – A partner with Carters, Ms. Man practices in the area of charity and not-for-profit law and is recognized as a leading expert by *Lexpert* and *Best Lawyers in Canada*. 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 vice chair of 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 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. 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 practiced 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.



Christina Shum, B.M.T., J.D – Ms. Shum graduated from Osgoode Hall Law School in 2018 and is Student-at-Law at Carters. While attending Osgoode, Christina interned at International Justice Mission where she provided research on bonded labour laws, and summered at CGI where she focused on contractual matters in IT law. She also volunteered as a community mediator and was Vice-President of Osgoode's Women's Network and Co-President of the Osgoode Peer Support Centre. Prior to attending law school, Christina obtained her Bachelors of Music Therapy from the University of Windsor and her Associate diploma in piano performance from the Royal Conservatory of Music.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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