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CHARITY & NFP LAW UPDATE

OCTOBER 2019

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

OCTOBER 2019

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RECENT PUBLICATIONS AND NEWS RELEASES

Proposed New Uniform Public Appeals and Crowdfunding Act

By Terrance S. Carter and Luis R. Chacin

A Working Group of the Uniform Law Conference of Canada (the "ULCC") released the "Consultation Paper on a Uniform Informal Public Appeals and Crowdfunding Act" (the "Consultation Paper"), in September 2019. As its title implies, the Consultation Paper includes a proposed Uniform Informal Public Appeals and Crowdfunding Act (the "Proposed Model Act"). The Working Group is seeking comment by January 15, 2020 on the Proposed Model Act which, if adopted by the ULCC, would replace the Uniform Informal Public Appeals Act previously adopted by the ULCC in 2011 (the "2011 Model Act"). The ULCC is a conference that brings together appointees from all the governments of Canada, academics, members of the bench and bar, as well as representatives from law reform commissions or similar bodies, for the purpose of promoting harmonization among the legislation of the provinces and territories.

For the balance of this *Bulletin*, please see *Charity & NFP Law Bulletin* No. 455.

Legislation Update

By Jacqueline M. Demczur

Ontario Proposes Exemptions to Food Premises Regulation 493/17

In a News Release from the Government of Ontario on October 29, 2019, the Ministry of Health announced that they have proposed amendments to the Food Premises Regulation 493/17 under the *Health Protection and Promotion Act* ("Regulation 493/17"). While the proposed draft amendments were not available at the time of writing, the News Release indicates that they would exempt organizations that serve "low risk foods", such as fresh fruit and pre-packaged foods, from certain provisions under Regulation 493/17. The exemptions would include the requirement for food premises operators to operate with industrialized cleaning equipment, maintain an adequate number of hand washing stations, and have a trained, certified food-handler onsite.

Currently, charities and not-for-profits are not exempt from these requirements under Regulation 493/17, except in limited circumstances, for example with certain bake sales. The News Release indicates that the proposed amendments are being introduced to reduce the burden on food banks, soup kitchens, and similar operations, many of which are charitable or not-for-profit, because the current legislation in Ontario

"doesn't distinguish between fast-food chain restaurants and the various not-for-profit soup kitchens, after school programs and new and innovative food rescue and delivery organizations which operate in schools, community centres, churches, mosques, temples and synagogues."

The Ministry of Health is consulting with the public on the proposed amendments, and is welcoming feedback until November 27, 2019.

Québec Bill 13 Amends *Act respecting the Québec sales tax*

Québec Bill 13, *An Act to amend the Taxation Act, the Act respecting the Québec sales tax and other legislative provisions* ("Bill 13"), received Royal Assent and came into force on June 19, 2019. Of note to charities and not-for-profits, Bill 13 introduced new section 66.1 to the *Act respecting the Québec sales tax*. Section 66.1 includes changes to the rules relating to donations to charities with regard to the taxable supply of property or a service that is included in determining the amount of an advantage to a donor. The wording in this section had previously been proposed in Bill 175, which was discussed in the May 2018 *Charity & NFP Law Update*, but which never received Royal Assent.

CRA Provides View on Donations by Alter Ego Trusts After Settlor's Death

By Ryan M. Prendergast

On September 25, 2019, the Canada Revenue Agency ("CRA") released CRA View, Document 2019-0798491C6 ("CRA View"), concerning donations from alter ego trusts to charities following a settlor's death, as discussed at the 2019 STEP CRA Roundtable on June 7, 2019. As this CRA View is highly detailed and nuanced, this article only provides a brief summary of the CRA's position, and those interested should read the full CRA View, which is available via online subscription services.

The CRA View considers various questions concerning a hypothetical alter ego trust and donations made by it following the death of the settlor. In this regard, the question involves an alter ego trust that owns publicly traded securities that have appreciated in value and various scenarios where after the death of the settlor, donations are made to registered charities. In this regard, the CRA View indicates that where the settlor dies, there is a deemed year-end at the end of the day on which the settlor dies pursuant to subsection 104(13.4) of the *Income Tax Act* ("ITA"). Subsection 104(4) of the ITA indicates that the alter ego trust would also realize a capital gain at that time. The CRA View then looks at different scenarios where the alter ego trust makes donations to registered charities.

In this regard, where the residual beneficiary after the settlor's death is a registered charity, and a distribution is made to that charity, the CRA View indicates that it is a mixed question of fact and law whether the payment from the trust to the charity is a charitable gift eligible for a subsection 118.1(3) donation tax credit, or a distribution of income or capital to a beneficiary of the trust. This would depend on the specific wording of the trust agreement and the trustee's intentions in making the payment to the charity. Where the trustee has no discretion regarding whether the payment is made to the charity, the payment would not qualify as a gift and would therefore not be eligible for the donation tax credit. Conversely, where the trustee is clearly given the discretion to decide how the funds are to be used, the payment to the charity would be voluntary and would be considered a charitable gift eligible for the donation tax credit. The CRA View also indicates that the same principle would apply where the residual beneficiaries are a class of registered charities as determined by the trustees, and where the trustees may make payments over a period of time, to those various registered charities.

Where the donation from the alter ego trust consists of certain publicly-traded securities, subparagraph 38(a.1)(i) of the ITA provides that "a taxpayer's taxable capital gain for a taxation year from the disposition of a property is equal to zero if the disposition is the making of a gift to a qualified donee" of certain publicly-traded securities. In such circumstances, the CRA View indicates that the taxable capital gain of the trust resulting from the disposition would be equal to zero.

CCIC Policy Brief Addresses Direction and Control and Anti-Terrorism in Canada

By Theresa L.M. Man and Terrance S. Carter

On October 15, 2019, the Canadian Council for International Co-operation (the "CCIC"), a national association representing international development and humanitarian organizations, released a policy brief titled "Directed Charities and Controlled Partnerships" (the "Policy Brief").

The Policy Brief discusses how registered charities that want to operate outside Canada are seriously restricted in effectively working with their partners by (i) the CRA's requirement that registered charities exercise direction and control over the funds they disburse through third parties that are not registered charities or other types of qualified donees, and (ii) Canada's onerous anti-terrorism regime. Based on research and interviews with national charity coalitions from six other member countries of the Organization for Economic Cooperation and Development ("OECD"), as well as input from the International Civil Liberties Monitoring Group, the Policy Brief made a number of recommendations

concerning how the Government of Canada can improve the legal framework governing the charitable sector.

First, the Policy Brief explains the requirement in the CRA's Guidance CG-002, *Canadian registered charities carrying out activities outside Canada* ("Guidance CG-002") on how Canadian charities may operate outside Canada with the assistance of intermediaries abroad. This may be done by maintaining direction and control over the use of the charity's resources by the intermediary, with strict conditions imposed on such a "partnership." Specifically, Guidance CG-002 reflects the CRA's interpretation of the ITA requirement under paragraph 149.1(1)(a.1) that "all the resources of [a charitable organization be] devoted to charitable activities carried on by the organization itself." The Policy Brief states that Canadian charities operating internationally are required by the CRA to "assume dominance over their partners […] rather than pursuing equal, respectful, and mutually beneficial relationships," something contrary to the central tenet of promoting effective international development of promoting local ownership.

As such, the Policy Brief supports the recommendation in the Special Senate Committee on the Charitable Sector's (the "Special Senate Committee") final report, discussed in *Charity & NFP Law Bulletin* No. 451. The Special Senate Committee recommended, among other things, to amend Guidance CG-002 to replace the direction and control requirement with an expenditure responsibility test that emphasizes careful monitoring of financial expenditures by intermediaries and partners rather than substantive or operational control, and thereby bringing it more in line with the policies in effect in other OECD countries.

Second, regarding Canada's anti-terrorism regime, the Policy Brief refers to the powers granted to the Minister of Public Safety and Emergency Preparedness and the Minister of Revenue under the *Charities Registration (Security of Information) Act.* These Ministers may reject an application for charitable status or revoke such status with respect to a registered charity that they believe has made, makes or will make available any resources, directly or indirectly, to a terrorist entity or an entity engaging in terrorist activities, as defined in the *Criminal Code*. The Policy Brief states that, although preventing Canadian charities from being used as a tool to support terrorism is an important policy goal, many humanitarian organizations work in conflict zones where listed non-state armed groups control parts of the territory. Accordingly, the strict prohibition on the flow of any resources to or through such organizations would often result in certain peoples being denied humanitarian aid. As a result, these provisions work to

discourage humanitarian organizations from operating in conflict-affected areas where needs may be most urgent.

In response, the Policy Brief recommends "the repeal or amendment of the *Charities Registration (Security of Information) Act* in favor of the use of the *Criminal Code* provisions, where necessary." It also recommends the adoption of an exemption to the *Criminal Code*'s anti-terrorism provisions for "impartial humanitarian assistance undertaken with due diligence," as well as a limitation on the definition of "facilitation" in the Criminal Code to situations where the facilitator knowingly facilitates a terrorist activity.

Overall, the Policy Brief highlights the constraints imposed on the charitable sector working globally because of the current regulatory and legislative provisions relating to direction and control and the anti-terrorism legislation. The Policy Brief makes significant recommendations to reform both frameworks and to engage in a broad and systematic consultation and dialogue with Canadian charities.

Ontario Court Upholds Membership Election of New Directors in Governance Dispute

By Esther S.J. Oh

The decision of *Bose v Bangiya Parishad Toronto* ("*Bose* Decision"), released on September 30, 2019, involved the Prabasi Bengal Cultural Association, which organizes cultural events for members of the Bengali community ("Cultural Organization"), and the Bangiya Parishad Toronto ("Religious Congregation"), which are both not-for-profit corporations incorporated under the *Corporations Act* (Ontario).

The *Bose* Decision considered two proceedings before Justice Belobaba. For several decades, the two organizations had operated in tandem. The two organizations had a common board of directors and issued consolidated financial statements. The Religious Congregation owns the community centre from which both organizations have carried out their programs over the years. Since a dispute arose in 2016, the Religious Congregation, under the control of its self-proclaimed board of directors, has excluded the Cultural Organization from the community centre.

The Cultural Organization was properly organized under its incorporating statute and held membership elections. In contrast, the Religious Congregation was never properly organized from a corporate law perspective. The board of directors of the Cultural Organization functioned as the board of directors for

both corporations, and members of the Cultural Organization were always treated as members of the Religious Congregation, even though the by-laws of the Cultural Organization did not mention the Religious Congregation.

When a dispute arose concerning the election of officers for the Religious Congregation as a result of factions at the two organizations, the president-elect for the Religious Congregation, supported by a minority of its directors, purported to nullify the election of directors for the Religious Congregation and self-proclaim a new board of directors and membership list for the Religious Congregation. As a result, there were competing boards of directors and uncertainty concerning the proper, lawful board of directors of the Religious Congregation. The Cultural Organization and its directors brought an application to determine this question in a proceeding which was heard in part on August 26, 2019 before Justice Belobaba. Pursuant to that application, Justice Belobaba provided a handwritten endorsement ordering a new election of the board of directors for the Cultural Organization and Religious Congregation, and adjourning the balance of the application (the "Order").

The second proceeding involved a motion filed on September 19, 2019 requesting a stay pending an appeal to the Court of Appeal from the Order. In this regard, the appellants (the self-proclaimed board of directors for the Religious Congregation) sought an urgent stay to prevent the election of a new board of directors for the Religious Congregation scheduled for that upcoming Sunday, September 22, 2019 and to preserve the *status quo* pending the appeal.

In dismissing the motion, the court found the balance of convenience was even or tilted slightly towards the respondents, and it was neither just nor convenient to grant a stay of the Order. In this regard, the court found that the appellants had failed to establish that they were likely to suffer irreparable harm unless the election was stayed. In addition, the court did not "see much risk of harm" in permitting the members to vote at the election. The court stated that even if the appeal was later allowed, "member democracy" was required to end the "wrongful usurpation" of the Religious Congregation.

This *Bose* Decision is instructive of what can happen when factions within a not-for-profit corporation attempt to take over control of the board of directors in a manner that is prejudicial to the rights of its members. This case also underscores the importance of complying with basic corporate law requirements (including adoption of an appropriate by-law and complying with by-law provisions) as one measure that may help to reduce the opportunities for factional interests to attempt to seize control and disrupt the governance of a corporation.

Court of Appeal Considers Freedom of Religion in Determination of Death

By Jennifer M. Leddy

The Court of Appeal decision in *McKitty v Hayani*, released on October 9, 2019, concerns a freedom of religion challenge to the common law definition of when death has occurred. As the court's analysis is complicated, only a brief summary of the main issues will be provided. In this case, Taquisha McKitty had suffered total brain death but was maintained on life support, which allowed her heart and lungs to continue functioning. Although the respondent, Dr. Hayani, had determined that Ms. McKitty had met the common law neurological criteria for death, Ms. McKitty's parents, as her substitute decision-makers, were granted an interlocutory injunction preventing Dr. Hayani from withdrawing life support on the basis that, according to Ms. McKitty's Christian beliefs, death only occurred when the heart stopped.

Although no Ontario legislation defines "death", the court affirmed that the consensus of Canadian medical practice and the common law concur that death occurs "where there is either an irreversible loss of cardiorespiratory function or total loss of neurological function." Ms. McKitty's parents challenged the constitutionality of this approach to defining death, arguing that this view violated religious freedom, failed to accommodate religious obligations, and violated Ms. McKitty's rights under the *Canadian Charter of Rights and Freedoms* ("Charter"). However, the application judge dismissed the application because (1) Ms. McKitty was physically incapable of exercising her Charter rights, and therefore did not fall under the scope of "everyone" under section 2 of the Charter and, as such, was "not a bearer of Charter rights"; and (2) because the Charter does not impose duties on private individuals such as Dr. Hayani who are not state actors.

Although Ms. McKitty had passed away prior to the appeal, rendering the appeal moot, the Court of Appeal considered the matter nonetheless. It upheld the common law definition of death which includes brain death, but also found that a common method of determining death was heart failure. While it found religious beliefs ought to be considered in determining when death has occurred , the Court did not decide whether Dr. Hayani's declaration of death infringed Ms. McKitty's Charter rights because this case did not have an adequate evidentiary record, due to the lack of participation by the Attorney General and because it was moot,

The Court of Appeal dismissed the lower court's conclusion that Ms. McKitty was not a bearer of Charter rights as being overly broad, stating that many people are unable to exercise many of their Charter rights due to impairment, but that this has no bearing on their status as subjects of Charter rights, and that "…at

least some of the *Charter* rights protect not only one's interest in doing but simply in being. The rights govern how one is to be treated by others. These include, for example, the right not to be deprived of life and the right to equal benefit of the law." Further, with regard to whether Ms. McKitty fell under the scope of "everyone", the Court indicated that the lower court ought to have adopted the Privy Council's approach in *Edwards v Canada (Attorney General)* by "apply[ing] a presumption of membership in the class ("everyone") who is to benefit from the Charter."

Concerning the Charter's application, the Court found that Dr. Hayani did not owe any duties to Ms. McKitty under the Charter, as it could not be established that Dr. Hayani was performing a governmental function or acting as a government agent. Although the appellants argued that the *Vital Statistics Act* compelled Dr. Hayani to complete a medical certificate of death and therefore violated Ms. McKitty's freedom of religion, the Court indicated that the main issue was the continuation of Ms. McKitty's medical treatment, and left this matter to be decided by a future case.

The Court considered a "Charter rights argument" seeking to use section 52 of the *Constitution Act, 1982* to invalidate the law relating to the definition of death and replace it with one that accommodates religious freedoms. In this regard, it found that Ms. McKitty's beliefs fell within the protection of freedom of conscience and religion under subsection 2(a) of the Charter. In this regard, the Court characterized her religious beliefs to be that life stops when the heart ceases to beat, that stopping life support to stop a heartbeat would amount to intentionally killing Ms. McKitty, and that breaching the rule against killing would be to defy God. However, the Court also held that the question of whether Ms. McKitty's right to freedom of religion had been limited would be "better left […] to a case with a more developed record."

The Court also considered a "Charter values argument" whereby the Court was asked to use its inherent power to "modify the common law to require religious accommodation." Charter values arguments rely on "moral norms, principles, and aspects of well-being associated with the particular provisions of the Charter," and are used in litigation between private parties to "guide incremental change to the common law." However, Charter values are "not Charter rights by another name" and while they can change the common law, they cannot change legislation. The Court stated that Charter values should be approached with careful attention to the rules, as "unlike Charter rights, [Charter values] are not taken from a canonical text," and have no methodology to guide their formulation or resolve priority in a conflict. Again, given the evidentiary deficiencies and that the appeal was moot, the Court concluded that "whether a common law rule should be crafted to provide accommodation for persons whose religious convictions cannot

accept neurological criteria for death, is a question that must, ultimately, be left for another case," and dismissed the appeal.

Although the case lacked the proper evidentiary basis to do a full Charter rights or Charter values analysis and the case was moot, the Court's distinction between Charter rights and Charter values and elucidation of the Charter values methodology has provided a helpful roadmap for similar cases in the future which are bound to arise.

Tribunal Awards Considerable Damages for Discriminatory Hiring Practice

By Barry W. Kwasniewski

On August 23, 2019, the Human Rights Tribunal of Ontario ("HRTO") released its Decision on Remedy in *Haseeb v Imperial Oil Limited* ("Decision on Remedy") awarding damages to be paid by Imperial Oil Limited ("Imperial Oil"), in the amount of over $120,000, as a result of discrimination in its hiring practices on the protected ground of "citizenship" in the Ontario *Human Rights Code* (the "*Code*"). As was previously discussed in *Charity & NFP Law Bulletin* No. 430, the HRTO released its interim decision for this case on the issue of liability ("Decision on Liability") on July 20, 2018, holding that Imperial Oil's policy that required entry-level job applicants to disclose proof of their eligibility to work in Canada on a permanent basis was discriminatory on the ground of citizenship. In doing so, the HRTO adopted a novel approach by conducting a "detailed analysis of this ground in the *Code* and its relationship to various subgroups of non-citizens."

Following this, Imperial Oil filed a Request for Reconsideration, which was denied on February 14, 2019. The HRTO ordered that the parties proceed with the hearing on remedial issues, which assessed the damages that were awarded against Imperial Oil. This *Charity & NFP Law Bulletin* summarizes the Decision on Remedy.

For the balance of this *Bulletin*, please see *Charity & NFP Law Bulletin* No. 456.

IAPP and EY Jointly Release Privacy Governance Report

By Esther Shainblum

In late September, 2019, the International Association of Privacy Professionals ("IAPP") and Ernst & Young ("EY") jointly released the fifth IAPP-EY Privacy Governance Report (the "Report"). The Report

compiles and summarizes results from a global survey of IAPP members on issues related to privacy program structures (*e.g.* budget, staffing and career development), compliance with the EU's General Data Protection Regulation ("GDPR"), and trends in privacy and data protection professionals' daily routines, among other matters.

The Report, which surveyed respondents in the US, EU, UK, Canada, and other countries, reveals some interesting statistics. For example, by the first anniversary of the GDRP's implementation, over 500,000 organizations had data protection officers ("DPOs"), far in excess of pre-GDPR estimates. While most organizations had DPOs because they were required to do so under the GDPR, the survey found that some respondents had a DPO even if they were not required to have one. With regard to the role of the board of directors, the Report states that the board's role in privacy matters has been elevated as a result of the US Federal Trade Commission's ruling on Facebook and Cambridge Analytica, which brought privacy risks to the forefront of organizations. Yet, when it comes to internal reporting on privacy, the Report found that, while EU-based privacy leaders generally report to the board of directors, US-based privacy leaders generally report to the general counsel and that boards in the EU are more likely to have direct oversight of privacy issues than those in the US.

The Report noted that, among organizations that must comply with the GDPR, the number of reported data "breaches", defined as any unauthorized disclosure of personal data, had doubled from 16% in 2018 to 38% in 2019. In fact, 22% of respondents indicated they had reported ten or more breaches in the last year. The Report attributes this increase to the broad definition of data breach under the GDPR and to possible over-compliance by organizations, rather than to other causes, such as an increase in cyberattacks. Interestingly, only 2% of organizations reported being fined for a privacy breach, causing the authors of the Report to speculate that the whopping fines levied on organizations such as British Airways ($230 million) and Marriott ($125 million) may be outliers and that authorities may be choosing in most cases to work with organizations to address problems rather than resorting to fines and enforcement actions. Fewer than half of survey respondents, both within and outside of the EU, believed they were "fully" or "very" compliant with the GDPR, with one-tenth in the EU reporting that they are only "somewhat" compliant with the GDPR. The Report suggests that these statistics indicate the difficulty of complying with the GDPR, not that organizations do not take their privacy obligations seriously. 88% of respondents in the EU felt that their top priority was to comply with the GDPR or other law, whereas only 57% of US privacy leaders selected that as their top priority. Interestingly, 16% of US privacy leaders felt that

safeguarding data from threats was one of their top three priorities whereas only 3% of EU leaders included that in their top three priorities.

Generally, respondents found that fulfilling their core GDPR privacy obligations, such as data portability requests, access requests and the right to be forgotten, had become less difficult over the past year. More than half of the organizations surveyed had received access and right to erasure requests over the last year. Organizations found locating unstructured personal data and monitoring data protection/privacy practices of third parties to be the most difficult types of data subject requests to handle. One area of growing uncertainty noted by the Report for organizations subject to the GDPR is cross border data transfers. The GDPR permits personal data to be transferred only to countries with adequate protection laws (such as Canada). To transfer to other countries, such as the US, organizations subject to the GDPR must put in place adequate safeguards to ensure GDPR compliance. Most organizations rely on standard contractual clauses or the EU-US Privacy Shield frameworks, both of which are currently before the Court of Justice of the European Union and could be invalidated. If that were to happen (as was the case with the former "Safe Harbor" framework) there will be a great deal of uncertainty about how to comply with the GDPR's data transfer requirements. This problem will be magnified by Brexit, when the UK leaves the EU. It may become challenging to ensure continued data flows from the EU to the US, the UK and other countries.

The Report found that most companies subject to the GDPR are "controllers" under the GDPR, with about 2/3 also being "processors". It also states that 90% of organizations subject to the GDPR use other organizations to process data, with contracts being the most widely used method of ensuring third party processor compliance.

With regard to privacy program structures, the Report indicates that there are almost twice as many staff who devote part of their time to privacy matters as there are full-time privacy staff. Three out of ten privacy professionals also indicated that they expect to see full-time privacy staff increase in the coming year.

The Report provides a helpful look at the state of privacy matters on a global scale, and in particular highlights how the GDPR has affected organizations both within and outside of the EU. The findings will be of interest to Canadian charities and not-for-profits, which may be able to draw certain ideas for best practices in their privacy governance from the Report.

Grace Period to Ensure Compliance with French Signage Laws in Québec Ending Soon

By Sepal Bonni

As reported in the November 2016 *Charity & NFP Law Update*, amendments to the regulations under the Québec *Charter of the French Language* came into force on November 24, 2016, requiring Québec organizations that have non-French trademarks on outdoor signage to ensure a "sufficient presence of French" on outside signage. The regulations provided a three year grace period for organizations to comply. This grace period comes to an end on November 24, 2019.

Under the amended regulations, any trademark "displayed outside an immovable" in a language other than French is required to have "a sufficient presence of French". The definition of "outside an immovable" includes signs or posters related or attached to an immovable, including rooftops, signs or posters outside premises situated in a larger property complex, or inside a storefront but intended to be seen from the outside.

As a reminder, charities and not-for-profits may fulfill this requirement by including "(1) a generic term or a description of the products or services concerned; (2) a slogan; [or] (3) any other term or indication, favouring the display of information pertaining to the products or services to the benefit of consumers or persons frequenting the site." The "sufficient presence of French" requirement would be met if the French sign or poster is given permanent visibility, legibility in the same visual field as that mainly covered by the non-French trademark signage, and is illuminated and situated in a way to make it easy to read along with the non-French trademark. However, there is no requirement that the French signs or posters be in the same place, number, material or size as the non-French trademark, so long as the two are equally legible.

Charities and not-for-profits operating in Québec that publicly display trademarks should take note of the new regulations and ensure they meet the newly imposed obligations by November 24, 2019. In that regard, the *Office québecois de la langue française* has prepared illustrative guides to assist organizations with implementing the requirements. However, it is recommended that charities and not-for-profits that operate in Québec review their trademark registrations to determine if complying with the new regulation will result in alterations to registered trademarks. If this is the case, trademark owners should consult trademark counsel to determine if their trademarks are still being used in accordance with Canadian trademark law.

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 October 2019 are now available through our website at http://www.carters.ca/.

Legal Challenges and Options for Boards of Religious Institutes in Transition

A handout is now available from a presentation given by Terrance S. Carter on the topic of *Legal Challenges and Options for Boards of Religious Institutes in Transition* at the Association of Treasurers of Religious Institutes 32nd Annual Conference, on September 29, 2019 in Calgary. The handout will be of interest for Catholic and other religious organizations having to deal with the intersection of civil law and canon law, particularly where these areas of law touch on the role of directors in dealing with religious organizations in transition, which may arise in part due to declining membership. The handout identifies legal challenges that boards of religious institutes in transition can face as civil law entities, as well as some options and suggestions to consider in response.

The handout can be accessed here: Legal Challenges and Options for Boards of Religious Institutes in Transition.

IN THE PRESS

Charity & NFP Law Update – September 2019 (Carters Professional Corporation) was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.

Federal Decision Lifts Discipline Restriction on Not-for-Profits written by Terrance S. Carter was featured in The Lawyer's Daily on October 22, 2019.

RECENT EVENTS AND PRESENTATIONS

Essential Charity Law Update was presented by Terrance S. Carter at the Christian Legal Fellowship National Conference on September 27, 2019.

Legal Challenges and Options for Boards of Religious Institutes in Transition was presented by Terrance S. Carter at the ATRI 32nd Annual Conference (Association of Treasurers of Religious Institutes) in Calgary, Alberta, on September 29, 2019.

Succession Planning was presented by Nancy E. Claridge at the Orangeville & Area SBEC on October 9, 2019.

Evolving Trends in Philanthropy and Planned Giving: More Than Just Charitable Donations was presented by Terrance S. Carter at STEP Canada – Ottawa Branch on October 16, 2019.

Volunteer Ottawa hosted a session on October 16, 2019, at which Esther Shainblum presented the following topics:

- **Essential Privacy Issues for Charities & Not-for-Profits** and
- **Duties and Liabilities of Directors and Officers of Charities and NFPs**

Investment Challenges and Opportunities for Charities, Including Social Investments and Donor Advised Funds was presented by Terrance S. Carter at the Estate Planners Council of London during an evening session on October 21, 2019.

UPCOMING EVENTS AND PRESENTATIONS

Four days left to register for the **26th Annual Church & Charity Law Seminar™** will be held on **Thursday, November 7, 2019**, hosted by Carters Professional Corporation in Greater Toronto, Ontario. Details, brochure and registration are available online.

AFP Congress 2019 will be held on Tuesday November 26, 2019 at which Terrance S. Carter and Theresa L.M. Man will be presenting on the topic of "Gift Acceptance Policies".

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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, 2019), and co-author of *Branding and Copyright for Charities and Non-Profit Organizations* (2019 LexisNexis). He is recognized as a leading expert by *Lexpert*, *The Best Lawyers in Canada* and *Chambers and Partners*. Mr. Carter is a member of CRA Advisory Committee on the Charitable Sector, and is a Past Chair of the Canadian Bar Association and Ontario Bar Association Charities and Not-for-Profit Law Sections. He is editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorismlaw.ca.

Sean S. Carter, B.A., LL.B. – Sean Carter is a partner with Carters and the head of the litigation practice group at Carters. Sean has broad experience in civil litigation and joined Carters in 2012 after having articled with and been an associate with Fasken (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 Carters. 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 pensions, government sponsored development programs, as well as litigation dealing with public service employees. His areas of practice include Corporate and Commercial Law.

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 Master's 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.

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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 – Ms. Shainblum practices at Carters Professional Corporation in the areas of charity and not for profit law, privacy law and health law. 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.

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