

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

FEBRUARY 2020

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SAVE THE DATE – Friday, June 19, 2020

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RECENT PUBLICATIONS AND NEWS RELEASES

Competition Bureau's Role in Digital Advertising: Implications for Charities and Not-for-Profits

By [Terrance S. Carter](#) and [Luis R. Chacin](#)

On February 11, 2020, the Competition Bureau released its strategic vision for 2020-2024 in the document titled "[Competition in the Digital Age](#)" (the "Plan"), highlighting the leadership role that the Competition Bureau intends to take in the digital economy, including enforcement action with regard to fraud and deceptive marketing practices. The Plan follows the speech, "[Honest Advertising in the Digital Age](#)", delivered by the Deputy Commissioner of the Competition Bureau's Deceptive Marketing Practices Directorate at the Canadian Institute 26th Annual Advertising and Marketing Law Conference on January 22, 2020. The Deputy Commissioner provided insight into the Competition Bureau's role and enforcement priorities with regard to marketing and advertising in the digital economy. This *Charity & NFP Law Bulletin* provides a brief overview of the Plan and the speech by the Deputy Commissioner, both of which are relevant to charities and not-for-profits in their digital fundraising campaigns.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 461](#).

CRA News

By [Ryan M. Prendergast](#)

Excise and GST/HST News No. 107

The Canada Revenue Agency ("CRA") released its [Excise and GST/HST News No. 107](#) ("Newsletter") on February 19, 2020. Among other topics, the Newsletter discusses the newly implemented registered journalism organization ("RJO") regime introduced at the beginning of 2020. While the CRA had previously released a Guidance on RJOs, discussed in [Charity & NFP Law Bulletin No. 459](#), the Newsletter provides additional details concerning RJOs for GST/HST purposes. It indicates that RJOs are neither charities nor public institutions for GST/HST purposes, and therefore do not have any entitlements or obligations as such. However, an RJO that is not a trust may be a non-profit organization for GST/HST purposes. To be a non-profit organization, the RJO must be "organized and operated solely for non-profit purposes"; and must not "distribute or make available any of its income for the personal benefit of any proprietor, member, or shareholder, unless the proprietor, member, or shareholder is a club, a society, or an association that has, as its primary purpose and function, the promotion of amateur athletics in Canada."

In this regard, it is a question of fact whether or not an RJO meets the criteria for being a non-profit organization.

CRA Introduces Digital Processes for Authorizations

The CRA [announced](#) on January 16, 2020 that it was introducing new digital processes for online authorization requests made by charities' representatives. Among various changes, Form RC59, *Business Consent for Offline Access* was combined with the T1013, *Authorizing or Cancelling a Representative* and NR95, *Authorizing or Cancelling a Representative for a Non-Resident Tax Account* to create one new consolidated form, the AUT-01, *Authorize a Representative for Access by Phone and Mail*. The changes took effect on February 10, 2020, and will only be used to request offline access to individual and business tax accounts.

CRA Charities and Information Sessions and Webinars

The CRA has been providing free [in-person information sessions](#) to registered charities and qualified donees. The information sessions are intended to teach those within the charitable sector about their charity's obligations. As the next round of in-person information sessions have not yet been announced, charities are encouraged to monitor the CRA's [website](#) for information on new sessions.

In addition to in-person information sessions, the CRA has also begun to provide [online information sessions/webinars](#). Two sessions on Gifting and Receipting were held on February 24 and 26, 2020. Additional webinars will be offered by the CRA throughout the year on other topics.

CAGP Provides Update on Gifts of Life Insurance in B.C.

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

In November 2019, Canadian Association of Gift Planners ("CAGP") [reported](#) that British Columbia's then-regulator for the *Insurance Act*, the British Columbia Financial Institutions Commission ("FICOM"), now the BC Financial Services Authority (the "BCFSA"), had provided a BC charity with an enforcement letter advising that it had contravened the *Insurance Act* when it accepted a life insurance policy donation from a BC resident. The enforcement letter indicated that the acceptance of life insurance policies was considered "trafficking" in contravention of the Act, and that charities could not solicit or accept donations of life insurance policies from BC residents. FICOM instructed the charity to specifically note on its website that BC residents cannot donate life insurance policies.

CAGP has now released [an update](#) on gifts of life insurance policies on February 25, 2020. The update states that CAGP had also been informed of a second charity that had received a similar warning from FICOM. As it has been common for charities to solicit and accept donations of life insurance policies, CAGP indicates that the BCFSA's current stance is concerning. Although the matter is currently relegated to BC, this issue could also emerge in other Canadian jurisdictions because equivalent provincial insurance statutes contain similar language. In providing further clarity, CAGP indicates that:

1. Despite efforts to gain clarity from the BCFSA on the matter, little clarity is available to date. The BCFSA is now reviewing the matter and will provide a response upon completion.
2. This issue pertains only to situations involving the transfer of an insurance policy itself, and not situations where the donor remains the owner of a policy and names the charity as a beneficiary of that policy.
3. Insurance companies have provided differing views on the meanings of the enforcement letters, adding to the confusion concerning what may be permissible.
4. Donors and charities should both seek legal advice where gifts of life insurance are being considered, other than where a charity is being designated as a beneficiary.

CAGP will continue to monitor the issue, and will provide clarification as it becomes available, a hugely valuable service to the charitable sector.

Legislation Update

By [Terrance S. Carter](#)

Bill C-7, *An Act to amend the Criminal Code (medical assistance in dying)*

On February 24, 2020, [Bill C-7, *An Act to amend the Criminal Code \(medical assistance in dying\)*](#) ("Bill C-7") was introduced in the House of Commons and is legislation that may impact hospitals and other health-related charities. Bill C-7 states in its preamble that it is the Government of Canada's response to the Superior Court of Québec decision in *Truchon v Attorney General of Canada* on September 11, 2019, which declared the *Criminal Code* requirement that "natural death has become reasonably foreseeable" and Quebec *Act respecting end-of-life* requirement that the person "be at the end of life" to be of no force or effect for violating several provisions of the *Canadian Charter of Rights and Freedoms*.

If passed, Bill C-7 would amend the *Criminal Code* to repeal the requirement that a person's natural death be reasonably foreseeable in order for that person to be eligible for medical assistance in dying, specify that persons whose sole underlying medical condition is a mental illness are not eligible for medical assistance in dying, create safeguards before medical assistance in dying may be provided, permit medical assistance in dying to a person who has lost the capacity to consent as long as it is on the basis of a prior agreement entered into with the medical practitioner or nurse practitioner providing medical assistance in dying, among other amendments.

Ontario Bill 175, *Connecting People to Home and Community Care Act, 2020*

On February 25, 2020, [Bill 175, *Connecting People to Home and Community Care Act, 2020*](#) ("Bill 175") was introduced at the Legislative Assembly of Ontario and carried after first reading. If passed, Bill 175 will amend the *Connecting Care Act, 2019* and *Ministry of Health and Long-Term Care Act*, provide for a transitional repeal of the *Home Care and Community Services Act, 1994*, among a number of consequential amendments to other provincial acts. Bill 175 will replace all references to "integrated care delivery systems" in the *Connecting Care Act, 2019*, discussed in the [April 2019 Charity & NFP Law Update](#), with references to "Ontario Health Teams", which is the terminology used by all stakeholders. Of note, Bill 175 would open the door for Ontario Health to authorize a health service provider or Ontario Health Team to govern the funding and oversight of home and community care services.

On the same date, the Minister of Health, recognizing that "home and community care is part of an integrated system and is not a stand-alone service", released a [consultation](#) on proposed regulations under the *Connecting Care Act, 2019* and other legislation in anticipation of the enactment of Bill 175. The consultation is open until April 14, 2020.

Ontario Bill 136, *Provincial Animal Welfare Services Act, 2019* Now Proclaimed

On January 1, 2020, a number of provisions of the [Provincial Animal Welfare Services Act, 2019](#) ("PAWS-2019") came into force by [proclamation](#), repealing the *Ontario Society for the Prevention of Cruelty to Animals Act* and making consequential amendments to the *Animal Health Act, 2009* and the *Dog Owners' Liability Act*. As discussed in the [November 2019 Legislation Update](#), PAWS-2019 was introduced as a result of the Ontario Superior Court of Justice decision in *Bogaerts v Attorney General of Ontario*, discussed in the [January 2019 Charity & NFP Law Update](#) and the [June 2019 Legislation Update](#), with regard to the constitutionality of the government's delegation of search and seizure powers to a private organization, the Ontario Society for the Prevention of Cruelty to Animals. Of note, PAWS-2019 provides

for the appointment of a Chief Animal Welfare Inspector and deputy Chief Animal Welfare Inspectors, with statutory powers to investigate offences under the legislation, apply for warrants, when appropriate, as well as other enforcement powers.

Donation Receipts Signed by and in Favour of Charity Officer Denied

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

On January 30, 2020, the Tax Court of Canada (“TCC”) released its decision in [Ampratwum-Duah v The Queen](#), denying the appeal by Rev. Augustine Ampratwum-Duah (the “Appellant”) of three concurrent reassessments respecting denial of charitable donations the Appellant had claimed for the 2005, 2006 and 2007 taxation years. Specifically, the Appellant testified he had made charitable deductions, in the total amounts of \$3,550, \$9,120 and \$6,346 for his 2005, 2006 and 2007 taxation years respectively to the then-recognized charity, named “City Chapel Ministries International” (“CCMI”), of which the Appellant was the religious leader. Each of the three donation receipts put in evidence (one for each year) had been signed by the Appellant in his capacity as CCMI’s religious leader. The TCC stated that no corroborating evidence such as bank account or church records were submitted in evidence, nor were any other CCMI officials, such as the then-Treasurer, called to testify on the basis that no such records were available because the donations had been made more than six years earlier.

The Appellant argued that his receipts should constitute sufficient evidence of the donations, that his income was sufficient to support the claimed amounts, and that too many years had passed to be able to obtain bank records. The CRA argued that no gift had been made, the Appellant had access as religious leader to CCMI records, and alleged the Appellant had signed his own donation receipts. The CRA also cited section 230 of the *Income Tax Act* (Canada) (“ITA”), which requires taxpayers to keep corroborating books and records sufficient to determine their tax liabilities for at least six years or until the expiration of any objection or appeal.

In dismissing the appeal, the TCC found for the Respondent, on the basis that the requirement in subsection 230(6), that supporting books and records be retained and available until an appeal has been concluded, was not complied with. The TCC stated that corroborating books and records (both bank and CCMI supporting records) were reasonably required in this case, particularly since the Appellant was the sole signatory of the CCMI receipts. The TCC clarified that it had not found that the claimed donations were not made, but instead that there was insufficient evidence required by subsection 230(6) to

reasonably support a finding confirming on a balance of probabilities that the subject donations were made.

This case serves as a reminder for donors, in particular, of the need to retain sufficient books and records of account as evidence, as required under subsections 230(1) and (6) of the ITA, to demonstrate that a donation has been made. Registered charities are also required to maintain books and records in accordance with the ITA. In addition, from a practical standpoint, it would be prudent for registered charities to have a policy in place to ensure that any officer of the charity is not permitted to sign donation receipts issued to himself or herself, in order to avoid any actual or perceived conflicts of interest.

Tax Court of Canada Rejects Charitable Donation Scheme... Again

By [Ryan M. Prendergast](#)

On January 27, 2019, the TCC released its decision in [Tudora v The Queen](#) (“*Tudora*”), another case involving the same charitable donation scheme under the guise of the Global Learning Gifting Initiative (“GLGI”) that the TCC rejected in its 2015 decision in *Mariano v The Queen* (“*Mariano*”), as discussed in the [October 2015 Charity & NFP Law Update](#) and [August 2016 Charity & NFP Law Update](#).

The GLGI program was a charitable donation scheme by which, in general terms, each participant, in exchange for a cash donation to charity A (Millenium Charitable Foundation), as well as an application to become a “capital beneficiary” in a trust (Global Learning Trust 2004), received rights to educational courseware licences with an inflated value that was several times higher than their original cash payment and which the participants subsequently “gifted in kind” to another participating charity; so that each participant would receive two donation receipts, one for their cash donation and another for the “gifted” courseware licenses valued much higher than the participant’s original cash donation.

In *Tudora*, the TCC was asked to determine whether the appellant taxpayer, by participating in the GLGI program, had effectively made a gift which constituted a valid charitable donation. In denying the claimed charitable tax credits pursuant to section 118.1 of the ITA, the CRA asked the TCC to apply the principle of judicial comity, relying on its previous analysis of the GLGI program and that: i) the taxpayer lacked the donative intent which is a requisite element of a gift; ii) the trust involved in the GLGI program was not a valid trust; iii) the donation receipts issued did not represent the fair market value of the alleged gifts in kind; and iv) subsections 248(30) to (32) would reduce the eligible amount of the purported gift to nil.

The TCC dismissed the appeal finding that the appellant taxpayer had no donative intent, but had an expectation of receiving a benefit as a result of his participation in the GLGI program.

On June 26, 2019, the Ontario Superior Court of Justice [certified a class action](#) against the promoters of the GLGI program as well as their professional advisors who participated in developing, structuring and promoting this charitable donation scheme which involved over 30,000 taxpayers claiming combined tax credits in the hundreds of millions of dollars.

Ontario Court Rules on Trusts in Scouts Land Ownership Dispute

By [Jacqueline M. Demczur](#)

The Ontario Superior Court of Justice released its decision in the case of [Tillsonburg Scout Association v Scouts Canada](#) on February 6, 2020 concerning a dispute over the ownership of a 95 acre parcel of land in Muskoka known as “Camp Jackson”. Tillsonburg Scout Association, an unincorporated association (“TSA”), sought a declaration vesting title to Camp Jackson in TSA as the original settlor of a trust held by Scouts Canada (“Scouts”) as trustee. Scouts, however, denied TSA’s proprietary interest in Camp Jackson, and sought a declaration that Scouts holds absolute legal title or, alternatively, that it holds title to Camp Jackson as trustee under a charitable purpose trust.

TSA purchased Camp Jackson in 1960 from Mr. Gordon Jackson, with three individuals holding title as trustees for TSA as beneficiary (“1960 Transfer”). As conditions of transfer, Camp Jackson was only to be used “for the purposes of promoting youth welfare” and any future disposition required Mr. Jackson’s written approval. In 1971, with Mr. Jackson’s written approval, the three trustees transferred title of Camp Jackson to the Kinsmen Club of Tillsonburg (“Kinsmen”) to hold as trustee for TSA (“1971 Transfer”).

Subsequently, TSA and Scouts agreed on a transfer of Camp Jackson to the Scouts, as “Scouts enjoy tax exemption status and TSA and [sic] were satisfied the Scouts real estate policy stipulated any eventual disposal of real estate would be on the recommendation of the local Scouting council and include a plan for the proceeds of sale, provided the proceeds would be used for ‘Scouting purposes in the relevant area.’” In 1983, with Mr. Jackson’s written consent, Kinsmen transferred Camp Jackson to “Provincial Council for Ontario; Boy Scouts of Canada” (which is required by Scouts policy to hold all real estate in Ontario for Scouts) on the same conditions as in the 1960 and 1971 transfers, which were to remain in force until 1985 (“1983 Transfer”).

Unincorporated associations are incapable of owning or holding property. In this regard, the court indicated that they also cannot be beneficiaries or settlors of a trust, as a valid trust requires the settlor, trustee and beneficiary to have capacity. Despite TSA incorporating in 2005, the court found that since TSA was incapable of holding an interest in Camp Jackson at first instance, there was no interest that the incorporated TSA could succeed either as settlor or beneficiary.

The court then considered whether the 1960 Transfer established a valid trust. It considered the “three certainties” (*i.e.* certainty of intention, subject matter, and objects), and found that Mr. Jackson intended to create a trust through the 1960 Transfer by him to the three trustees, and that the trust clearly described the subject matter as being Camp Jackson. However, concerning certainty of objects, it questioned whether the trust was in favour of persons or a charitable purpose, and whether the class of beneficiaries were described in sufficiently certain terms for trust to be performed.

Although the court did not find a private trust, it held that there was a valid charitable purpose trust. It found that the 1960 Transfer was “of benefit to society, sufficiently public in nature, exclusively charitable and without political purpose,” given the restriction that Camp Jackson must be used “only for the promotion of youth welfare.” It held that this restricted purpose fell within “advancement of education,” and satisfied the certainty of object requirement. Further, it stated that the charitable purpose trust continued with the 1971 Transfer to Kinsmen.

In contrast to the 1960 and 1971 Transfers, the court found that the 1983 Transfer omitted reference to Scouts taking title as trustee. The court concluded that this omission was deliberate. Although TSA argued that Scouts could only take the title as held by the transferor (*i.e.* as trustee), the court found that Mr. Jackson consented to the disposition of Camp Jackson to Scouts in accordance with his restriction. The court therefore held that Scouts took full legal title to Camp Jackson through the 1983 Transfer. On these grounds, the court dismissed TSA’s application and allowed Scouts’ application in part, with a declaration the Provincial Council for Ontario; Boy Scouts of Canada holds legal title to Camp Jackson, and a declaration that TSA has no beneficial interest in Camp Jackson.

This case is a good illustration of the difficulties associated with real property ownership by unincorporated associations. Further, it is a helpful reminder of the importance of clearly drafted trust documents to outline the intention of parties when entering into a trust arrangement.

One Incident of Sexual Harassment Justified Termination for Cause

By [Barry W. Kwasniewski](#)

On November 27, 2019, the Ontario Superior Court of Justice (the “Court”) released its decision in [Render v ThyssenKrupp Elevator \(Canada\) Ltd.](#), holding that the employer, ThyssenKrupp Elevator had just cause to terminate its employee, Mark Render (“Render”), over an incident of workplace sexual harassment. In finding the dismissal of Render without notice or pay in lieu of notice was justified, the Court applied a contextual analysis, which is “an assessment of the context of the alleged misconduct to determine whether the misconduct violates an essential condition of the employment contract, breaches the faith inherent in the work relationship or is fundamentally inconsistent with the employee’s obligations to his employer.” This *Bulletin* summarizes the Court’s decision, which is relevant to charities and not-for-profits as employers.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 462](#).

BC Court Finds Indigenous Ceremonies in School Did Not Violate Freedom of Religion

By [Jennifer M. Leddy](#)

The Supreme Court of British Columbia released its decision in [Servatius v Alberni School District No. 70](#) on January 8, 2020, concerning freedom of religion under the *Canadian Charter of Rights and Freedoms* (“*Charter*”). Candice Servatius, an evangelical Christian, claimed that she and her children’s freedom of religion under section 2(a) of the *Charter* had been infringed when an Indigenous Elder visited a public elementary school (“School”) and demonstrated smudging, and when an Indigenous prayer was said during an Indigenous dance performance held at a School assembly. She argued that their belief system prohibited them from participating in any “religious, spiritual or supernatural ceremonies” outside of their faith, and that the smudging and prayer constituted “compelled participation in state-sponsored religious exercises.”

The court first considered the historical background of the residential schools that played a central role in the federal government’s assimilationist policy. Viewed in this context, the smudging and hoop dancing allowed Indigenous students to “see themselves and their culture reflected” in the school they attended, helped to make the school a “culturally safe space,” and increased the knowledge and understanding of Indigenous culture and history.

With regard to freedom of religion, the court indicated that the purpose of section 2(a) is to “prevent interference with profoundly held personal beliefs that govern one’s perception of oneself, humankind, nature, and, in some cases, a higher or different order of being.” Pursuant to *Syndicat Northcrest v Amselem*, Ms. Servatius had the burden of proving infringement by proving that (1) she or her children have a sincere belief that has a nexus with religion; and (2) the impugned events interfered, in a manner that was more than trivial or insubstantial, with their ability to act in accordance with their religious beliefs. It added that one method of establishing a section 2(a) infringement is to show that “state neutrality” with respect to religion had been breached.

As it was conceded that Ms. Servatius’ beliefs were sincere, the court considered whether she had proven objectively that the smudging or prayer interfered with her or her children’s ability to act in accordance with their religious beliefs. With regard to state neutrality, the court found that the defendant School District had not professed, adopted, or favoured Indigenous beliefs to the exclusion of all others. While schools must be neutral public spaces “free from coercion, pressure, and judgment on the part of public authorities in matters of spirituality,” the court found that this did not mean the “homogenization” of that space. It concluded that the School District’s intent was not to profess, adopt, or favour Indigenous spirituality, but to teach about the culture and to encourage the inclusion of Indigenous students.

In response to Ms. Servatius’ argument that her children were “compelled to participate” in the Indigenous practices and affirm their beliefs, the court indicated that teaching about other people’s spiritual beliefs and practices does not compel participation or affirmation of those beliefs. While mere presence before a spiritual practice has been found in other cases to be sufficient grounds to establish a non-trivial interference, the court distinguished this case on the basis that the practices at the School were teaching demonstrations, stating that “[i]n the context of children in school being taught about beliefs, [...] mere presence does not constitute proof on an objective basis of interference with the ability to act in accordance with religious beliefs.” The court gave other examples that would not be problematic, such as a visit by students to a mosque to learn about Islam or a Catholic priest bringing candles and incense to school to acquaint students with Church rites. On the other hand, it would be problematic if the students were required to pray at the mosque or participate in a specific Catholic rite. The court therefore could not find proof on an objective basis that Ms. Servatius or her children’s beliefs had been interfered with, and dismissed her claim.

This case confirms that the teaching and demonstration of spiritual beliefs in schools is generally not a violation of freedom of religion under the *Charter*. In an educational environment, more than a student's mere presence before a demonstration or explanation of spiritual beliefs would be required to establish a violation.

Ministry of Health Revokes its Hospital Naming Directive

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

On December 18, 2019, the Deputy Premier and Minister of Health [announced](#) that the hospital naming directive previously issued in October 2017, discussed in the [October 2017 Charity and NFP Law Update](#), would be revoked so that hospitals in Ontario will no longer be required to obtain approval from the Minister of Health prior to adopting a new corporate or business name. However, recognizing that naming opportunities are key in securing donations for hospitals and hospital foundations and also that corporate or business names must respect the interests of local communities, the Ontario government will require hospitals to abide by certain expectations in order to help hospitals secure donations. The expectations are explained in a [backgrounder](#) released by the Ministry:

- Each hospital should have in place a naming policy to ensure a consistent approach to the adoption of corporate and business names.
- Meaningful consultation with stakeholders and the community concerning the adoption of a proposed name is an essential step in determining whether to adopt a new corporate or business name.
- A hospital corporation and business names are valuable assets to the hospital and community. A decision to adopt a new corporate or business name in recognition of philanthropy should be made where the level of philanthropy corresponds with the value of that asset.
- Any agreement concerning the adoption of a corporation or business name should not include a contractual term to the effect that a hospital will use a name indefinitely.
- Hospitals will continue to provide the ministry with notice of the anticipated adoption of a new corporate or business name.

In this regard, hospitals and hospital foundations should review their fundraising policies to ensure they are in compliance with the new expectations of the Ministry of Health.

Recent Issues in Privacy: Case Law Update

By [Esther Shainblum](#)

Three recent court decisions illustrate the rapid pace of change in the Canadian privacy landscape and the uncertainty in predicting the parameters of individual privacy rights. These cases, discussed below, are (i) the Ontario Superior Court of Justice's decision in [Yenovkian v Gulian](#), in which the court recognized the new privacy tort of "publicity placing a person in a false light"; (ii) the Ontario Superior Court of Justice's decision in [Stewart v Demme](#), in which a class action was certified for a privacy breach claim, apparently narrowing a previous, inconsistent decision of the court; and (iii) the Court of Queen's Bench of Alberta's decision in [R v Bykovets](#), in which it was held that there is no reasonable expectation of privacy in IP addresses. This *Bulletin* provides brief summaries of these decisions, all of which will have application to charities and not-for-profits in a privacy context.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 463](#).

New Canadian UDRP Provider for Resolving Domain Name Disputes

By [Sepal Bonni](#)

As digitalization moves forward at a rapid pace, disputes over domain names can arise for charities and not-for-profits, particularly where abusive registrations have been made in bad faith by third parties. Domain name dispute arbitrations are governed by global uniform rules. Canadian domain name disputes regarding ".ca" domain names are decided under the Canadian Internet Registration Authority's Dispute Resolution Policy. Disputes regarding generic top level domains ("gTLD") such as ".com", ".org", and ".net", are dealt with pursuant to the Uniform Domain Name Dispute Resolution Policy ("UDRP"). The [UDRP](#) was established by the [Internet Corporation for Assigned Names and Numbers](#) ("ICANN"), which is an international non-profit corporation that coordinates the Domain Name System across the world. The UDRP sets out the legal framework for resolving domain name disputes between a domain name registrant and a third party when there has been an abusive registration. It applies to all generic top-level domain ("gTLD") names (e.g. .com, .org, and .net), as well as some country code top-level domains, such as .au.

The UDRP is particularly helpful to trademark owners who wish to recover domain names that have been registered in bad faith and are infringing their registered trademarks. Trademark owners looking to file a complaint under the UDRP now have an additional provider where they can submit their complaints. On November 7, 2019, the [Canadian International Internet Dispute Resolution Centre](#) ("CIIDRC") started

accepting applications for resolving domain name disputes under the UDRP. CIIDRC was approved by ICANN to become one of only six UDRP service providers in the world that include the Arab Center for Domain Name Dispute Resolution, Asian Domain Name Dispute Resolution Centre, The Czech Arbitration Court Arbitration Center for Internet Disputes, National Arbitration Forum, and the World Intellectual Property Office.

A UDRP proceeding at the CIIDRC is commenced by the filing of an online complaint by a third party that must be in compliance with the UDRP rules of procedure. The respondent is then notified after the payment of filing fees, and given an opportunity to respond. The complainant may then select a one-member panel, or either party may choose to select a three-member panel and pay applicable fees. A decision is rendered by the panel and implemented by the registrar, which is then published. This entire [process](#) may be completed within 2 months.

In order to succeed, the complainant must prove three elements: (i) the registrant's domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (ii) the registrant has no rights or legitimate interests in respect of the domain name; and (iii) the registrant's domain name has been registered and is being used in bad faith. The remedies available are limited to the cancellation of the registrant's domain name, or the transfer of registrant's domain name registration to the complainant.

As a result, charities and not-for-profits should keep this avenue in mind when looking for timely and cost-effective resolutions to domain name disputes involving their trademarks.

Anti-Terrorism/Money Laundering Update

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

Further Amendments to Regulations under the PCMLTFA

On February 15, 2020, new proposed [*Regulations Amending the Regulations Amending Certain Regulations Made Under the Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act, 2019*](#) (the "Proposed Amending Regulations") were published in the *Canada Gazette*, Part I, and will be open for comment from interested persons for thirty (30) days from the date of publication. The Proposed Amending Regulations introduce further amendments to the previously amended regulations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the "PCMLTFA"), discussed in the [*August 2019 Anti-Terrorism/Money Laundering Update*](#).

The Proposed Amending Regulations would align Canada's AML/ATF Regime with recommendations of the Financial Action Task Force ("FATF"), including the FATF's *Guidance for a Risk-based Approach for Virtual Assets and Virtual Asset Service Providers*, discussed in the [June 2019 Anti-Terrorism/Money Laundering Update](#), the recommendations from the 2018 five-year parliamentary review of the PCMLTFA, discussed in the [AML/ATF and Charity Law Alert No. 48](#), as well as the *Dirty Money* reports commissioned by the Government of British Columbia and released in [2018](#) and [2019](#).

Of note, the Proposed Amending Regulations would introduce stronger customer due diligence requirements for designated non-financial businesses and professions ("DNFBPs"), such as accountants and accounting firms, British Columbia notaries, casinos, departments and agents of the Crown, dealers in precious metals and stones, as well real estate brokers, sales representatives and developers. As such, when required to verify the identity of an entity, DNFBPs would have to collect beneficial ownership information describing the ownership, control and structure of an entity, including corporations and trusts. DNFBPs would also be required to take reasonable measures to confirm the accuracy of the information obtained and keep records of the information and the measures taken to comply.

The Proposed Amending Regulations would also help address new emerging risks involving virtual currencies. Consistent with the FATF's 2019 guidance on virtual assets, the Proposed Amending Regulations would introduce the "travel rule" of customer due diligence as a requirement for banks and other financial institutions such as money services businesses.

US 2020 National Strategy for Combating Terrorist and Other Illicit Financing

On February 6, 2020, the US Department of the Treasury [released](#) its [2020 National Strategy for Combating Terrorist and Other Illicit Financing](#) (the "2020 Strategy"). The 2020 Strategy provides a "whole-of-government approach to guide the public and private sectors in addressing 21st century illicit finance challenges", identifying the most significant threats and vulnerabilities that allow illicit proceeds to enter the US financial system, such as the abuse of charitable organizations and unlicensed money transmitters to move money around the world.

A central focus of the 2020 Strategy is the adoption of a risk-based approach applying simplified or enhanced measures in response to different risks and focusing resources in the areas of highest risk in order to make the greatest impact.

In this regard, the 2020 Strategy also identifies enforcement priorities and supporting actions, such as improving communication of priority illicit finance threats, vulnerabilities, and risks. In this regard, the 2020 Strategy states that:

U.S.-based tax-exempt charitable organizations play an important role in delivering aid to communities worldwide and in countering terrorist propaganda and recruitment. Treasury and interagency partners will continue to engage with charitable organizations and financial institutions to evaluate and communicate the actual risk that these organizations may be misused to support terrorism and that financial institutions apply the risk-based approach to the opening and maintenance of charity accounts, as the vast majority of U.S.-based tax exempt charitable organizations are not high risk for terrorist financing.

We note that this language is consistent with the US Treasury’s 2018 National Terrorist Financing Risk Assessment, discussed in the [March 2019 Anti-Terrorism/Money Laundering Update](#), which stated that US tax-exempt charitable organizations operating domestically in the US faced a low risk of abuse but that a “small number of US tax-exempt charitable organizations that operate in high risk regions” faced a greater risk.

The 2020 Strategy also identifies vulnerabilities and enforcement priorities in relation to the collection of beneficial ownership information of legal entities, as well as money services businesses, broker-dealers, and casinos. As well, the 2020 Strategy acknowledges the value of artificial intelligence and data analytics to support law enforcement.

UN Working Paper on Impact of Counter-terrorism Legislation on Humanitarian Action

On February 13, 2020, the Inter-Agency Standing Committee (“IASC”) of the United Nations (“UN”) General Assembly [published](#) a working paper containing key recommendations from a desk review of main articles and papers published between 2011 and 2019 on the impact of counter-terrorism legislation and measures on principled humanitarian assistance (the “Paper”). The Paper identifies a number of problems caused by counter-terrorism legislation on humanitarian work, such as:

- The absence of humanitarian safeguards or exceptions in counter-terrorism legislation and sanctions regimes, causing humanitarian actors to make different choices about where to work and who to serve;
- The broad and vague definitions of terms such as “terrorism”, “material support” and “assistance” in counter-terrorism legislation, which do not explicitly exempt humanitarian activities;

- Difficulties in collecting evidence of the impact of counter-terrorism legislation and measures on principled humanitarian action, by failing to engage constructively with civil society actors on counter-terrorism legislation;
- Financial de-risking, where banks refuse to provide services to humanitarian organizations to avoid onerous compliance requirements; and
- The increased burden of counter-terrorism legislation on donor agreements including provisions regarding recruitment, procurement and programming where such obligations must be passed on to any implementing partners, contractors or sub-grantees.

In this regard, the Paper also offers a few key recommendations targeted to the UN Security Council, donors and the FATF. These recommendations include adding humanitarian exemptions and exceptions to counter-terrorism legislation and measures; improving wording and language of UN Security Council Resolutions; increased systematic monitoring of and reporting on the impact of sanctions regimes and counter-terrorism measures on humanitarian work; greater transparency and accountability of UN counter-terrorism bodies; and the development of risk-sharing measures among donors, humanitarian organizations and financial institutions.

Essential Trademark Issues for Charity and Not-For-Profit Lawyers

By [Terrance S. Carter](#)

For registered charities and other not-for-profits, their trademarks may be one of the most valuable assets that they own. As such, failure to protect such assets could have serious consequences for the directors of those organizations as well as for the organizations themselves. For instance, with regard to charities, the common law places a high fiduciary duty on directors to act as trustee-like stewards of the charitable property entrusted to them and to take reasonable steps to protect those assets. For this reason, it is important that directors of charities, as well as not-for-profits, understand the appropriate steps that are involved in protecting the organization's trademarks. To avoid the situation where a charity or not-for-profit is precluded from addressing an intellectual property challenge because the appropriate steps were not taken in a timely manner, it is important for a lawyer when initially consulting with a charity or not-for-profit to identify.

This paper was prepared for the Ontario Bar Association's Institute 2019: Audits, Working with Indigenous Communities, and Key Updates in Charity and Not-For-Profit Law. To reference the full paper, see "[Essential Trademark Issues for Charity and Not-For-Profit Lawyers](#)."

Theresa L.M. Man Named to CRA Technical Issues Working Group

Carters is proud to announce that Theresa L.M. Man is serving as a member of the CRA Charities Directorate's [Technical Issues Working Group](#) for a two-year term during 2020 and 2021. The Technical Issues Working Group advises the CRA on registered charity and qualified donee regulation issues, and is composed of CRA and Department of Finance Canada officials, as well as members of the charitable sector. Its mandate is to provide a forum to discuss trends and technical issues in the charitable sector, in order to explore workable solutions, and expand the Directorate's understanding of this sector.

IN THE PRESS

[Charity & NFP Law Update – January 2020 \(Carters Professional Corporation\)](#) was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.

RECENT EVENTS AND PRESENTATIONS

[Essential Trademark Issues for Charity and Not-For-Profit Lawyers](#) was presented by Terrance S. Carter at the Ontario Bar Association's Institute on Tuesday, February 4, 2020. [Paper](#) and [Handout](#) are posted at our website.

The Changing Compliance Landscape for Charities and NFPs was presented by Terrance S. Carter at the CSAE Winter Summit held on Thursday, February 6, 2020 in Alliston, Ontario.

Terrance S. Carter participated in a panel discussion at the **CPA Canada Not-for-Profit Forum 2020**, that covered the most significant issues and opportunities in the not-for-profit sector, on Monday, February 10, 2020, in Vancouver, B.C. Others on the panel include Alison Brewin from Vantage Point and Paul Nazareth from the Canadian Association of Gift Planners.

The 13th Annual Ottawa Region Charity & NFP Law Seminar was hosted by Carters Professional Corporation in Ottawa, Ontario, on Thursday February 13, 2020 with more than 350 in attendance.

UPCOMING EVENTS AND PRESENTATIONS

The Social Purpose Real Estate Law Conference will be hosted by the University Of Toronto Faculty Of Law on March 27, 2020. Nancy E. Claridge will participate on a three-person panel on real estate issues.

2020 Carters Charity & NFP Webinar Series will be hosted by Carters Professional Corporation on Wednesdays starting April 15, 2020. Click here for [online registration](#) for one or more individual sessions. Topics to be covered are as follows:

- **New Trademarks Act Now in Force: What it Means for Your Charity or NFP** by Sepal Bonni on Wednesday, April 15th - 1:00 - 2:00 pm ET
- **You Can't Fire Me for That: I'm Off Duty!** by Barry W. Kwasniewski on Wednesday, April 29th - 1:00 - 2:00 pm ET
- **Governance 101 for Charities & NFPs: Back to the Basics** by Theresa L.M. Man on Wednesday, May 6th - 1:00 - 2:00 pm ET
- **Evolving Trends in Philanthropy: More Than Just Charitable Donations** by Terrance S. Carter on Wednesday, May 20th - 1:00 - 2:00 pm ET
- **Navigating Privacy Breaches for Charities and NFPs** by Esther Shainblum on Wednesday, June 3rd - 1:00 - 2:00 pm ET
- **Managing Sexual Abuse Claims: The New Reality for Churches & Charities** by Esther S.J. Oh and Sean S. Carter on Wednesday, June 17th - 1:00 - 2:00 pm ET
- **Registered Journalism Organization: New Entry for Qualified Donees** by Ryan M. Prendergast on Wednesday, June 24th - 1:00 - 2:00 pm ET

Privacy Law Summit hosted by the Ontario Bar Association will include a session on Practical Advice for Drafting and Negotiating Privacy-Related Provisions in Health-Sector Vendor Agreements on April 1, 2020. Esther Shainblum will moderate this panel discussion.

[CAGP National Conference on Strategic Philanthropy](#) will be held in Regina, Saskatchewan on April 23, 2020. Theresa L.M. Man will present on the topic of “Foreign or Non-resident Donors.” Terrance Carter will participate in a panel giving an update on the work of the CRA Advisory Committee on the Charitable Sector.

[CBA Charity Law Symposium](#) will be held on May 22, 2020. Theresa L.M. Man will present on the topic of “CNCA 10 Years In: Lessons Learned and Pitfalls to Avoid.”

SAVE THE DATE – Healthcare Philanthropy Seminar, co-hosted by Carters and Fasken in Toronto will be held on Friday, June 19, 2020. Registration details will be available on our website soon.

CONTRIBUTORS

Editor: Terrance S. Carter

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



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, 2020), 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 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 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 government sponsored development programs, as well as litigation dealing with public service employees. His areas of practice includes Business Law and IT 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.



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 (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*, *Best Lawyers in Canada*, and *Chambers and Partners*. 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 chair of the CBA Charities and Not-for-Profit Law Section, a member of the Technical Issues Working Group of Canada Revenue Agency's (CRA) Charities Directorate, and a member and past chair of the OBA Charities and Not-for-Profit Law Section. Ms. Man has also written on charity and taxation issues for various publications.



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 – 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.



Urshita Grover, H.B.Sc., J.D. – Ms. Grover graduated from the University of Toronto, Faculty of Law in 2019 and is a Student-at-Law at Carters. While attending law school, Urshita worked at a technology law firm, Limpert & Associates, assisting on client matters and conducting research in IT law, and also worked as a research intern for a diversity and inclusion firm, Bhasin Consulting Inc. She has volunteered with Pro Bono Students Canada, and was an Executive Member of the U of T Law First Generation Network. Prior to attending law school, Urshita obtained her Honours Bachelor of Science degree from the University of Toronto, with majors in Neuroscience and Psychology.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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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

Sepal Bonni B.Sc., M.Sc., J.D.

sbonni@carters.ca

Adriel N. Clayton B.A. (Hons), J.D.

aclayton2@carters.ca

Luis R. Chacin LL.B., M.B.A., LL.M.

lchacin@carters.ca

Heidi N. LeBlanc J.D.

hleblanc@carters.ca

STUDENT-AT-LAW

Urshita Grover H.B.Sc., J.D.

ugrover@carters.ca

Toronto Office

67 Yonge Street, Suite 1402
Toronto, Ontario, Canada
M5E 1J8

Tel: (416) 594-1616

Fax: (416) 594-1209

Orangeville Office

211 Broadway, P.O. Box 440
Orangeville, Ontario, Canada
L9W 1K4

Tel: (519) 942-0001

Fax: (519) 942-0300

Ottawa Office

117 Centrepointhe Drive, Suite 350
Nepean, Ontario, Canada
K2G 5X3

Tel: (613) 235-4774

Fax: (613) 235-9838