

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

MARCH 2020

SPECIAL COVID-19 EDITION

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RECENT PUBLICATIONS AND NEWS RELEASES

Carters' Response to COVID-19

Carters would like to update our clients about the steps being taken by our firm in light of national and international health authorities' best practices recommendations to help limit the risk of transmission of COVID-19, as well as protect clients and ensure the health and safety of our staff and lawyers. At the same time, as an essential workplace in Ontario in accordance with provincial directives, Carters is committed to ensuring that the delivery of legal services for our clients remains a top priority.

Click [here](#) to read more about the action that Carters is currently taking.

Due Diligence by Directors and Officers of Charities and NFPs in Response to COVID-19

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

On March 11, 2020, the Director-General of World Health Organization (“WHO”) declared that the COVID-19 outbreak is a worldwide pandemic. COVID-19 has resulted in unprecedented action by governments and businesses to help “flatten the curve” of new cases of infection to manageable levels over the coming months. As well, the premier of Ontario and several other provinces have declared states of emergency and shut-down of non-essential business. In response, directors and officers of charities and not-for-profits (“NFPs”) need to consider what are the appropriate due diligence steps that they need to take in order to fulfill their fiduciary duty to protect the best interests of their organisation, reflecting the care and skill of what a reasonably prudent person would do under similar circumstances.

This *Bulletin* provides a brief overview of some of the basic issues that directors and officers of charities and NFPs will need to consider in light of the COVID-19 pandemic, recognising that the circumstances of each organisation are unique and that “no one size fits all.” As well, the suggestions in this *Bulletin* do not replace the need for specific legal advice in order to determine what needs to be done in a particular fact situation.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 464](#).

Employer Obligations and Considerations in Response to the COVID-19 Pandemic

By [Barry W. Kwasniewski](#)

Ever since COVID-19 was declared as a pandemic by the WHO on March 11, 2020, there has been a great deal of uncertainty about, among other things, an employer's obligations towards its employees. In this unprecedented time, employers need to take into account their obligations and the rights of employees in making operational decisions, and to ensure that they are complying with the most up-to-date legislative requirements and government directives. This *Bulletin* provides an overview of some of the legal requirements and considerations that, as employers, charities and NFPs should be aware of, including the recently announced legislative changes by the federal government, as well as the Ontario government.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 465](#).

NFP Board and Members' Meetings Amidst COVID-19 Pandemic

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

Not only has the spread of the unprecedented COVID-19 pandemic affected many aspects of our lives, the operations of many NFPs, including registered charities, are also affected. In particular, many NFPs are considering how to adjust their way of holding board meetings and members' meetings without holding in-person meetings. While it is generally an easy switch from holding in-person board meetings to electronic board meetings by conference calls or video calls, the impact of COVID-19 on how to hold members' meetings often involves complicated considerations.

This *Bulletin* reviews factors that would need to be considered by NFPs when determining alternative mechanisms to holding board meetings and members' meetings, in particular annual general meetings, when it is no longer possible to hold in-person meetings.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 466](#).

COVID-19 and the Performance of Contracts

By [Luis R. Chacin](#) and [Adriel N. Clayton](#)

Most charities and NFPs are having to deal with the impact of the COVID-19 outbreak, which the World Health Organization characterized as a pandemic on March 11, 2020, as well as the measures taken by governments declaring states of emergencies and ordering the shut-down of non-essential businesses in an effort to "flatten the curve". Businesses, as well as charities and NFPs, have seen their operations come

to a halt, disrupting or threatening the performance of contracts with business services providers and other counterparties, such as conference venues, real estate transactions, and the delivery or receipt of goods and services generally. This *Bulletin* provides a brief overview of the impact of COVID-19 and other supervening events on contractual obligations with regard to *force majeure* clauses and the common law doctrine of frustration. However, this *Bulletin* does not constitute and is not a substitute for the need to retain legal counsel to advise a charity or NFP on what it can do in a particular fact situation.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 467](#).

Privacy and Data Security in Response to COVID-19

By [Esther Shainblum](#)

Responses to the COVID-19 pandemic could intersect with privacy and data security concerns in a number of ways. The following is a brief review of some of the privacy and data security issues that are arising in the context of the COVID-19 pandemic. Charities and NFPs should take privacy and data security matters into account when determining the steps that they are taking to manage the situation.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 468](#).

Federal and Ontario Measures in Response to COVID-19 Impacting Charities and Not-for-Profits

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

In the wake of the COVID-19 pandemic, both the federal government and Ontario government are providing assistance, support, and online resources in hopes of alleviating some of the burden and problems that many Canadians are currently facing. In addition to the relief provided by the various governments in the employment context, discussed in greater detail in [Charity & NFP Law Bulletin No. 465](#), there is also support for small businesses, including charities and NFPs, being offered. Given the fluidity of the situation, new measures may continue to be introduced at any given moment. The following is therefore not comprehensive, but rather is a brief summary of various measures provided by the federal and Ontario governments at the time of writing, and may be subject to change at any given time.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 469](#).

IN THE PRESS

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

[Navigating Privacy Breaches for Charities, NFPs](#) written by Esther Shainblum was featured in The Lawyer's Daily on March 10, 2020. This article was originally published by The Lawyer's Daily (www.thelawyersdaily.ca), part of LexisNexis Canada Inc.

[Governance for Charities, Not-for-Profits: Back to Basics](#) written by Theresa L.M. Man was featured in The Lawyer's Daily on March 23, 2020. This article was originally published by The Lawyer's Daily (www.thelawyersdaily.ca), part of LexisNexis Canada Inc.

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 online panel discussion 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 has been postponed. More details will follow when this event is rescheduled.

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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, 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 include 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*TM.



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*TM, 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.

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