

CARTERS

BARRISTERS
SOLICITORS
TRADEMARK AGENTS

Chartered Professional Accountants of Canada

February 6, 2019

ESSENTIAL CHARITY LAW AND COMPLIANCE UPDATE


By Terrance S. Carter, B.A., LL.B., TEP, Trade-mark Agent

tcarter@carters.ca
1-877-942-0001

© 2019 Carters Professional Corporation

CARTERS PROFESSIONAL CORPORATION
BARRISTERS . SOLICITORS . TRADEMARK AGENTS
TOLL FREE: 1-877-942-0001

Toronto (416) 594-1616 Orangeville (519) 942-0001
Ottawa (613) 235-4774
www.carters.ca www.charitylaw.ca www.antiterrorismlaw.ca

 BARRISTERS SOLICITORS TRADEMARK AGENTS	Chartered Professional Accountants of Canada 2019 Not-for-Profit Forum Toronto: February 6-7, 2019		
<h2>Essential Charity Law and Compliance Update</h2> <p>By Terrance S. Carter, B.A., LL.B., TEP, Trade-mark Agent</p> <p>tcarter@carters.ca 1-877-942-0001</p> <p>© 2019 Carters Professional Corporation</p> <table border="0"><tr><td>CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001</td><td>Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.antiterrorismlaw.ca</td></tr></table>		CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001	Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.antiterrorismlaw.ca
CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001	Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.antiterrorismlaw.ca		

	2		
<h3>OVERVIEW OF THE TOPICS COVERED</h3> <ul style="list-style-type: none">• 2018 Federal Budget Highlights• Update on Political Activities by Charities• 2018 Fall Economic Statement Highlights• Special Senate Committee on the Charitable Sector• Recent CRA Publications and Programs• Tax Decisions, Rulings and Interpretations• Update on Privacy Law for Charities• Corporate Updates• Other Recent Changes in Ontario• Other Provincial Legislation Updates• Case Law of Interest <table border="0"><tr><td>www.charitylaw.ca</td><td>www.carters.ca</td></tr></table>		www.charitylaw.ca	www.carters.ca
www.charitylaw.ca	www.carters.ca		

3

2018 FEDERAL BUDGET HIGHLIGHTS

- Federal Budget 2018 was presented on Feb. 27, 2018
- There were a number of important changes proposed in the Budget affecting charities, including:
 - **Universities:** Definition of “qualified donee” (“QD”) was simplified so that universities outside of Canada that are qualified to be QDs are no longer required to also be listed in Schedule VIII of *Income Tax Act*, provided they meet registration requirements
 - **Municipalities:** Allows Minister of National Revenue to determine whether they may be eligible donees vs QDs on a case by case basis



www.charitylaw.ca

www.carters.ca

4

- **Trusts:** Additional reporting requirements for some trusts related to beneficial ownership, but charities and NFPs are exempt from them for now
- **Journalism:** Government is going to review over next year whether charitable, non-profit journalism may be possibly recognized (see Fall Economic Statement below for an update)
- **Financial Support:** Funding of various charitable and NFP initiatives, generally to be made over a period of five years
- **Political Activities:** It was indicated that clarification was going to come from the CRA on political activity restrictions in response to the May 2017 Report on political activities (see below presentation for more details)



www.charitylaw.ca

www.carters.ca

5

UPDATE ON POLITICAL ACTIVITIES BY CHARITIES

1. Report of the Consultation Panel on Political Activities of Charities

- On September 27, 2016, the Minister of National Revenue announced the “start of public consultations on the rules regarding the involvement of registered charities in political activities” and that a consultation panel had been established consisting of 5 experts
- On May 4, 2017, CRA published the Report of the Consultation Panel on the Political Activities of Charities (the “Consultation Report”) and in part recommended:
 - Replacing “political activities” with the term “public policy dialogue and development activities” (“PPDDA”)

www.charitylaw.ca

www.carters.ca

6

- To engage in PPDDA without limitation, provided that it is subordinate and furthers the purposes of the charity
- This recommendation in effect called for the elimination of the “Substantially All Test” in the ITA
 - The Substantially All Test has meant, until recently, that a charity could generally devote no more than 10% of its total “resources” in a year to political activities, but only if those activities were ancillary, incidental to its charitable purpose, and were not in direct or indirect support, or opposition, of a political party or a candidate for office



www.charitylaw.ca

www.carters.ca

7

2. *Canada Without Poverty v AG Canada*, 2018 ONSC 4147 (July 16, 2018) (under appeal)

- On July 16, 2018, the Ontario Superior Court of Justice struck down the Substantially All Test
- Court held that the Substantially All Test infringed the charity's *Charter* right to freedom of expression
- Court found that there was no justification in the ITA between charitable activities and non-partisan "political activities" in the nature of public policy advocacy
- The decision is currently under appeal by the Minister of National Revenue
- However the Minister announced on August 15, 2018 that the appeal would not change the Government's decision to remove "quantitative limits on political activities"

www.charitylaw.ca

www.carters.ca

8

3. September 14, 2018 Draft Legislation

- On September 14, 2018, the Government released draft legislative amendments for public consultation ("September Draft")
- The September Draft proposed removing the Substantially All Test from the ITA concerning the limitation on registered charities to engage in non-prohibited activities
- Explanatory notes, though, stated that the CRA would make the determination of permitted political activities by reference to the common law
- The common law, in the opinion of the CRA in its draft guidance, required an "incidental" test, which would have reinstated a quantitative limit on what political activities charities could do



www.charitylaw.ca

www.carters.ca

9

4. October 2018 Amendments in Bill C-86

- On October 25, 2018, the Government released revised draft legislation that was included in Bill C-86, which was introduced on October 29, 2018 and received Royal Assent on December 13, 2018
- Bill C-86 includes the removal of the Substantially All Test
- It also preserves the prohibition on “direct or indirect support of, or opposition to, any political party or candidate for public office”
- Definition of charitable activities now “includes PPDDA carried on in furtherance of a charitable purpose”
- Explanatory Notes clarified that the participation of charities in PPDDA that are in furtherance of a charitable purpose is “without limitation”

NO LIMITS

www.charitylaw.ca

www.carters.ca

10

- Explanatory Notes state that PPDDA “generally involve seeking to influence the laws, policies or decisions of a government, whether in Canada or a foreign country”
- New provision added to ITA stating that PPDDA carried on by the charity in support of its stated purposes are to be considered to be carried on in furtherance of those purposes and not for any other purpose



“Get ready! The next wave of legislation is rolling in.”

www.charitylaw.ca

www.carters.ca

11

5. CRA New Draft Guidance on PPDDA

- Draft Guidance on PPDDA was released on Jan. 21, 2019 and is open for comments until Apr. 23, 2019
- Definition of PPDDA is confirmed to include “seeking to influence the laws, policies, or decision of a government, whether in Canada or a foreign country”
- For the most part, the Guidance also includes the list of PPDDA from the Consultation Report, for example:
 - Advocacy - “charities may advocate to keep or change a law, policy, or decision, of any level of government in Canada, or a foreign country”
 - Mobilizing others – “charities may call on supporters or the general public to contact politicians of all parties to express their support for, or opposition to, a particular law, policy, or decision of any level of government in Canada or a foreign country”

www.charitylaw.ca

www.carters.ca

12

- The Guidance confirms that the ITA places no limits on the amount of PPDDA
- As such, charities may devote up to 100% of their total resources to PPDDA, provided that the PPDDA furthers the charity’s stated charitable purpose
- However, PPDDA, as a means to achieve a charitable purpose, cannot become the purpose itself
 - E.g, “charitable purpose” cannot “refer to influencing the laws, policies, or decision of a government”
 - Rather, the purpose has to be a charitable purpose at common law (e.g., the relief of poverty), but PPDDA can be utilized to achieve that purpose
- In addition, PPDDA, when considered together with the charity’s stated purpose, must provide a public benefit

www.charitylaw.ca

www.carters.ca

13

- However, charities are prohibited from “directly or indirectly support[ing] or oppos[ing] a political party or candidate for public office,” examples of which are provided in the Guidance
- Examples of “direct support or opposition”:
 - “endorsing a candidate over social media”
 - “telling people on a charity’s website not to vote for a political party”
 - “making a donation to a political party or a candidate’s election campaign”



www.charitylaw.ca

www.carters.ca

14

- Examples of “indirect support or opposition”:
 - “a charity’s internal planning documents explicitly confirm that it will oppose a political party that takes a different view on a certain policy issue, by holding a public demonstration in front of the building where the party is gathering for its annual convention”
 - “the internal minutes of a meeting of the directors of a charity record their explicit decision to oppose a candidate in a provincial election whose views on a policy issue differ from those of the charity, by carrying out PPDDAs...that specifically target his riding but do not refer to the candidate”
- Charities carrying out PPDDA will also need to be aware of and comply with federal, provincial, and municipal lobbying legislation



www.charitylaw.ca

www.carters.ca

15

2018 FALL ECONOMIC STATEMENT HIGHLIGHTS

- 2018 Fall Economic Statement was released on November 21, 2018 by the Department of Finance
- Re-confirmed the government's commitment to allow charities to engage more fully in public policy dialogue, which was implemented through Bill C-86
- Announced the government's commitment to establish a permanent Advisory Committee on the Charitable Sector, which would regularly consult with charities and advise the government with respect to important issues facing the charitable sector



www.charitylaw.ca

www.carters.ca

16

- Proposed providing up to \$755 million on cash basis over a period of 10 years to establish a Social Finance Fund to provide charities, non-profits, and other social purpose organizations with:
 - (1) access to new funding
 - (2) connections to private investors
- Proposed investing \$50 million over two years in the Investment and Readiness stream, which would assist social purpose organizations to successfully participate in the social finance market
- To support local journalism, the government proposed providing up to \$50 million over five years to support existing news sources in local communities



www.charitylaw.ca

www.carters.ca

17

- Proposed three new measures to ensure Canadian's continued access to informed and reliable civic journalism (more details will be provided in the 2019 Federal Budget)
 - (1) new category of qualified donee for eligible non-profit journalism organizations, allowing such organizations to issue official donation receipts to donors and receive funding from registered charities
 - (2) refundable tax credit for qualifying news organizations, with effective date to be set for January 1, 2019, to support labour costs
 - (3) temporary and non-refundable 15% tax credit for qualifying subscribers of eligible digital news media

www.charitylaw.ca

www.carters.ca

18

SPECIAL SENATE COMMITTEE ON THE CHARITABLE SECTOR

- On January 30, 2018, the Senate of Canada appointed a Special Committee to study the impact of federal and provincial laws governing charities, and the charitable sector on Canada
- The Special Committee has heard from various witnesses on ongoing basis starting in April 2018
- Its study and resulting report on how Canada can better assist the charitable and NFP sector was to be completed by December 31, 2018, but has been extended to September 30, 2019



www.charitylaw.ca

www.carters.ca

19

RECENT CRA PUBLICATIONS AND PROGRAMS

- On January 12, 2018, the CRA updated its T4063, which is the guide for registering a charity for income tax purposes, to state that the Charities Directorate will not review applications submitted with draft governing documents, but will treat them as incomplete and return them to the applicant
- On February 15, 2018, CRA reminded qualified donees that they have until March 31, 2019 to update their official donation receipts with the CRA's new website URL, which is "canada.ca-charities-giving"
- On February 28, 2018, the CRA posted a video, "Gift Certificates and Gift Cards", outlining when and how registered charities can issue official donations receipts for gift card or gift certificate donations

www.charitylaw.ca

www.carters.ca

20

- On March 1, 2018, the CRA announced that September 2017 initiative of assigning new business numbers to internal divisions of charities will not be proceeding, *i.e.* status quo is to continue
 - Plan was to give separate business numbers to internal divisions to access CRA's online services via Charities IT Modernization Project ("CHAMP")
 - This step is no longer required, meaning practice of derivative business numbers will continue
- On September 18, 2018, the CRA announced that the public release of CHAMP, scheduled for November 2018, will be delayed until June 2019
 - Once in place, CHAMP will provide several new e-services, *e.g.* T2050 and T3010 filings

www.charitylaw.ca

www.carters.ca

21

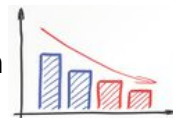
- On November 14, 2018, the CRA announced that it has stopped providing charities with peel and stick bar code labels for T3010 annual information return packages
- On November 15, 2018, CRA released an infographic (i.e. visual educational tool) “Changing Your Fiscal Year-End: What a registered charity needs to do”, providing details on steps that must be taken when a charity changes its fiscal year-end
- On January 11, 2019, the CRA published its “Report on the Charities Program 2016 to 2018”, which provides a review of statistics of registered charities, as well as programs and other resources implemented by the CRA over the past three years

www.charitylaw.ca

www.carters.ca

22

- The number of applications for charitable status decreased from 3,306 to 3,142
- The number of charitable registration decreased from 1,693 to 1,569
- Total number of revocations, including voluntary, after audit, and other revocations, increased from 1,372 to 1,562
- CRA states that it will be working on compliance related projects including:
 - “Reviewing the boards of registered charities to identify whether there are concerns related to ineligible individuals” and
 - “Reviewing activities involving the acquisition and construction of real estate to ensure such activities further a charitable purpose”



www.charitylaw.ca

www.carters.ca

23

TAX DECISIONS, RULINGS AND INTERPRETATIONS

1. On April 9, 2018, the TCC released its decision on split receipting and donative intent in *Markou v The Queen*, 2018 TCC 66



- Involved an appeal from an assessment made under the ITA for filings of a group of individuals who had participated in the leveraged donation program
- The TCC concluded that “split gifts require that the gift portion of a transaction be separated from the non-gift portion, and that the gift portion be supported by donative intent.” **80%**
- The 80% threshold in s.248(3) of the ITA will only be considered where the CRA and courts are able to split the transfer into two transactions and identify the appropriate donative intent

www.charitylaw.ca

www.carters.ca

24

2. On June 12, 2018, the TCC released decision, *McCuaig Balkwill v The Queen*, regarding fair market value (“FMV”) of donated wine to be sold at auctions hosted by charities



- Issue was how to appropriately value wine, *i.e.* \$23,600 (position of charities issuing receipts) vs. \$4,700 (CRA’s view based on actual auction prices)
- TCC held that FMV of donated wine should not be based LCBO’s Private Ordering pricing, which is a monopoly, and relied on the CRA’s expert instead
- TCC made clear other methodologies possible in determining wine’s FMV, provided they are supported with evidence and accurately applied
- Charities receiving non-cash donations should bear in mind various FMV methodologies and keep full evidence of how calculations reached

www.charitylaw.ca

www.carters.ca

25

UPDATE ON PRIVACY LAW FOR CHARITIES

1. The General Data Protection Regulation (“GDPR”)

- The GDPR came into force on May 25, 2018 and harmonizes data protection and privacy laws across all EU jurisdictions
- GDPR strengthens and enhances data protection rights for individuals and imposes strict requirements on organizations engaged in data “processing” - any operation performed on personal data including collection, use, disclosure or storage
- GDPR applies to organizations outside of the EU if they process personal data of EU residents to offer them goods or services (whether or not a fee is charged) or if they monitor the behaviour of EU residents within the EU

www.charitylaw.ca

www.carters.ca

26

- Organizations that e.g. offer services in a language or currency of a member state or have permanent cookies on their websites and users in the EU could be caught by the GDPR
- Organizations to which the GDPR applies must comply or face severe penalties
- Organizations, when updating their current privacy policies, will need to keep in mind GDPR requirements



www.charitylaw.ca

www.carters.ca

27

2. Mandatory Breach Reporting

- On November 1, 2018, new breach notification, reporting, and recordkeeping obligations came into force under the Personal Information Protection and Electronic Documents Act (“PIPEDA”) and regulations
- Must report breaches to the Office of the Privacy Commissioner of Canada and notify affected individual (and possibly third parties) when:
 - an organization experiences a “breach of security safeguards” involving PI under its control
 - if it is reasonable in the circumstances to believe that the breach creates a “real risk of significant harm”
- Must retain records of all breaches for 24 months
- Charities and NFPs should consider voluntary compliance with breach reporting provisions

www.charitylaw.ca

www.carters.ca

28

CORPORATE UPDATE - FEDERAL

- On December 30, 2017, *Canada Corporations Act* (“CCA”) and its *Regulations* were repealed
 - All federal NFP corporations under CCA now either transitioned to the *Canada Not-for-profit-Corporations Act* (“CNCA”) or dissolved
- Since December 2017, uncertified corporate documents available for purchase from Corporations Canada
- On June 26, 2018, Corporations Canada started online service to file applications for certain exemptions under the CNCA and *Canada Business Corporations Act*
- On October 4, 2018, Corporations Canada announced a new online service to obtain a certificate of compliance or a certificate of existence for a not-for-profit that is incorporated under the CNCA

www.charitylaw.ca

www.carters.ca

29

CORPORATE UPDATE – ONTARIO

- Ontario government has indicated early 2020 for proclamation of Ontario *Not-for-Profit Corporations Act, 2010* (“ONCA”), but exact timing remains uncertain
- On November 14, 2017, Bill 154, *Cutting Unnecessary Red Tape Act, 2017*, received Royal Assent, amending 3 key statutes for the not-for-profit sector:
 - *Ontario Not-for-Profit Corporations Act, 2010*
 - *Ontario Corporations Act* (“OCA”)
 - *Charities Accounting Act* (to be discussed later)



www.charitylaw.ca

www.carters.ca

30

- On November 14, 2017, the following important amendments to the OCA came into force:
 - Meetings of members may be held by telephone or electronic means
 - Members may remove a director from office by majority vote, instead of 2/3rds
 - A person may be a director without being a corporate member, although written consent will be required to be a director
- Then, on January 13, 2018, the following amendments of the OCA came into force:
 - Directors and officers are now subject to a statutory objective standard of care

www.charitylaw.ca

www.carters.ca

31

- Corporations have the capacity of a natural person, which has resulted in a reduction of the number of special provisions required by the OPGT and also broadened borrowing powers of the corporation
- As of December 10, 2018, charities and not-for-profit corporations incorporated under the OCA must keep, at their head office, a register of ownership interests in real property in Ontario along with certain supporting documents
- In December 2018, the government announced a joint consultation and review of the *Co-operative Corporations Act* by Ministry of Finance and Ministry of Government and Consumer Services



www.charitylaw.ca

www.carters.ca

32

CORPORATE UPDATE – OTHER PROVINCES

- As of November 29, 2018, societies in British Columbia must have filed applications to transition from the old *BC Society Act* to the new *BC Societies Act*, which came into force on November 28, 2016
 - Societies that have not transitioned by the deadline will risk dissolution, which could lead to revocation of their registration as a charity
- On June 12, 2018, Prince Edward Island Bill 18, *An Act to Amend the Extra-provincial Corporations Registration Act* (“Bill 18”) received Royal Assent, to be proclaimed into force at a future date
 - Bill 18 repeals section 3 of the Extra-Provincial Corporations Registration Act, which currently exempts certain corporations from extra-provincial registration



www.charitylaw.ca

www.carters.ca

33

OTHER RECENT CHANGES IN ONTARIO

1. Social Investments in Ontario

- *Charities Accounting Act* (“CAA”) applies to all charities in Ontario and provides that the *Trustee Act* (which deals with investment powers of trustees) apply to directors holding property for charitable purposes
- Bill 154 amended the CAA as of November 14, 2017
- These CAA amendments now permit charities to make “social investments” when they apply or use trust property to:
 - directly further the purposes of the trust and
 - achieve a “financial return” for the trust
- “financial return” is defined as an outcome in respect of the trust property that is better for the trust in financial terms than expending all the property



www.charitylaw.ca

www.carters.ca

34

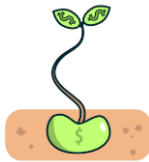
- In April 2018, the Ontario Public Guardian and Trustee (“OPGT”) released the “Charities and Social Investments Guidance” (the “Guidance”)
 - It sets out the OPGT’s interpretation of the social investment framework under the CAA
 - The Guidance clarifies that “financial return” is not required to be at market rates, and, depending on the terms of investment, it may not require the repayment of the invested capital
 - This suggests that even where the investment results in a partial loss of capital, it may still qualify as a social investment as long as the investment was directly furthering the charitable purpose of the charity



www.charitylaw.ca

www.carters.ca

35



- The Guidance recommends that a charity should base its decision to make a social investment on:
 - its charitable purposes and assets (assets may be considered although the CAA does not specifically reference them as consideration for trustees making social investments)
 - the rules and duties that apply to social investing
 - its governing documents, and
 - a director's or trustee's general fiduciary obligation
- The Guidance recognizes that charities making social investments must also comply with CRA requirements
 - This would include complying with requirements for program-related investments under CRA Guidance (CG-014) on community economic development activities

www.charitylaw.ca

www.carters.ca

36

2. Remuneration of Directors in Ontario

- On April 1, 2018, amendments to Regulation 4/01 ("Regulation") of the CAA came into force concerning remuneration of directors by authorizing "charitable corporations" to pay directors and "connected persons" in certain limited situations
- Amendments require charities to consider any accompanying Guidance which may be prepared
- In May 2018, the OPGT released its Guidance
- The Guidance provides that a director can be paid for certain services provided to a charity, subject to the charity's fulfillment of specific requirements
- The Guidance also states that directors and "connected persons" cannot be paid for: (1) being a director or employee or (2) fundraising/real property transactions

www.charitylaw.ca

www.carters.ca

37

- Guidance elaborates upon the Regulation requirements to authorize payments to directors or “connected persons” for certain services, including:
 - Board must consist of at least 5 directors, with at least 4 eligible to vote on the payment to the director or connected person
 - Board must believe at time of authorization that the payment is the charity’s best interests
 - Payment amount must be reasonable
- Guidance provides more detail on the mandatory disclosure of payments to the members at the annual meeting and in financial statements
- Guidance states that charities are advised to keep records of everything related to compliance with the Regulation



www.charitylaw.ca

www.carters.ca

38

3. Other Legislation Updates in Ontario

- The Ontario *Children, Youth and Family Services Act, 2017* (“CYFSA”) and four of its supporting regulations came into force on April 30, 2018
 - The CYFSA replaced the Ontario *Child and Family Services Act*, with the following key changes:
 - Age of protection has been increased to include 16 and 17 year olds, who may be found to be in need of protection subject to their circumstances
 - While the mandatory duty to report applies only to children younger than 16, under the CYFSA a person may make an optional report in respect of a child who is 16 or 17



www.charitylaw.ca

www.carters.ca

39



- Procedures to show respect for the culture of children under protection, including Indigenous children, by keeping children in their home communities, where possible
- Providing great accountability and oversight over child protection service providers
- Charities and NFPs working with children and youth in Ontario should work with their legal counsel to revise their child protection policy in accordance with the updated reporting requirements under the CYFSA



www.charitylaw.ca

www.carters.ca

40

- On November 1, 2018, the Ontario *Police Record Checks Reform Act, 2015* and its regulations came into force, implementing a new standardized regime governing police record checks including vulnerable sector checks
 - Vulnerable sector checks are used to determine an individual's suitability to work or volunteer in a position of trust or authority over vulnerable persons
 - Charities and NFPs that work with children or other vulnerable persons will need to be aware of these updated procedures that apply to their employees and volunteers when obtaining or updating vulnerable sector checks



www.charitylaw.ca

www.carters.ca

41

OTHER PROVINCIAL LEGISLATION UPDATES



- On January 1, 2018, New Brunswick (“NB”) Bill 21, *An Act Respecting Agricultural Associations*, came into force, which amended NB’s *Companies Act* to allow agricultural associations to be continued under the Act
- On May 30, 2018, Saskatchewan (“SK”) Bill 128, *The Provincial Sales Tax Amendment Act, 2018* received Royal Assent, adding new exemption from Provincial Sales Tax for prepared food and beverages sold by charities and NFPs in prescribed circumstances
- On January 1, 2019, BC Bill 44, *Budget Measures Implementation (Employer Health Tax) Act, 2018* came into force introducing new annual employer health tax based on the remuneration paid to their employees and former employees; certain charities and NFPs exempt

www.charitylaw.ca

www.carters.ca

42

CASE LAW OF INTEREST (in chronological order)

- ***John Doe (GEB #25) v The Roman Catholic Episcopal Corporation of St. John’s, 2018 NLSC 60 (Mar.16, 2018)***
 - Plaintiffs had been abused by teachers as residents of an orphanage linked to the Roman Catholic Episcopal Corporation of St. John’s (the “Archdiocese”), with plaintiffs claiming the Archdiocese was vicariously liable for this abuse.
 - Court held that the Archdiocese was not vicariously liable, as the orphanage and Archdiocese were separate corporate entities that operated without blurring these boundaries
 - Vicarious liability for the actions of an employee or subordinate requires that there is a close connection between the defendant and the enterprise which gave rise to the tortious conduct

www.charitylaw.ca

www.carters.ca

43

- **Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall, 2018 SCC 26**
 - On May 31, 2018, the Supreme Court of Canada ("SCC") upheld religious autonomy in *Wall* decision
 - Court will generally not interfere in religious doctrine matters and procedural rules requiring doctrinal interpretation
- **Trinity Western University Decisions ("TWU")**
 - On June 15, 2018, the SCC upheld the denial of accreditation regarding TWU's law school due to TWU's mandatory covenant on sexual conduct
 - The SCC indicated that whether a state actor (e.g. Law Society of BC) may review a mandatory covenant of an institutions will depend on the facts and a reasonable balancing of harms and benefits

www.charitylaw.ca

www.carters.ca

44

- ***Faas v CAMH, 2018 ONSC 3386 (June 6, 2018) (under appeal)***
 - The Faas Foundation and its principal ("Faas") made an application under s.6(3) of the CAA for a court order directing the OPGT to investigate how a public foundation and registered charity, CAMH, used the funds donated by Faas.
 - Courts have discretion to make orders under s.6(3) of the CAA if it is of the opinion that the public interest would be served by a PGT investigation
 - The court denied the application on grounds that absent evidence of financial misdeeds, Faas had no right to a detailed accounting of CAMH's program and use of funds
 - Courts are reluctant to interfere with a charity's operations unless the public interest is being affected

www.charitylaw.ca

www.carters.ca

45

- ***Heffel Gallery Limited v The Attorney General of Canada*, 2018 FC 605 (June 12, 2018) (under appeal)**



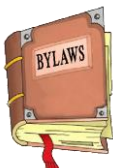
- Canadian Cultural Property Export Review Board had denied application by auction house to ship a painting to the UK because it met the “outstanding significance” and “national importance” test (“Test”) as per *Cultural Property Export and Import Act*
- Test is the same criteria required for an object to be a “total cultural gift” under ITA, which forms part of “total gifts” for tax purposes (and donation receipts)
- Court adopted stricter threshold in requiring that the object must have a direct connection to Canada
- As such, the decision will result in a decrease in the number of cultural property items that are eligible for tax receipts

www.charitylaw.ca

www.carters.ca

46

- ***The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v. Canadian Hearing Society*, 2018 ONSC 5445 (September 17, 2018)**



- Application claimed oppression under s.253 of the CNCA, sparked by changes made to a charity’s membership policy and by-laws
- Court found the Campaign was not proper party to bring application for oppression, *i.e.* no standing
- For individual applicants’ claims, Court deferred to CHS’s by-laws requiring arbitration and stayed application until arbitration completed
- Well crafted by-laws may help avoid court proceedings in dealing with members’ disputes

www.charitylaw.ca

www.carters.ca

47

- ***The McKay Cross Foundation v ICSS*, 2018 ONSC 6422 (October 30, 2018)**
 - Application to dismiss a claim made by plaintiffs for return of a \$100,000 donation to a registered charity, *Innovative Community Support Services*
 - Court considered the evidence and agreement between both parties to determine if donated funds were specific purpose charitable funds
 - Court found that donation was made with no strings attached; agreement was “too vague to be enforceable” and email exchanges did not indicate that donation was for a specific purpose
 - Charities and donors should enter into proper gifting agreements prior to donations being made, especially if gift is intended to have specific purpose

www.charitylaw.ca

www.carters.ca

48

- ***Friends of Toronto Public Cemeteries Inc v Mount Pleasant Group of Cemeteries (“MPGC”)*, 2018 ONSC 7711 (December 31, 2018)**
 - Plaintiffs claimed that MPGC was a trustee of the cemeteries, had improperly appointed directors, and was not in compliance with its governing legislation
 - Court examined MPGC’s complicated corporate and trust history going back to 1826
 - The Court found that
 - MPGC was subject to the trust and governance provisions of its 1826 and 1849 Acts
 - The current directors of MPGC had not been validly appointed as trustees in accordance with its 1849 Act

www.charitylaw.ca

www.carters.ca



- MPGC continues to hold its assets as trustee of the trust created by 1826 Act and amendments
- Trust administered by MPGC is a charitable trust
- MPGC is a trustee subject to the CAA
- The funding and operation of visitation centres and funeral homes are beyond the scope of the stated purpose of a “cemetery or cemeteries or places for the burial of the dead”
- The Court stated that
 - “...a blanket statement that *no* charitable corporations hold their assets in trust is simply too broad to be sustained.”
 - “Care must be taken to examine the corporate and trust history to determine what conclusion best fits the facts.”

www.charitylaw.ca

www.carters.ca

CARTERS

BARRISTERS
SOLICITORS
TRADEMARK AGENTS

Disclaimer

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

© 2019 Carters Professional Corporation

CARTERS PROFESSIONAL CORPORATION
TOLL FREE: 1-877-942-0001

Toronto Ottawa Orangeville
www.carters.ca www.charitylaw.ca www.antiterrorismlaw.ca