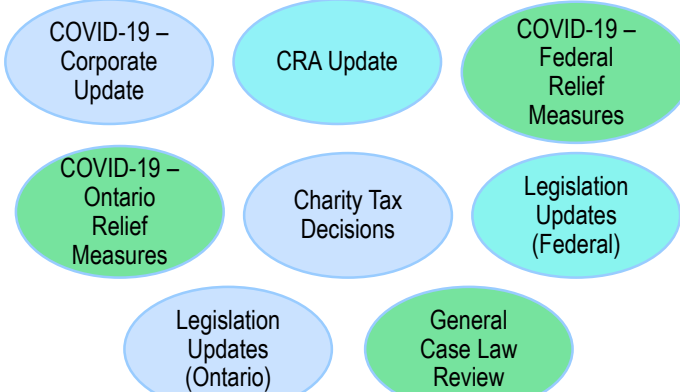
 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p>The Ottawa Region 2021 <i>Charity & Not-for-Profit Law</i> Webinar February 11, 2021</p>
<p>Essential Charity & NFP Law Update</p> <p>By Esther S.J. Oh, B.A., LL.B.</p> <p>estheroh@carters.ca 1-877-942-0001</p> <p>© 2021 Carters Professional Corporation</p>	
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OVERVIEW (Current as of February 8, 2021)



- COVID-19 – Corporate Update
- CRA Update
- COVID-19 – Federal Relief Measures
- COVID-19 – Ontario Relief Measures
- Charity Tax Decisions
- Legislation Updates (Federal)
- Legislation Updates (Ontario)
- General Case Law Review

All information in this PowerPoint is current as of February 8, 2021, but is subject to change. To sign up for our firm e-newsletter, click on the “Subscribe to our NEWSLETTER” button at www.carters.ca

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A. COVID-19 – CORPORATE UPDATE

1. Federal Corporations (CNCA)

- On December 30, 2020, Corporations Canada published a reminder that the Order (which extended the deadline to call AGMs and present financial statements) has ended
- As of January 1, 2021, federal corporations will therefore return to “business as usual”

- For CNCA corporations, AGM must be held no later than 15 months after the previous AGM, and no more than six months after the last financial year-end

- Corporations Canada’s announcement:

- States that it is unsafe to hold in-person AGMs during the COVID-19 outbreak because it would contradict public health advice

- Reminds corporations that depending on the provisions in their by-laws, a corporation might be able to hold electronic AGMs

- For corporations with a small number of members, the members can sign a written resolution in lieu of holding an AGM

2. Ontario Corporations (OCA)

a) Electronic meetings

- On October 1, 2020, Ontario government enacted amendments to permit directors' and members' meetings to be held electronically
 - Regardless of contrary provisions in a corporation's constating documents
 - Deadline extended until May 31, 2021

b) Deadline to hold AGMs

- No further extensions to timelines to hold annual general meetings of members
 - Essential component of the democratic functions and self-governance of corporations

B. CRA UPDATE

CRA Update

- New CRA Guidances are available:
 - Relief of Poverty and Charitable Registration (CG-029)
 - Advancement of Education and Charitable Registration (CG-030)
- Revisions to CRA Guidances on Charities Using Intermediaries are also available
- See Theresa Man's presentation "Key Takeaways from CRA's New Guidances" for further information
- See presentation by Tony Manconi, Director General of the Charities Directorate of the CRA, for other updates from CRA

C. COVID-19 FEDERAL RELIEF MEASURES

COVID-19 –
Federal Relief
Measures

1. Canada Emergency Wage Subsidy (CEWS)

- Wage subsidy covering eligible employers for up to 85% of employee wages (on a sliding scale) up to a maximum of \$847 per week extended until June 2021

2. Canada Emergency Business Account (CEBA)

- Interest-free loans of up to \$60,000 to cover operating costs of certain charities and NFPs whose revenues impacted. Applications are open until March 31, 2021

3. Canada Emergency Rent Subsidy

- Bill C-9 amended ITA to introduce a rent subsidy available to charities and non-profits for up to 65% of their qualifying rent expenses (and up to an additional 25% for organizations temporarily shut down), until June 2021

D. COVID-19 ONTARIO RELIEF MEASURES

COVID-19 –
Ontario Relief
Measures

1. Extension of Orders in Ontario

- On January 12, 2021, the Ontario government declared a second provincial emergency under section 7.0.1(1) of the *Emergency Management and Civil Protection Act* (“EMCPA”)
 - Emergency was extended 14 days after January 26, 2021, and ended on February 9, 2021
- Effective on January 14, 2021, the Ontario government issued a Stay-at-Home Order under the EMCPA requiring that every individual remain in their place of residence unless necessary for permitted purposes
 - Stay-at-Home Order was extended until February 9, 2021, and will be lifted gradually for each public health unit between February 10-22, 2021

2. Ontario Public Guardian and Trustee (“OPGT”)

- OPGT released a temporary guidance on March 30, 2020 (applies to Ontario charities only):
 - Permits charities in danger of closing due to economic hardships from COVID-19 to:
 - access the income and capital of their restricted purpose trust funds and
 - use such funds for day-to-day operations without the need to first obtain a court order
- See Ryan Prendergast’s presentation, *Critical Board Due Diligence During a Pandemic and Beyond* for further information

3. Legislation to Limit COVID-19 Liability

- On November 20, 2020, *Supporting Ontario’s Recovery and Municipal Elections Act, 2020* received Royal Assent and came into force, providing protection from liability for “persons” (including charities and other not-for-profits) operating during the COVID-19 pandemic
- The Act protects the person from liability from acts or omissions resulting in an individual being or potentially being infected with or exposed to COVID-19 on or after March 17, 2020, provided:
 - The person made a good faith effort to act in accordance with public health guidance and any applicable federal, provincial or municipal law relating to COVID-19; and
 - The person was not grossly negligent

- However, the protection from liability under the Act does not apply with respect to acts or omissions that occurred while a law required the person's operations to close, in whole or in part
- The Act also protects a person from vicarious liability for the acts or omissions of another person protected under the Act, but does not apply to limit claims launched by employees against their employers, subject to provisions of the *Workplace Safety and Insurance Act*
- Given the remaining potential for liability that will still exist where there is a finding of gross negligence, charities and NFPs should continue to monitor and ensure compliance with a public health-related guidance and laws when carrying out their activities

E. CHARITY TAX DECISIONS

Charity Tax
Decisions

1. *Ampratwum-Duah v The Queen, 2020 TCC 18*

- A religious minister ("Taxpayer") claimed charitable deductions for donations to a charity that he was the religious leader of, and he signed the donation receipts in his capacity as the charity's religious leader
 - No corroborating evidence, i.e. bank account or church records, testimony of other charity officials, was introduced
 - Taxpayer alleged no records were available because the donations were made more than six years earlier

- The Tax Court of Canada upheld the CRA's reassessment, indicating that supporting books and records were necessary and that
 - The donation receipts were insufficient evidence of donations, particularly as the Taxpayer had signed his own donation receipts
- The CRA reassessed and denied his deductions on grounds that he had access to the charity's records, signed his own donation receipts, and failed to keep sufficient books and records for his donations

2. Church of Atheism of Central Canada v. Canada (National Revenue), 2019 FCA 296

- Church of Atheism of Central Canada
 - CNCA corporation with a stated purpose “to preach Atheism through charitable activities...”
- In 2017 applied for charitable status and was refused by the Minister of Revenue
- Church appealed the decision arguing that the common law test governing the advancement of religion as a head of charity was invalid as contrary to sections 2, 15 and 27 of the Charter of Rights
- On October 29, 2020, application for leave to appeal to Supreme Court of Canada was dismissed

F. LEGISLATION UPDATES (FEDERAL)

1. Bill S-222, *Effective and Accountable Charities Act*

- On February 8, 2021, Bill S-222, *Effective and Accountable Charities Act* was tabled in the Senate, removing the “own activities test” from the *Income Tax Act*, but allowing charities to share resources and work with non-QDs while ensuring “resource accountability” to achieve charitable purposes

2. Bill C-11, *Digital Charter Implementation Act, 2020*

- On November 17, 2020, the federal government introduced Bill C-11, which if passed would replace the privacy protection measures set out in PIPEDA with the *Consumer Privacy and Protection Act* and the *Personal Information and Data Protection Tribunal Act*
- See Esther Shainblum’s article at www.carters.ca for further details

3. Updates to List of Terrorist Entities

- On February 3, 2021, Public Safety Canada announced the addition of 13 new groups to the *Criminal Code* list of terrorist entities, including four ideologically motivated violent extremist groups: Atomwaffen Division, the Base, the Proud Boys and Russian Imperial Movement.
- The news release also states:
 - The *Criminal Code* mandates severe penalties for people and organizations that deal with property or finances of a listed entity
 - A listing can also support the denial or revocation of a Canadian organization’s charitable status if it maintains connections to listed entities

G. LEGISLATION UPDATES (ONTARIO)

1. **Bill 118, *Occupiers Liability Amendment Act, 2020***

- Royal Assent was received on December 8, 2020. Once proclaimed into force, Bill 118 will amend the *Occupiers' Liability Act*
- Subject to certain exceptions, plaintiffs will be prohibited from bringing an action against occupiers of a premises and independent contractors, for personal injury damages from snow or ice injuries unless:
 - Plaintiff first serves written notice of the claim within 60 days of the injury, setting out the date, time and location of the injury
- Plaintiffs will still need to commence an action in accordance with the *Limitations Act, 2002* (as amended) to preserve their rights

2. **Accessibility Standards for Websites and Web Content of Large Employers**

- By January 1, 2021, designated public sector organizations and other organizations, including charities and NFPs, with 50 or more employees in Ontario, must make their internet websites and web content conform with the accessibility standards for websites and web content set out in the World Wide Web Consortium Web Content Accessibility Guidelines 2.0 at Level AA
 - Mandated under O Reg 191/11 Integrated Accessibility Standards under the under *Accessibility for Ontarians with Disabilities Act, 2005*

H. GENERAL CASE LAW REVIEW

1. *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's, 2020 NLCA 27 (July 28, 2020)*

- Archdiocese in this case was not found to have done anything negligent on its own
 - Court found Archdiocese responded appropriately and satisfied any duty that existed in civil law
 - However, Archdiocese was found vicariously liable because of the specific facts surrounding its involvement with another distinct entity, and the actions of that other entity's staff and members

- Organizations may be found vicariously liable for the actions of separate third-party organizations where:
 - i. a sufficiently close relationship exists;
 - ii. and a connection exists to the incident causing the harm
 - where this may apply, due diligence measures must also extend to the other organizations
 - however, depends on the facts and the relationship between organizations
- Not a binding case outside of Newfoundland and Labrador, but persuasive authority in other provinces of Canada
- Leave to appeal to Supreme Court of Canada was denied

2. *Bose v. Bangiya Parishad Toronto, 2021 ONSC 59*

- Dismissal of an appeal of a decision recognizing that the members of one NFP were *de facto* members of another charity
- This case involves the Prabasi Bengal Cultural Association (“Cultural Org.”), and the Bangiya Parishad Toronto (“Religious Corp.”)
 - For several decades, the two organizations had a common board of directors
 - When a dispute arose, a minority of the Religious Corp.’s board purported to nullify the election of the board and purported to form a new board for the Religious Corp. (independent of the Cultural Org.)

- The Religious Corp. had not enacted its own by-laws or admitted its own members.
 - Therefore it was not possible to call a meeting of the members of the Religious Corp.
- The Court recognized that the Religious Corp.’s members were the members of the Cultural Org.
 - Religious Corp. had treated the members of the Cultural Org. as its members for decades, and the members of the Cultural Org. had regarded themselves as members of the Religious Corp.
 - Court ordered Cultural Org. members to hold a meeting to elect whom they wished to run their organizations, as the most practical and democratic option under s. 297 of the OCA

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