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**The Annual 2020
Church & Charity Law™ Webinar
Goes *Virtual* - November 5, 2020**

**ESSENTIAL CHARITY & NFP
LAW UPDATE**

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2

OVERVIEW (Current as of November 3, 2020)

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

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A. COVID-19 – CORPORATE UPDATE

1. Federal Corporations (CNCA)

- Deadlines for calling annual general meetings (“AGMs”) and presenting financial statements for CNCA corporations extended to the shorter of
 - 21 months after the previous AGM and no more than 12 months after the last financial year-end;
 - December 31, 2020
- Corporations Canada is not currently processing applications to extend the time for calling an AGM
 - Uncertain whether further relief can be expected

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. COVID-19 – CRA UPDATE

COVID-19 –
CRA Update

- After a brief suspension of activity CRA resumed work on CRA audits and revocations in Sept 2020
- Filing deadline for T3010 Registered Charity Information Return Form extended to Dec 31, 2020
 - applies to all charities required to file between March 18 and December 31, 2020
 - can be filed online using “My Business Account for Charities” on CRA website
 - Board approval and professional advice recommended, if possible, prior to filing
 - Form T3010 will be a public document
- See presentation by Tony Manconi, Director General of CRA, Charities Directorate

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 \$40,000 (increase to \$60,000 likely) to cover operating costs of certain charities and NFPs whose revenues impacted

3. Canada Emergency Rent Subsidy

- Announced rent subsidy supporting 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

- The *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* ended the declaration of emergency on July 24, 2020
- The Ontario government has extended a number of emergency orders until November 21, 2020 and may continue to extend them for up to 30 days at a time
- The orders include different restrictions for areas in Stages 1, 2 or 3, with most of Ontario currently in Stage 3, and a few areas in Stage 2 (*i.e.*, Ottawa, Toronto, Peel Region and York Region)
- Restrictions include limits on social gatherings associated with a wedding, a funeral or a religious service, rite or ceremony, depending on where is held

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, “Board Due Diligence and Crisis Management During a Pandemic” for further information

3. Proposed Legislation to Limit COVID-19 Liability

- On October 20, 2020, the Ontario government introduced Bill 218, *Supporting Ontario's Recovery Act, 2020* to provide protection from liability for “persons” (including churches, charities and other not-for-profits) operating during the COVID-19 pandemic
- If passed, the Act would protect 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 would 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
- As well, the Act, as currently drafted, 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, churches, charities and other NFPs should continue to monitor and ensure they are complying with all public health-related guidance and laws when carrying out their activities

E. 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 (39180)

- 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. PROPOSED LEGISLATION (FEDERAL)

1. Bill C-6, An Act to Amend the Criminal Code (Conversion Therapy)

Proposed
Legislation
(Federal)

- On October 1, 2020, the Federal Government introduced Bill C-6 An Act to amend the Criminal Code (conversion therapy)
- If passed, Bill C-6 would criminalize certain acts related to conversion therapy
 - a practice intended to change an individual’s sexual orientation, including counselling and behavioural modification
- Bill C-6 also proposes the five new criminal offences, including causing a minor to undergo conversion therapy

2. Bill C-7, An Act to amend the Criminal Code (Medical Assistance in Dying)

- On October 5, 2020, the Federal government reintroduced Bill C-7 which proposed changes to the *Criminal Code's* provisions on medical assistance in dying (“MAID”)
- Bill C-7 proposes to remove the requirement that a person’s natural death be reasonably foreseeable in order to be eligible for MAID
- If passed, Bill C-7 would create two sets of safeguards - one applicable to persons whose death is reasonably foreseeable another applicable to persons where it is not

G. GENERAL CASE LAW REVIEW

General
Case Law
Review

1. *Aga v Ethiopian Orthodox Tewahedo Church of Canada*, 2020 ONCA 10

- Five members (“Appellants”) were expelled from Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral a “voluntary association” (“Congregation”)
- Appellants alleged Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral, incorporated under the OCA (“Church Corp”) failed to follow their own internal procedures’ in expulsion
 - Appellants alleged their right to natural justice and freedom to practice their religion as set out in s. 2(a) of the Charter was violated

- The motions judge dismissed the case
 - alleged breaches of procedural fairness could not be remediated, as there was no underlying contract between the parties
- On appeal, the Ontario Court of Appeal found the Congregation's constitution and by-laws constituted a contract between the Congregation and the Appellants
 - ONCA did not decide whether or not the contract was breached, due to insufficient evidence
- The Supreme Court of Canada has granted leave to appeal to the Appellants and the appeal is currently pending

2. 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 entity, and the actions of that other entity's staff and members
- Where there is a close working relationship with other entities, due diligence measures must also extend to the other organizations

- Organization can be vicariously liable not only for
 - employees and volunteers acting within the scope of their duties
 - but also for the actions of the employees and leaders of separate organizations which it may work with in the context of its programs
 - However, depends on the facts and the relationship between organizations.
- Not a binding case, but persuasive authority in other provinces of Canada
- Application for leave to appeal to Supreme Court of Canada submitted on September 23, 2020

3. Benito v Immigration Consultants of Canada Regulatory Council, 2019 FC 1628 (December 18, 2019)

- The Court held that s.158, of the CNCA permits disciplinary matters to be decided by a one person panel of the Discipline Committee, and the person does not need to be a director or member of the corporation
 - Principles of interpretation allow for the word “members” in s.158 to also mean “member”, giving a single person the power to discipline

4. UAlberta Pro-Life v Governors of the University of Alberta, 2020 ABCA 1 (January 6, 2020)

- The Court found that the Charter applies to how the University of Alberta sets conditions that affect freedom of expression by its students on campus
- Student association had organized an on-campus demonstration with the University's approval, which attracted groups of counter-protestors
- When Pro-Life requested permission for another demonstration, the University required payment of \$17,500 for security, or Pro-Life could hold the event indoors
- The Court held that the University's action was subject to the Charter because education by means of freedom of expression has been the core purpose of the University since it was established by the government

- The Court further reasoned that the grounds of the University are physically designed to ensure that students learn, debate and share ideas in a community space that is "hospitable to a pursuit of the truth about all things without a prescribed predefinition of truth before the pursuit begins"
- Court took the tone and content of expression of Pro-Life's event into consideration, and recognized the degree of deference available to the University under the judicial review framework
 - Court found that the University's Security Decision was not a reasonable and proportional limitation on Pro-Life's freedom of expression