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THE 2020 ANNUAL  
**Church & Charity Law™ Webinar**  
*Goes Virtual*  
Thursday, November 5<sup>th</sup>, 2020

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**WELCOME**

Welcome to the 2020 Annual Church & Charity Law™ Webinar, designed to assist churches and charities in understanding developing trends in the law in order to reduce exposure to legal liability, with a focus this year on legal issues that churches and charities can face when operating virtually. Although the topics presented are directed to churches and charities, many aspects of the presentations will also be of interest to not-for-profits as well. For legal and accounting professionals, this Webinar is eligible for **4.5 substantive hours** Law Society of Ontario Continuing Professional Development credits and Chartered Professional Accountants Professional Development requirements.

The Annual *Church & Charity Law Seminar*™ has been held every year since 1994. This year it is being presented as a Webinar for the first time due to COVID-19. The Webinar is presented by **Carters Professional Corporation (Carters)**, a law firm with offices in Toronto, Ottawa and Orangeville, and experienced in advising churches, charities and not-for-profits across Canada, both domestically as well as internationally.

**ACKNOWLEDGEMENTS AND THANKS**

We gratefully acknowledge and thank The Honourable Ratna Omidvar, C.M., O.Ont., Senator for Ontario and Tony Manconi, Director General of the Charities Directorate of the CRA for their contributions as our guest speakers at this year's webinar, as well as the lawyers at Carters who have volunteered their time in preparing for this Webinar.

**FORMAT OF THE WEBINAR**

Presentations will be 20 minutes in length, including approximately 5 minutes for Q&A. The special presentations by our guest speakers, Senator Omidvar and Tony Manconi will be 40 minutes in length including approximately 10 minutes for Q&A. Questions can be entered in the Question Box feature of the webinar. Unfortunately, not all questions can be answered due to time constraints.

**CARTERS RESOURCE MATERIALS**

Today's electronic handout package, including the PowerPoint presentations and various resource materials, are available online during the webinar and can be downloaded for your use. These materials, along with numerous other articles, Webinar materials, and newsletters of interest to churches and charities, including back issues of *Charity Law Bulletins*, *Church Law Bulletins*, and *Charity & NFP Law Updates* are available free of charge at our websites at [www.charitylaw.ca](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca), [www.carters.ca](http://www.carters.ca), and [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca). As well, a link is being provided to the current recently updated version of the Legal Risk Management Checklist for Ontario-Based Charities that includes a new section on COVID-19.

**CHARITY & NFP LAW UPDATE**

To receive the monthly *Charity & NFP Law Update*, e-mail us at [info@carters.ca](mailto:info@carters.ca) with "mailing list" in the subject line. Alternatively, please click on the link on the webinar resources tab to add your name and e-mail address to our [Mailing List](#) indicating your consent to receive firm newsletters and information about future seminars. You may access the October 2020 edition of the [Charity & NFP Law Update](#) through our website.

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**AGENDA**

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8:50	Online Login	
9:00 a.m.	Opening Remarks	
9:10 a.m.	Essential Charity & NFP Law Update	Esther S.J. Oh
9:30 a.m.	Board Due Diligence and Crisis Management During a Pandemic	Ryan M. Prendergast
9:50 a.m.	Preparing Churches and Charities for the ONCA	Jacqueline M. Demczur
10:10 am	Employees Working Remotely: Shifting to the New Normal	Barry W. Kwasniewski
10:30 a.m.	The Case for Charities: Empowerment in the 21 <sup>st</sup> Century	The Honourable Ratna Omidvar, C.M., O.Ont., Senator for Ontario
11:10 p.m.	Break (15 minutes)	
11:25 a.m.	Real Issues for Virtual Corporate Meetings	Theresa L.M. Man
11:45 a.m.	Mitigating Privacy and Security Risks in a Virtual World	Esther Shainblum
12:05 p.m.	Copyright Issues in a Virtual Reality: Tips and Traps	Sepal Bonni
12:25 p.m.	Legal Issues in Fundraising in a Virtual World	Terrance S. Carter
12:45 p.m.	Regulating Charities During a Pandemic and the New Virtual Reality	Tony Manconi
1:25 p.m.	Concluding Remarks and Draw Prizes	
1:30 p.m.	Program Ends	

Please see **Speaker Biographies** in the electronic handout package, and take a moment to complete the **Evaluation Form** available in the webinar platform resources to help us make the next Annual *Church & Charity Law™* Webinar/Seminar even better.

***The webinar will be recorded and a link to the recording will be sent next week to those attendees who have registered.***

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## WEBINAR SPONSORS

Carters would like to thank the following companies for their sponsorship of the Annual *Church & Charity Law*<sup>™</sup> Webinar that helps to underwrite costs associated with the Webinar, including contracting EventStream Production who are helping to ensure that the Webinar runs smoothly and professionally.

- **GMS Chartered Professional Accountants Professional Corporation**, 905-919-3543, [www.gmscpa.ca](http://www.gmscpa.ca)
- **Hogg, Shain & Scheck Professional Corporation**, 416-499-3100, <https://www.hss-ca.com>
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- **Thomson Reuters**, 1-800-387-5164, <http://store.thomsonreuters.ca>
- **Guardian Capital Advisors**, 1-800-253-9181, <https://www.guardiancapital.com/private-wealth-management/endowment-services>
- **LexisNexis Canada Inc.**, 1-800-668-6481, <https://store.lexisnexis.ca>

## SECTOR RESOURCE MATERIALS

We are pleased to make resource materials from the following organizations available on the webinar platform.

- **Canada Revenue Agency, Charities Directorate**
- **Canada Revenue Agency, GST/HST Outreach Program**
- **Canadian Centre for Christian Charities**, <https://www.cccc.org>
- **ONN (Ontario Nonprofit Network)**, <https://theonncan.ca>, <https://nonprofitresources.ca/Canadian>
- **Association of Gift Planners (CAGP)**, <https://www.cagp-acpdp.org/>
- **Association of Fundraising Professionals (AFP)**, Toronto Chapter, <https://afptoronto.org/>

## ABOUT CARTERS

**Carters Professional Corporation** is a law firm with expertise in the area of church, charity and other not-for-profits and is committed to assisting clients in avoiding legal problems before they occur through effective legal risk management advice, including assistance with:

- Anti-bribery Compliance
- Counter-terrorism Policy Statements
- CRA Charity Audits
- Charitable Organizations & Foundations
- Charitable Incorporation & Registration
- Charitable Trusts
- Charity Related Litigation
- Church Discipline Procedures
- Church Incorporation
- Corporate Record Maintenance
- Director and Officer Liability
- Dissolution and Wind-Up
- Employment Related Issues
- Endowment and Gift Agreements
- Foreign Charities Commencing Operations in Canada
- Fundraising and Gift Planning
- Gift Acceptance Policies
- Governance Advice
- Human Rights Litigation
- Insurance Issues
- International Trademark Licensing
- Investment Policies
- Legal Risk Management Audits
- Legal Audits
- National and International Structures
- Privacy Policies and Audits
- Religious Denominational Structures
- Sexual Abuse Policies
- Special Incorporating Legislation
- Charity Tax Opinions and Appeals
- Trade-mark and Copyright Protection
- Transition Under the ONCA

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## **PROTECTION FROM REGULATORY OFFENCES FOR CHURCHES AND CHARITIES**

Churches and charities often face significant liability and financial challenges due to increasing enforcement of federal and provincial regulatory legislation dealing with such matters as water, working conditions and environmental issues. Carters is able to provide advice and assistance at all stages from an initial investigation through to a full defence at a trial. For more information, contact Sean Carter at Carters (1-877-942-0001).

### **EVALUATION**

We appreciate your evaluation and comments. Feel free to use the SurveyMonkey link available at the end of the webinar, or email your comments to [seminars@carters.ca](mailto:seminars@carters.ca).

### **SAVE THE DATE 2021**

The 2021 Annual Church & Charity Law Seminar™ will tentatively be held on **Thursday November 4, 2021**. More details will be available in the New Year at [www.carters.ca](http://www.carters.ca).

### **CARTERS OFFICE LOCATIONS**

2020  
**LEXPERT**RANKED  
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CARTERS PROFESSIONAL CORPORATION 2021  
RECOGNIZED BY  
**Best Lawyers**

#### **Toronto Office**

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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 Centrepointe Drive, Suite 350  
Nepean, Ontario, Canada  
K2G 5X3  
Tel: (613) 235-4774  
Fax: (613) 235-9838

### **GENERAL DISCLAIMER**

Please note the following Disclaimer that applies to all presentations: 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. © 2020 Carters Professional Corporation

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## SPEAKER BIOGRAPHIES



**[Sepal Bonni](#)**, B.Sc., M.Sc., J.D., Trademark Agent - Called to the Ontario Bar in 2013, Ms. Bonni is a registered trademark agent and practices in the areas of intellectual property and information technology law. Prior to joining Carters, Ms. Bonni articulated and practiced with a trademark firm in Ottawa. Ms. Bonni represents charities and not-for-profits in all aspects of domestic and foreign trademark prosecution before the Canadian Intellectual Property Office, as well as trademark portfolio reviews, maintenance and consultations. Sepal's copyright practice includes providing clients comprehensive copyright assistance in a range of areas, including copyright registration, licenses, publishing contracts, software licenses, and copyright due diligence.



**[Terrance S. Carter](#)**, B.A., LL.B, TEP, Trademark 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.



**[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 *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*<sup>™</sup>.



**[Barry W. Kwasniewski](#)**, B.B.A., LL.B. – Mr. Kwasniewski is a partner with the firm and joined Carters' Ottawa office in 2008 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 been retained by charities, not-for-profits and law firms to provide legal advice pertaining to insurance coverage matters.



**[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 past 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 former chair of the OBA Charities and Not-for-Profit Law Section. Ms. Man has also written on charity and taxation issues for various publications.



**[Tony Manconi](#)**, B.A. – Tony Manconi was appointed as Director General of the Charities Directorate with the Canada Revenue Agency (CRA) on July 25, 2016. He is responsible for the overall management of the federal regulation of registered charities under the *Income Tax Act*. Mr. Manconi began his career in the Public Service in 1988 at the Secretary of State. Prior to joining the Charities Directorate, Mr. Manconi served as the Director General of the Collections Directorate of the CRA. Mr. Manconi holds a Bachelor's degree from Carleton University with a combined major in Law and Economics.



**[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* and *The Best Lawyers in Canada*. Ms. Oh has written numerous articles on charity and not-for-profit legal issues, including incorporation and risk management for [www.charitylaw.ca](http://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.



**The Honourable Ratna Omidvar**, C.M., O.Ont.. In 2016, Ratna Omidvar was appointed to the Senate of Canada as an independent Senator representing Ontario. From 2018 – 2019, Senator Omidvar served as the Deputy Chair of the Special Senate Committee on the Charitable Sector. Senator Omidvar has over 30 years of experience working in the charitable sector at senior levels of management as well as serving as a board director and a volunteer with over 35 organizations. For over 16 years she transformed a small, private foundation – Maytree – into a champion for anti-poverty, diversity and inclusion and immigrant and refugee policy issues. She is the co-editor of *Five Good Ideas: Practical Strategies for Non-Profit Success* (2011).



**[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](http://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. Ryan is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*.



**[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.

### **ADDITIONAL LAWYERS AT CARTERS**



**[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.



**[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. Nancy is recognized as a leading expert by *Lexpert*.



**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.” Ms. Leddy is recognized as a leading expert by Lexpert.



**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.



**Adriel N. Clayton**, B.A. (Hons), J.D. - Called to the Ontario Bar in 2014, Adriel Clayton manages Carters’ knowledge management and research division, and practices 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*.



**Heidi N. LeBlanc**, J.D. – Heidi is a litigation associate practicing out of Carters’ Toronto office. Called to the Bar in 2016, Heidi has a broad range of civil and commercial litigation experience, including matters pertaining to breach of contract, construction related disputes, defamation, real estate claims, shareholders’ disputes and directors’/officers’ liability matters, estate disputes, and debt recovery. Her experience also includes litigating employment-related matters, including wrongful dismissal, sexual harassment, and human rights claims. Heidi has represented clients before all levels of court in Ontario, and specialized tribunals, including the Ontario Labour Relations Board and the Human Rights Tribunal of Ontario.

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

**ESSENTIAL CHARITY & NFP  
LAW UPDATE**

**By Esther S.J. Oh, B.A. LL.B.**

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

### Essential Charity & NFP Law Update

By Esther S.J. Oh, B.A., LL.B.

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### 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

All information in this PowerPoint is current as of the above date, 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](http://www.carters.ca)

[www.charitylaw.ca](http://www.charitylaw.ca) [www.carters.ca](http://www.carters.ca)

## 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

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**BOARD DUE DILIGENCE AND  
CRISIS MANAGEMENT DURING A  
PANDEMIC**

**By Ryan M. Prendergast, B.A., LL.B.**

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<p><b>Board Due Diligence and Crisis Management During a Pandemic</b></p> <p>By Ryan M. Prendergast, B.A., LL.B.</p> <p>rmp@carters.ca 1-877-942-0001</p> <p>© 2020 Carters Professional Corporation</p>	
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	2
<p><b>A. INTRODUCTION</b></p> <ul style="list-style-type: none"><li>• COVID-19 has created an unprecedented situation for directors and officers (“D&amp;Os”) of churches and charities in knowing how to respond both effectively and in compliance with the changing law</li><li>• D&amp;Os are having to make decisions quickly, some of which could impact the ability of the church or charity to continue to operate</li><li>• In order to make effective decisions, D&amp;Os should be become familiar with the relevant legal issues that will need to be considered</li><li>• This knowledge will help determine the appropriate due diligence steps needed to fulfill fiduciary obligations to protect the best interests of their charities</li></ul> <p>www.charitylaw.ca <span style="float: right;">www.carters.ca</span></p>	

- Under Canadian law, D&Os of churches and charities that are corporations are required in general terms to:
  - act honestly and in good faith with a view to the best interests of the corporation (their **fiduciary duty**),
  - exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances (their **duty of care**)
- The “business judgment rule” recognizes that D&Os are not expected to be perfect, but need to take all reasonable measures and perform the necessary due diligence required to fulfil their fiduciary obligations
- This presentation discusses legal principles generally applicable across Canada, but with a focus on Ontario
- Professional advice should be sought from lawyers in applicable jurisdictions as necessary

## B. DUE DILIGENCE CONSIDERATIONS

### 1. Keep Records of Decisions

→ In order to discharge their duties during a crisis like the COVID-19 pandemic, D&Os of a church or charity need to become engaged

→ The steps being taken, along with the reasoning behind the decisions, the dates on which the decisions and action items are being taken should be documented in writing, including board minutes

→ This will provide evidence of the due diligence undertaken by the D&Os of a church or charity in the event of a legal challenge at a future time

## 2. Convene Meetings as Necessary

- Convene **board of directors' meetings** quickly to deal with the crisis and meet regularly thereafter as needed
- Determine whether board meetings and members' meetings can be held electronically – review requirements in the legislation and by-laws
- Determine whether **annual members' meetings** may need to be postponed or whether alternative methods for meetings may need to be considered
- Monitor changing filing dates for corporate returns
- Legal advice may be required
- See Theresa L.M. Man's presentation, *Real Issues for Virtual Corporate Meetings*, for details on virtual meetings and related corporate matters

## 3. Develop a Communications Strategy

- It is essential to keep members, staff, volunteers, beneficiaries of the charity, suppliers, as well as the broader constituent community informed about changes or measures being undertaken that could impact them
- Maintaining open communication during the COVID-19 crisis is key to preserving reputational integrity
- It is important to have one person in the charity in charge of maintaining consistency in content and methodology of communication with that person reporting back to the board
- Keep written or electronic records of what communication was sent, on what date, and to whom

#### 4. Keep Up-to-date with Government Actions

- Monitor federal, provincial and local public policy and public health-related orders, directives and restrictions which may impact the operations of the organization, both inside and outside Canada
- For example, on October 20, 2020, Ontario [introduced](#) the *Supporting Ontario's Recovery Act, 2020*, to protect workers, volunteers, and organizations who make honest efforts to follow COVID-19 public health guidelines. See Esther Oh's presentation, *Charity Law Update*, for further details
- It is also important to monitor government actions in other jurisdictions in which the church or charity may carry out programs affected by COVID-19

#### 5. Review Risk Management Policies

- Review any existing risk management, disaster recovery and remote access policies
  - If these are not in place, consider adopting and implementing such policies as soon as possible
- Consider adopting succession policies for necessary key persons in order to mitigate against the impact on possible loss of management for the charity
- Review insurance policies, including directors' and officers' insurance and business interruption insurance, if applicable
  - Consider asking the insurance broker to advise in writing on the extent of insurance coverage and exclusions that may apply in a pandemic

## 6. Review Contractual Obligations

- Review contractual obligations in light of government directives and public health recommendations regarding COVID-19 to determine their impact on planned events or conferences, as well as the delivery or receipt of goods and services
- Reviewing pre-existing provisions in contracts will allow D&Os of churches and charities to make informed decisions about next steps when contractual obligations cannot be fulfilled or need to be delayed
- See article by Sean S. Carter and Heidi LeBlanc on practical strategies for dealing with termination of contracts in a pandemic: [Charity & NFP Law Bulletin No. 472](#)

## 7. Address Financial Matters

- It is essential to review the financial health of the church or charity on a regular basis by determining the anticipated impact of COVID-19 on donations, grants, investment income and capital, sponsorship income, membership income, sales of goods and services, and any other sources of income
- Review all funding and other agreements with governments or other agencies to determine the church's or charity's obligations to deliver services
- It is important for charities to develop a realistic reserve in order to cover operating costs in a crisis
- Evaluate and manage risks related to employee shortages, project cancellations, disruptions, and delays

## 8. Address Employee Issues

- Ensure that salaries of employees continue to be paid, otherwise directors may be left exposed to personal liability for unpaid wages and vacation pay
- Ensure that employee source deductions (e.g. CPP, EI) and GST/HST amounts pursuant to relevant legislation, are remitted when required to avoid personal liability
- Keep up-to-date with provincial and federal legislative changes concerning required government payments
- If considering layoffs and/or elimination of staff, legal advice should be sought
- See articles by Barry W. Kwasniewski and Luis R. Chacin for further details on employment issues during the pandemic: [COVID-19 Resource](#) and [Charity & NFP Law Bulletin No. 465](#)

## 9. Ensure Workplace Health and Safety

- Essential to keep abreast of all appropriate health and safety measures for staff, volunteers, and beneficiaries so that exposure to COVID-19 is appropriately managed
- Ensure compliance with health and safety legislation, such as the *Occupational Health and Safety Act* (Ontario)
- See Esther Oh *Essential Charity & NFP Law Update* concerning Bill 218, *Supporting Ontario's Recovery Act, 2020* for liability protection
- Evaluate and manage risks related to employee shortages, project cancellations, disruptions, and delays
- D&Os need to give special consideration to the role of volunteers during a pandemic
  - Volunteers carry similar obligations and liability as employees

## 10. Consider Privacy Implications

Determine the extent to which the organization's measures in response to COVID-19 are in line with privacy legislation, where applicable

Public health and safety may supersede usual privacy obligations during this time

Working from home can raise additional privacy concerns, such as increasing the risk of cyber attacks and privacy breaches, exposing D&Os to the risk of litigation for failure to protect PI and confidential business information

See Esther Shainblum's presentation, *Mitigating Privacy and Security Risks in a Virtual World*, for more information on privacy considerations

## 11. Use of Restricted Purpose Trust Funds

- As charities start to deplete their resources, they may be forced to consider encroaching on restricted purpose trust funds, such as endowment funds
- On March 30, 2020, assistance was announced by the Office of the Public Guardian and Trustee of Ontario ("PGT") allowing charities, which are in danger of closing, to access the income and capital of restricted purpose trust funds when necessary, without the need to first obtain a court order to enable them to continue their day-to-day operations, subject to certain conditions, which include:
  - Accessing the restricted purpose trust funds is the last resort, after access to reserve and non-restricted funds, as well as government funding has been used

- The charity is in danger of closing, including becoming insolvent or filing for bankruptcy or receivership
  - This does not mean that the charity must be on the verge of turning off the lights and locking its doors (i.e. can foresee closing in 30 to 60 days without other funding)
- To access funds, the PGT needs to be notified in writing, along with meeting other requirements
- While initial approval/consent of the PGT is not required, if the PGT subsequently disagrees, it will look to the reasonableness of the decision and the good faith of the directors at the time and decide what measures to take at that point

- If found to be an unreasonable decision, the PGT may require the funds to be replaced by the charity
- The PGT has advised that D&Os should seek legal advice if uncertain, including PGT's counsel being available to discuss
- D&Os should document the decision contemporaneously for purposes of a subsequent application under the *Charities Accounting Act*
- Charities are also required to keep an accounting of use of accessed funds
- For further details, see article by Ryan M. Prendergast on accessing restricted charitable funds during the pandemic:  
[Charity & NFP Law Bulletin No. 470](#)

## 12. Manage Investments of Funds

- Investments of charitable funds must be carefully monitored at all times, particularly in a volatile market
- It is important for a charity to have a robust investment policy that reflects prudent investment standards, *i.e.* “the care, skill, diligence and judgment that a prudent investor would exercise in making investments” in accordance with s.27(1) of the *Trustee Act* (Ontario), or other applicable provincial legislation
- Important to document compliance with prudent investor standard
- Some provinces, like Ontario, provide statutory protections to D&Os if they have acted in accordance with an investment policy

## 13. Utilize an Audit Committee

Generally, it is important for a church or charity to have an audit committee in order to review financial statements before they are approved by the board

Audit committees are generally responsible for overseeing financial reporting, disclosure, corporate reporting and risk management

Audit committees will be particularly important in reviewing financial outcomes from COVID-19

Important to ensure that the audit committee complies with any requirements that may be imposed by the incorporating legislation, *e.g.* requirements on size, composition, and responsibilities of committee

## 14. Maintain Solicitor-Client Privilege

- If churches or charities are facing legal challenges and/or potential litigation, discussions with legal counsel to seek legal advice should be protected from disclosure in future litigation as long as privilege (e.g. solicitor-client) is properly maintained
- In this regard, important not to waive solicitor-client privilege by disclosing the content of discussions with third parties, even with former board members
- When the board meets to discuss legal advice, that portion of the minutes should be identified as being privileged and confidential as a result of legal advice being discussed

## C. CONCLUSION

- Board due diligence remains critical throughout pandemic
- Take pandemic as an opportunity to build for the next crisis:

→ Does the board and/or committee need to meet more frequently or receive reporting more frequently?

→ Did the pandemic reveal gaps in policies that would protect the board in another crisis?

→ How can the board be proactive in preparing for the next crisis?

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**PREPARING CHURCHES AND  
CHARITIES FOR THE ONCA**

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<p><b>A. THE ONCA APPEARS TO FINALLY BE HERE!</b></p> <ul style="list-style-type: none"><li>• <i>Ontario Not-for-Profit Corporations Act, 2010</i> (“ONCA”) is expected to be proclaimed soon</li><li>• It will replace <i>Ontario Corporations Act</i> (“OCA”), whose Part III governs non-share capital corporations</li><li>• It’s taken a LONG time to get the ONCA to this point<ul style="list-style-type: none"><li>– Royal assent in October 2010</li><li>– Proclamation delayed several times since 2013</li><li>– Reasons? Technical amendments (done Nov. 2017) and tech improvements (still to be done?)</li><li>– Some draft Regulations released in June 2020 but more to come</li><li>– Proclamation deadline extended by Motion 89 (Sept 2020) to December 31, 2021 at latest</li></ul></li></ul> <p><a href="http://www.charitylaw.ca">www.charitylaw.ca</a> <span style="float: right;"><a href="http://www.carters.ca">www.carters.ca</a></span></p>

- Original purposes of the ONCA:
  - Enhanced corporate governance and accountability
  - Simplified and more modern incorporation process
  - More membership rights
  - Improved protections for directors and officers
- Continue to monitor updates on the Ministry's website at <https://www.ontario.ca/page/rules-not-profit-and-charitable-corporations> and [www.charitylaw.ca](http://www.charitylaw.ca)

## B. WHAT DO YOU MEAN WE HAVE TO CHANGE? IMPLICATIONS OF THE ONCA'S PROCLAMATION

- ONCA applies to all OCA corporations automatically
- Optional transition process within 3 years of proclamation to make necessary changes to current governing documents
- Prudent to go through transition by preparing both of the following documents reflecting the ONCA's detailed requirements:
  - Articles of amendment
  - New general operating by-law

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- Otherwise, if no transition done, then corporation will not be dissolved BUT...LPs, SLPs, by-laws and special resolutions deemed to come into conformity with ONCA
- Only exceptions are those provisions listed in the ONCA (ss. 207(3)) which can remain valid beyond the 3 year ONCA transition period
- Result? Uncertainty

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## C. DO IT RIGHT - HOW TO GET READY FOR YOUR ONCA TRANSITION

### 1. Collect governing documents

- Letters patent, supplementary letters patent
- All by-laws, including amendments
- Collect governance related documents, eg. org charts, policies, manuals, etc.
- Confirm your corporation is actually under the OCA and needs to transition to the ONCA

### 2. Review governing documents

- Do they reflect current governance process? If not, what is the process?
- Are changes desired? Write them down, create a wish list

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### 3. Review key ONCA features

- This understanding will help you figure out how your current governance structure will be impacted by the ONCA and how to draft your new ONCA documents
- Need to understand the ONCA framework
  - Rules in the Act
  - Regulations (still to come)
  - Articles and By-laws
- Three types of rules in ONCA
  - Mandatory rules – Cannot be overridden
  - Default rules – Can be overridden if stated
  - Alternate rules – Can be opted into if desired

### 4. Compare ONCA rules with current governance

- Are the current by-laws or desired governance structure/process inconsistent with ONCA? What to do if they are?

### 5. Prepare new ONCA documents

- Articles of amendment to amend portions of Letters Patent (“LP”) offside of the ONCA’s requirements
- Current by-law will need to be replaced or substantially revised because the ONCA differs so much from the OCA

## 6. Obtain membership approval and complete filings

- Need special resolution of members to approve
- File articles of amendment with the Ministry (but not the by-laws)
- Registered charities need to file all of the ONCA documents with Canada Revenue Agency, Charities Directorate

## D. OVERVIEW - KEY ELEMENTS OF THE ONCA

### 1. Incorporation and Corporate Powers

- Incorporation as of right with only 1 incorporator
- Certificate of incorporation issued - no more LPs
- No need to file by-laws or financial statements
- Default ONCA by-law applies if no by-law adopted
- Corporation will have powers of a natural person

### 2. Public Benefit Corporations (PBCs)

- Corporations will be PBCs or non-PBCs
- PBCs include charitable corporations and non-charitable corporations receiving more than \$10,000 in public donations or government funding
- Additional requirements imposed on PBCs

### 3. Financial Review

- Members required to appoint at each AGM by ordinary resolution an auditor or person to conduct review engagement
- There are rules for exemption depending on gross annual revenues (GAR) for (1) need to appoint an auditor and (2) audit vs. review engagement
- Exemption rules/thresholds differ if PBC vs non-PBC



### Directors

- Minimum 3 directors, with range possible if in Articles
- Directors elected at AGMs
- Ex-officio directors possible
- Appointment of directors by Board between AGMs
- If different member groups elect x directors to the Board, must structure members as separate classes
- Directors no longer need to be members
- Maximum 4 year term of directors

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- No limit though on maximum number of terms
- Staggered terms for directors possible
- Removal of any director by majority vote of members (mandatory)
- Directors must consent in writing to take office

## 5. Members and their Rights/Remedies

- A corporation must have members, with articles to set out member classes
- If 1 class, all members must be voting, but if 2+ classes, voting rights must be given to at least 1 class
- By-laws must set out the conditions for membership
- Default rule is 1 vote per member (subject to articles)

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- ONCA originally gave all member classes (even non-voting) separate vote on fundamental matters and certain amendments to articles, i.e. a veto
- Bill 154 (2017) proposed delaying implementation of all membership class votes for at least 3 years after the ONCA's proclamation
- Motion 89 excluded extending these class vote provisions, but if these provisions come into effect (or not) depends on when the ONCA is proclaimed:
  - if proclamation is in 2021, then the class vote provisions would die by Dec 31 2020, but
  - if proclamation is by Dec 31, 2020, then provisions will remain valid, although they may be unlikely to be enacted by the Government

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- Default rules to terminate membership
- Articles or by-laws may give directors, members or a committee the power to discipline or terminate members within mandatory parameters
- Members may remove directors by majority vote, with exception of ex officio directors
- Members have extensive rights and remedies, which must be respected (cannot contract out)
  - Requisition members' meetings
  - Submit proposals
  - Access corporate records, eg. membership list
  - Numerous remedies available to utilize

## E. TAKEAWAY TIPS!

Monitor the ONCA

Have a committee in charge of the process

Engage your board of directors

Prepare early

Seek legal help

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**EMPLOYEES WORKING  
REMOTELY: SHIFTING TO THE  
NEW NORMAL**

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	2
<p><b>A. INTRODUCTION</b></p> <p><b>1. Overview</b></p> <ul style="list-style-type: none"><li>• COVID-19 Pandemic has caused significant changes in workplaces, including for churches and charities</li><li>• We are not certain if this is a temporary interruption or if the changes are creating a new permanent “normal”</li><li>• This presentation discusses challenges you may find yourself in as managers of employees who are working remotely, either part-time or full-time, and suggestions on dealing with these challenges</li><li>• The employment laws discussed in this presentation relate to Ontario, so it’s important to consult with employment lawyers in other provinces</li></ul> <p>www.charitylaw.ca <span style="float: right;">www.carters.ca</span></p>	

## 2. Current Situation

- Organizations have had to reduce their operating hours or close their doors because of government , emergency orders, regulations and public health directives
- Depending on where you are located and the number of COVID-19 cases in your area, the situation may be more or less severe for workplace restrictions
- This presentation will focus on a few key legal issues, potential risks and strategies for how best to manage the current situation

## 3. Key Legal Issues

- First: compliance issues regarding the Ontario *Employment Standards Act, 2000*, focusing on overtime pay and working from home
- Second: developing a “Work from Home” policy: a management tool that sets expectations of employees working remotely
- Third: human rights law and issues employers may face with accommodation requests for staff working from home, focusing on the Ontario Human Rights Code “family status” provisions

## A. EMPLOYMENT STANDARDS COMPLIANCE

### 1. The Law in Ontario

- Overtime pay claims are a potential liability for employers with staff working from home
- Ontario's employment standards in the ESA, Section 22, require overtime pay at a rate of 1½ times the regular rate for each hour in excess of 44 hours per week: <https://www.ontario.ca/document/your-guide-employment-standards-act-0/overtime-pay>
  - Managers and supervisors are exempt from overtime hours obligations in Ontario
    - What exactly a “manager” or “supervisor” is has been frequently litigated

### 2. Managing Overtime

- Workers may be putting in OT hours while working from home either by mistake or to be more productive for the employer
- Employees must be paid overtime for work in excess of 44 hours per week; this can be expensive
- How to mitigate this risk?

→ Give workers a set of written expectations and limitations for their hours per day and per week

→ Require employees to track and submit their hours regularly

→ Instruct employees that all overtime must be pre-approved in writing

- “Dark hours”: Inform employees that during certain times they are not permitted to log onto their work computers or respond to emails or calls (e.g. before 8 a.m. or after 5 p.m.)
- Managers should not expect employees eligible for overtime to respond to calls or emails during their off hours

### 3. Vacation Entitlements

- Section 33 of the ESA: minimum two weeks per year for employees with less than 5 years, and three weeks per year for employees with more than 5 years
- <https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation>
- Unused vacation time can accrue for employees working from home into a significant liability
- Employers must set clear policies with employees, and may require them to take vacation time (even if they are unwilling)
- Employees working from home have the same legal rights as those who are physically at work

## C. WORK FROM HOME POLICIES

### 1. New and Uncharted Territory?

- Even prior to the pandemic, it was already common for some industries, such as IT to have employees working remotely
- But many organizations in the charitable sector are not used to remote work, so it's necessary for management to adjust
- Organizations may want to consider written policies for employees to set clear guidelines
  - There is no legal requirement for these policies but they should be helpful and proactive

### 2. Typical Issues in Work-From-Home Policies

- 1) Permitted duration and days of the week for work from home and work in the office
- 2) Discretionary right of employer to oversee and alter or revoke the agreement to work from home depending on the employer's needs
- 3) Exclusivity: an employer's right to require that employees at home work only for the employer and not operate a side business without consent
- 4) Regular working hours and overtime authorization to exceed regular working hours, or "core hours" for an employee who is working on a flexible schedule

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- 5) Equipment requirements, such as computers and software, to be approved by the employer, for staff working remotely to complete assigned tasks
- 6) Security requirements: maintaining passwords, restricting access to other members of the household, protecting confidentiality of saved information.
  - May need to have policies to restrict the use of personal devices, if they lack security, for work purposes
- 7) When to allow the employer access to the employee's home to assess the security of equipment in the working area, or to conduct maintenance or repairs and retrieve equipment

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- 8) Responsibility for ordering and paying for home office supplies for employee to complete their work
- 9) Employee responsibility to maintain personal property, including liability insurance coverage, in a case of damage to property, and any injury claims by third parties for incidents on the employee's premises
- 10) Employee's income tax responsibilities, such as determining the tax implications for maintaining a home office area on their property, and encouraging them to seek advice from a qualified tax professional
- 11) These issues should all be part of a work-from-home policy to give clear instructions about rights and obligations; work-from-home may be time limited

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### 3. Reducing Risk — Constructive Dismissal Claims

- Employers should be clear in their policies that working from home is not an “essential condition” of the employment contract and may be a temporary situation
- Otherwise, if required to return to an office, staff who have been working from home may claim a “constructive dismissal”: a legal argument that the employer breached the employment contract
- “Constructive dismissal” is a common law concept that states an employer cannot change an “essential condition” of an employment contract without consent
- Such claims are brought to court as wrongful dismissal lawsuits and can lead to expensive monetary payouts depending on the circumstances

## D. HUMAN RIGHTS CODE COMPLIANCE

### 1. COVID-19 Impact on Families

- The pandemic is upsetting the regular routine of our family lives with closures of daycares and schools, increasing the burden on parents and caregivers
  - Employees are struggling to fulfill their obligations to their families along with work requirements
- Ontario Human Rights Code ss. 5(1) and 5(2) prohibits discrimination and harassment in employment on the grounds of “family status”

## Employment

5 (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, **family status** or disability. [Emphasis added.]

## Harassment in employment

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, **family status** or disability. [Emphasis added.]

- Employers will need to be flexible with employees' family needs if they are seeking accommodations, especially in light of the ongoing pandemic
- Employers must consider an employees' request for accommodation along with possible alternate work arrangements
  - Alternate arrangements can include modified work hours, reduced hours or leave of absence for family care obligations
- Ontario Human Rights Commission's COVID-19 policy statement includes a discussion of family status discrimination in the context of employment: [http://www.ohrc.on.ca/en/news\\_centre/ohrc-policy-statement-covid-19-pandemic](http://www.ohrc.on.ca/en/news_centre/ohrc-policy-statement-covid-19-pandemic)

## E. CONCLUSION

→ Working remotely is a new reality that has developed very rapidly because of the COVID-19 pandemic

→ Managing employees working from home is a significant operational and legal challenge for many organizations in the church and charity sector

→ Churches and charities need to rethink how work can be done, as many employees will expect a more flexible work-from-home policy, even after the pandemic ends

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

**REAL ISSUES FOR  
VIRTUAL CORPORATE MEETINGS**

**By Theresa L.M. Man, B.Sc., M.Mus, LL.B., LL.M.**

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 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p><b>2020 Annual Church &amp; Charity Law Seminar™ Toronto – November 5, 2020</b></p>		
<p><b>Real Issues For Virtual Corporate Meetings</b></p> <p>By Theresa L.M. Man, B.Sc., M.Mus., LL.B., LL.M.</p> <p>tman@carters.ca 1-877-942-0001</p> <p>© 2020 Carters Professional Corporation</p> <table border="0"><tr><td data-bbox="259 833 645 882">CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001</td><td data-bbox="652 833 1209 882">Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.churchlaw.ca</td></tr></table>		CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001	Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.churchlaw.ca
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<p><b>SETTING THE CONTEXT</b></p> <ul style="list-style-type: none"><li>• Charities and NFPs need to adjust how they hold board meetings and members' meetings during the COVID-19 pandemic because<ul style="list-style-type: none"><li>– Limit on how many people can gather</li><li>– Physical distancing</li><li>– Directors' fiduciary duties to act in the best interest of the organization by balancing the need to comply with legal requirements against the need to protect the health and well-being of directors and members and not subject them to risk of virus infection</li></ul></li><li>• See Bulletin 466 <a href="http://www.carters.ca/pub/bulletin/charity/2020/chylb466.pdf">http://www.carters.ca/pub/bulletin/charity/2020/chylb466.pdf</a></li></ul> <p>www.charitylaw.ca <span style="float: right;">www.carters.ca</span></p>

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## ISSUES TO DISCUSS

				
<b>Virtual vs hybrid meetings</b>	<b>Pros and cons</b>	<b>Legal requirements</b>	<b>IT platforms &amp; meeting issues</b>	<b>Final TIPS</b>

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- Considerations apply to both board meetings and membership meetings
- No one-size-fits-all solution
- This presentation does not cover
  - Provincial rules - will refer to *Canada Not-for-Profit Corporations Act (CNCA)* and *Ontario Corporations Act (OCA)* as examples
  - Other COVID-19 related issues, such as deadlines to hold AGMs, whether AGMs can be postponed, how to use absentee voting options (e.g., proxy, mailed-in ballots, electronic voting), when to use written resolutions in lieu of meetings

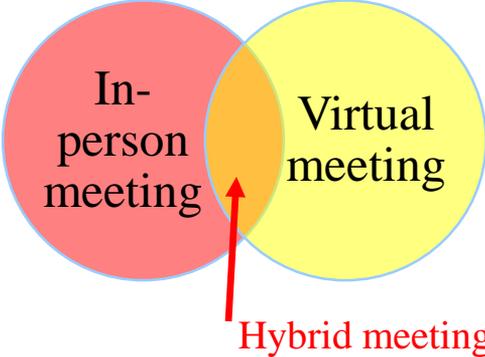
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**Virtual vs Hybrid Meetings**

- In-person meetings - everyone attends in person
- Virtual meetings - everyone attends electronically
- Hybrid meetings – Some attend in person, others attend electronically



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**Pros and Cons**

Sometimes, it may not be suitable to hold an electronic members' meeting for various reasons, for example:

- Are there contentious matters to be decided involving heated debates with complex proceedings (e.g., multiple amendments from the floor on motions being decided, or nominations from the floor)?
- Is the organization accustomed to holding electronic meetings?
- Does the organization have large membership or constituents who are elderly, have disability issues, or do not have easy access to technology?

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	In person	Hybrid	Virtual
Address COVID-19 concerns	Poor	Fair	Best
Means of communication	Best	Fair	Fair
Relay complex information or deal with contentious issues	Best	Difficult	Difficult
Cost	Venue cost	IT platform cost	IT platform cost
Travel and accommodation cost	Yes	Yes (for in-person)	None
Flexibility and convenience	Depends	Depends	Depends
Level of preparation for meeting	Venue preparation	Venue and IT preparation	IT preparation
Limitation on participation	Difficult for those who reside far away	Difficult for those not tech savvy or lack access to technology	Difficult for those not tech savvy or lack access to technology
Security and privacy concerns	Low	High	High

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**Legal Requirements**

- Check to see if electronic meetings are permitted, and if there are special requirements

**Corporations**  
– check:

Incorporating legislation

Articles / letters patent

By-laws

**Unincorporated**  
- check:

Constitution

By-laws

**Trusts**  
– check:

Trust indenture

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## Examples – OCA and CNCA

### 1. Board Meetings

- Generally not an issue for OCA and CNCA directors to hold meetings by telephonic or electronic means

#### OCA

- Directors and committees of directors may meet by telephonic or electronic means if certain conditions are met, and the by-laws do not otherwise provide
- COVID-19 relief during “Temporary Suspension Period”
  - More flexible to hold board meetings electronically during emergency
  - Made March 30, 2020, retroactive to March 17, 2020

Normal s. 283(3.1) suspended during Temporary Suspension Period	New s. 283(3.1) temporary provision during Temporary Suspension Period
Directors may meet “by such telephone, electronic or other communication facilities” provided that all of the following conditions are met:	Directors may meet “by such telephone, electronic or other communication facilities” provided that the following is met:
(1) all the directors present at or participating in the meeting consent	{not required}
(2) the facility used permits “all persons participating in the meeting to communicate with each other simultaneously and instantaneously”	The facility used permits “all persons participating in the meeting to communicate with each other simultaneously and instantaneously”
(3) the by-law does not otherwise provide	The above mechanism can be used despite any provision in the letters patent, supplementary letters patent or by-laws that provides otherwise

## CNCA

- Directors may participate in a meeting of directors or of a committee of directors “by means of a telephonic, an electronic or other communication facility” if all of the following conditions are met:
  - (1) If all the directors of the corporation consent
  - (2) The facility permits all participants to communicate adequately with each other during the meeting
  - (3) The by-law does not otherwise provide
- No relief from Corporations Canada for COVID-19 issues

## 2. Members’ Meetings

### OCA

- COVID-19 relief to allow electronic members’ meetings

Normal s. 125.1(1) suspended during Temporary Suspension Period	New s. 125.1(1) temporary provision during Temporary Suspension Period
Members’ meetings be held by “telephonic or electronic means” and members may “through those means, votes at the meeting or establishes a communications link to the meeting”	Members’ meetings be held by “telephonic or electronic means” and members may “through those means, votes at the meeting or establishes a communications link to the meeting”
unless the by-laws provide otherwise	The above mechanism can be used despite any provision in the letters patent, supplementary letters patent or by-laws that provides otherwise

## CNCA

- Hybrid meeting
  - Default - members are entitled to “participate by telephonic, an electronic or other communication facility” *if* the corporation provides such means
  - Corporation may prohibit hybrid meetings by opting out of such right in its by-laws
- Virtual meeting
  - Optional mechanism to meet by “an electronic or other communication facility”
  - Corporations that want to permit virtual meetings must opt in to such right in its by-laws
- Need to review by-laws to determine what types of meetings are permitted

- For both hybrid and virtual meetings, members may vote by means of a telephonic, electronic or other communication facility provided that the facility meets both of the following CNCA requirements:
  - enables the vote to be gathered in a manner that permits its subsequent verification
  - permits the tallied vote to be presented to the corporation without it being possible for the corporation to identify how the person voted
- Note that the same requirements apply to electronic voting at in-person meetings

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**IT Platforms  
& Meeting  
Issues**

- When determining a suitable electronic platform for the meeting, considerations will need to be given to the technical capabilities of the platform
- Many platforms in the market, the platform being contemplated must meet the unique needs of each organization
- *Do due diligence to find suitable IT platform*
- Decide if you want to look for a short-term solution just for the COVID-19 pandemic or plan for the long-term to hold electronic members' meetings in future
- Electronic meeting must meet requirements for a valid meeting – below are examples of issues to consider

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- **Notice of meeting** – proper information to be included in notice, timely delivery of notice, proper notice delivery method
- **Registration mechanism** - how to track attendee registrations, what if there are observer attendees?
- **Quorum count** - what if there is more than one voter that uses the same device to log in to the meeting, how not to include observers in quorum count
- **Absentee votes** – how to notify members of their right to cast absentee votes, how will they be cast, how will the votes be collected and tallied

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- **Discussion at meeting**
  - Does the platform allow participants to communicate adequately with each other during the meeting to have a meaningful discussion ? [one-way live streaming is not a suitable platform]
- **Meeting procedure**
  - How would the chair have control of the meeting?
  - How would attendees participate and speak at the meeting and what protocol to follow?
  - How would moving, seconding, amending, and discussion of motions be handled?
  - How to handle motions from the floor?
  - How to ensure only one person has the floor at one time? How would the chair control who has the floor?

- **Collect and tally votes**
  - Can the CNCA requirements on how votes are to be gathered be met?
  - Is it necessary to use the meeting platform with a voting platform?
  - How would attendees vote and how would the votes be tracked?
  - How to track the voter only votes once? Can the voter change his vote?
  - How to deal with weighted votes (e.g., a person holding multiple proxies)
  - How to ensure the votes are secure?

- **Chair of meeting**
  - Plays a key role, calm and be in control of the meeting, be knowledgeable of the requirements
  - Helpful for a script be prepared ahead of time
  - Have a technical person nearby to help if necessary
- **Minutes**
  - Minutes must still be kept by a real person of the proceedings
  - Not good practice to treat a video/audio “recording” of an electronic meeting as the “minutes”
  - Prevent attendees from recording meeting without permission

- **Other meeting and IT logistics issues**
  - Is there a limit on how many persons can participate at the same time?
  - Is there a limitation on the maximum length of the meeting?
  - Are there special hardware and internet requirements?
  - Is software download required?
  - Will each voter have a dedicated log in & voting ID?
  - Is test run supported?
  - Is live technical support available?
  - Can the meeting be recorded and if so, how long will the recording be maintained?

- Are there costs involved in utilizing the platform?
- Will the platform be available after COVID-19 in case if the organization would like to continue holding electronic meetings?
- Adopt electronic meeting policy
- **Privacy and security issues**
  - Is log in secure? How to ensure the person who logged in is the “right” person? How to ensure others are not logged in or “listen in”?
  - If materials are distributed through the platform, is it secure?
  - Are the voting and tallying functions secure?
  - How is the privacy of the attendees maintained?

- **Examples of common meeting platforms**
  - GetQuorum
  - GoToMeeting
  - Zoom
  - Onstream Meetings
  - Broadbridge
  - ClickMeeting
  - Pragmatic
- **Examples of voting platform to use with meeting platform**
  - Election Buddy
  - Simple Survey
  - Simply Voting
  - Secured Voting

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- Know the legal requirements
- Choose hybrid vs virtual, decide if this is right for you
- Do due diligence to find an appropriate IT platform
- Adopt electronic meeting policy and workflow
- Ensure sufficient time to complete the logistics, think through the meeting step by step
- Give clear instructions to attendees
- Prepare the chair and meeting host
- Have technical person nearby to help if necessary
- Do rehearsals and test runs
- **PREPARE, PREPARE, PREPARE**

**Final TIPS**

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Have a

**SUCCESSful**

**E-Meeting!**



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**MITIGATING PRIVACY AND  
SECURITY RISKS IN A  
VIRTUAL WORLD**

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<p><b>Mitigating Privacy and Security Risks in a Virtual World</b></p> <p><b>Esther Shainblum, B.A., LL.B., LL.M., CRM</b> eshainblum@carters.ca 1-866-388-9596</p> <p>© 2020 Carters Professional Corporation</p>	
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<p><b>A. INTRODUCTION</b></p> <ul style="list-style-type: none"><li>• In the wake of the COVID-19 pandemic, unprecedented numbers of people are working from home (“WFH”)</li><li>• According to Statistics Canada, 4.7 million Canadians who do not usually WFH started to as a result of the pandemic (see <a href="https://bit.ly/2HQltdm">https://bit.ly/2HQltdm</a>)</li><li>• The new WFH reality has exposed organizations, including charities and NFPs, to additional privacy and security risks</li><li>• As the pandemic drags on into its ninth month, many charities and NFPs are still dealing with the implications of the abrupt shift</li></ul> <p>www.charitylaw.ca <span style="float: right;">www.carters.ca</span></p>	

- Until there is a vaccine, it is unlikely that people will be returning to the office in large numbers
- Moreover, it is also unclear what the long term impact of the pandemic will be on how people work in the future
- Many employees may choose to work remotely on a permanent basis as “office centricity is over” (see <https://bit.ly/34K91WH>)
- Charities and NFPs will continue to face privacy and security risks associated with WFH for the foreseeable future

## B. THE PIVOT TO WFH

- At the beginning of the pandemic, the primary threat was to the physical safety of workers
- Social distancing requirements and mandatory closures of non-essential workplaces sprung up overnight
- In many organizations, WFH arrangements were hastily assembled
- Many charities and NFPs were not prepared to manage the large scale, sudden shift to WFH:
  - No time for risk assessments, to audit home environments for vulnerabilities or to put safeguards in place

- Could not check the security of their employees' computers or internet connections
- Many charity and NFP employees had no access to corporate-owned devices and were using personal devices to access core IT systems
- Some charities and NFPs did not have the tools or infrastructure to support a remote workforce or their remote access infrastructure could not support the increased demand
- At the same time, charities and NFPs facing declining revenues and the inability to fundraise due to the pandemic

## C. THE RISKS OF WFH

- The unprecedented number of people WFH means an unprecedented risk to organizations, including charities and NFPs
- These risks include:
  - Employees working outside safeguards present in the workplace environment e.g. firewalls, anti-virus software, face-to-face contact, and policies and procedures designed to prevent or mitigate cyber and privacy breaches
  - Multiple, dispersed remote work places make it more difficult for organizations to:
    - maintain security
    - monitor and enforce employee compliance with policies and procedures

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- keep track of sensitive information and who is accessing it
- find out about and respond to privacy breaches
- Stretched or inadequate IT support
- Some may require employees WFH to set up and manage their own remote connections
- Employees using personal, less secure home devices, such as laptops, phones and USB drives, to access core IT systems and sensitive work information

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- Organizations not putting in place secure remote access, such as virtual private networks (“VPNs”), to allow employees to securely access the workplace
- Employees accessing core IT systems or sensitive workplace information using poorly secured home internet connections
- Corporate policies, such as those regarding confidentiality, privacy and the use of personal or corporate devices, that do not address or reflect WFH
- Organizations not providing employees with additional cybersecurity awareness training when WFH

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- WFH making it more difficult for employees to communicate with one another, *e.g.* to verify email instructions, making them more susceptible to phishing and social engineering
- Employees WFH may not have a clear protocol to follow for cybersecurity incident or breach WFH, may not know how/may not be able to get help on an urgent basis
- Employees sharing computers, devices and workspaces with family members/roommates
- WFH making it harder to reinforce the need for vigilance and strict processes

- WFH relaxing or making it harder to follow the rules that normally apply at the workplace, *e.g.* not keeping devices, passwords and documents secure, not following usual processes or policies
- Increased volume of video conference calls that may discuss confidential information or make sensitive information visible, and the use of free platforms that may not have adequate security, *e.g.* Zoom Bombing
- Employees WFH potentially exposing their own personal information (“PI”) *e.g.* through video calls

#### D. THE SURGE IN CYBERCRIME

- Cybercrime has surged globally as a result of the shift to WFH and home based networks
- Coronavirus “possibly largest-ever cyber security threat” due to the total volume of cyber attacks related to the pandemic (see <https://bit.ly/3oUbAxs>)
  - 667% increase in cyber attacks in USA March, 2020
  - April, 2020 FBI reported a 400% spike in cybersecurity complaints.
- The Canadian Internet Registration Authority (CIRA) reported an increased volume of cyber attacks during the pandemic (see <https://bit.ly/322nQ4W>)

- Canada was the most frequently targeted country for phishing attacks during the first quarter of 2020 and there was a 25% spike in ransomware attacks in Canada in the first quarter of 2020.
- In July 2020, Blackbaud revealed that it had been the subject of a ransomware attack that impacted charities around the world, including many in Canada

- Cybercriminals are taking advantage of the pandemic in multiple ways:
  - Leveraging the massive shift to poorly secured home networks and devices to attack and compromise organizations' systems:
    - Weak passwords, out of date or insecure devices and software and the lack of layers of authentication or protection can make an organization vulnerable to attack
  - Using deception and manipulation to bypass defenses and safeguards and to gain entry or data, including:

**Phishing** – exploiting COVID fear and anxiety by pretending to be a trustworthy entity and sending pandemic-themed phishing emails to trick people into clicking links or fake websites or downloading attachments that contain malware or ransomware

**Spear phishing** – similar to phishing but well-researched and targeted toward a specific individual or organization

**CEO Fraud** – a similar scam, impersonating senior executives to trick people into transferring funds or downloading malware

**Clickbait** – pretending to offer something such as free healthcare advice about COVID

## E. MITIGATING THESE RISKS

- Charities and NFPs need to consider a number of measures to mitigate the risk of data loss, privacy breach or cyber attack
- Technological measures such as:

Provide employees WFH with corporate-owned devices managed and controlled by the organization

Proactively audit and test for vulnerabilities and regularly deploy updates and patches to address them

Use a VPN to create a secure connection between remote workers and the organization's network/sensitive data

Require strong and complex passwords for all accounts/devices

Consider Multi Factor Authentication requiring multiple forms of verification to access the VPN, network or PI

If personal devices must be used, regularly update their operating systems and require them to have the same security solutions as corporate owned devices to prevent them being an attack vector. Obtain extra licenses if necessary

Implement quick access to IT support in case of breach/incident

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- Privacy and cybersecurity measures such as:
  - Limit the collection, use and disclosure of personal information to the minimum necessary
  - Avoid emailing PI, send encrypted/password protected emails, obtain consent to email if possible, send test emails
  - "Hygiene" - secure devices and information, clean desks, protect monitors, eavesdropping, no PI taken home, minimize printing of PI, secure storage and disposal of PI
  - Limit or restrict access to PI for personal devices/mobile devices/removable media
  - Password protect and encrypt devices/removable media

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- Training and Policy measures such as:
  - Establish a WFH policy that sets out expectations and responsibilities for employees WFH
  - Review and update technology policies as needed to address WFH
  - Adapt and enforce privacy policies to ensure that employees WFH continue to comply with privacy law and policies
  - Have clear privacy breach and security incident response protocols in place
  - Implement mandatory cybersecurity awareness on cybersecurity threats, phishing, WFH securely and how to video conference securely
  - Conduct cybersecurity awareness training on a regular, ongoing basis
  - Obtain adequate cyber insurance coverage to protect the organization against cyber-crime and fraud

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## F. CONCLUSION

- WFH is here to stay, at least for the immediate future
- Nearly nine months into the pandemic, charities and NFPs should be implementing measures to mitigate the risks associated with WFH
- Take aways:
  - Update policies
  - Eliminate/reduce personal devices
  - VPNs
  - Phishing and cybersecurity awareness
  - Home office hygiene

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**COPYRIGHT ISSUES IN A  
VIRTUAL REALITY:  
TIPS AND TRAPS**

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<h3>Copyright Issues in a Virtual Reality: Tips and Traps</h3> <p>By Sepal Bonni, B.Sc., M.Sc., J.D., Trademark Agent</p> <p><a href="mailto:sbonni@carters.ca">sbonni@carters.ca</a> 1-866-388-9596</p> <p>© 2020 Carters Professional Corporation</p>	
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<h3>A. THE PURPOSE AND FUNCTION OF COPYRIGHT</h3>
<ul style="list-style-type: none"><li>→ Copyright is one form of intellectual property</li><li>→ It is the exclusive legal right to produce, reproduce, publish or perform an original literary, artistic, dramatic or musical work</li><li>→ The use of digital platforms, such as social media sites, allows individuals to reproduce copyright protected work in an instant</li><li>→ As a result, organizations must ensure that their copyright protected work is not infringed, and also that they are not infringing another organization's copyright protected work that exists online</li></ul>
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- Establishing a legal right to use these types of works therefore becomes of vital importance
- If left unchecked, reproducing copyright protected work can violate the copyright owner's rights
- This type of violation is referred to as infringement, and copyright owners have legal remedies under the *Copyright Act* against those who have infringed their work
- The effective management of copyrights belonging to a church or charity can help to protect and grow the assets of the organization
- Therefore, an awareness of copyright law and how it affects the day-to-day operations of a church or charity is of significant importance

## B. WHAT COPYRIGHT PROTECTS

- Copyright protects original literary, artistic, dramatic or musical works
- The word "original" is key in defining a work that qualifies for copyright protection

The work does not need to be new, but must originate from the author, not be copied, and involve some intellectual effort

- Originality can be tricky to determine and many court cases revolve around the question of whether a work has been copied, even in part, from someone else's work

## C. WHAT COPYRIGHT DOES NOT PROTECT

- Titles, names and short word combinations are usually not protected by copyright

A “work” or other “subject matter” for copyright purposes must be something more substantial

- As copyright is restricted to the expression in a fixed manner (e.g., text, recording, drawing) of an idea, it does not extend to the idea itself
- Facts, ideas and news are all considered part of the public domain, that is, they are everyone’s property

## D. INFRINGEMENT

- Since copyright gives you the sole right to produce or reproduce your work, through publication, performances, etc., or to authorize such activities, anyone who does such things without your permission is infringing (e.g., violating) your rights
- If you publish, perform or copy anyone else’s work without their permission, you are infringing their rights
- One form of infringement is plagiarism — e.g., copying someone else’s work and claiming it as your own
- Using a substantial part of someone else’s work — e.g., copying a novel, and simply changing the title and names of the characters

## E. TIPS FOR PROTECTING COPYRIGHT IN THE VIRTUAL WORLD

### 1. Automatic Copyright Protection

- Under the *Copyright Act*, there is automatic copyright protection for an author if he or she is a Canadian citizen or person ordinarily resident in Canada, or is a citizen of various other international convention countries

### 2. Copyright Registration

- Registering copyright with Canadian Intellectual Property Office entitles the owner to a registration certificate that constitutes official proof of ownership — creates a rebuttable presumption that copyright exists in the work and that the copyright registrant is the owner of said work - this can be useful when asserting rights

### 3. Notice of Copyright Ownership

- Another way of protecting a work is with a notice of copyright ownership which includes the © symbol, owner's name, and date the work was created, e.g., © Sepal Bonni, 2020
- This can be done even if the copyright is not registered
- Marking works is a proactive way for a church or charity to demonstrate to others its rights pursuant to the *Copyright Act*, and this alone may serve to deter potential infringers from violating the copyright

## 4. Copyright Policies

- A church or charity can help to reduce the risk of copyright infringement by creating a Copyright Policy for employees and volunteers to follow - it should be accessible and visible in areas where copying is likely to take place, such as near photocopiers and on the organization's computers
- A Social Media Policy should also be implemented that addresses the organization's policies regarding copyright protected works
- A church or charity should also have policies in place that protect its own copyright protected material and have public notices in place regarding its ownership of copyright on printed material and on its website

## 5. Terms and Conditions of Use Section on Website

- It is advisable to include a "Terms and Conditions of Use" section on websites outlining how the work shared on the website can or cannot be used by third parties
- For example, a church or charity may want a third party to distribute some content provided it is not used for commercial purposes, the content is not altered, and the owner of the work is referenced

## 6. Contracts

- Implement contracts with employees, volunteers and independent contractors that clearly state that the organization is the owner of all work and that moral rights are waived - further discussed in later slides

## F. COPYRIGHT TRAPS IN THE VIRTUAL WORLD

- As already discussed, copyrights can be a significant asset if effectively managed, but can also result in liability to an infringing organization
- Important questions for churches and charities to ask are:

→ Whether the organization has the rights necessary to carry out its activities without infringing on the rights of others?

→ Whether the organization possesses good title to the copyright that it believes it owns?

### 1. Copyright Ownership Generally

- Generally, the *author* of the work is the first *owner* of the copyright unless an exception exists
- The author is whoever writes, produces or otherwise creates a creative work
- Corporations cannot be authors - author must be human
- There can be multiple authors for one work
- The *Copyright Act* also recognizes and protects the creator's "moral rights" which includes the right to attribution, integrity, and association
  - moral rights can be waived but cannot be assigned

## 2. Works Created by Employees

- One exception to the author being the first owner of copyright is if the author is employed under a contract of service or apprenticeship, the employer automatically owns the copyright to the work
- There are three requirements for this to happen
  - The employee must be employed under a contract of service or apprenticeship
  - The work must have been made in the course of that employment or apprenticeship
  - There must not be an agreement to the contrary
- The author retains moral rights to the work

## 3. Works Created by Independent Contractors and Volunteers

- One difficult question that frequently emerges is whether a person is under a “contract of service” or a “contract for services”
- Independent contractors, volunteers, and quasi-employees are not usually considered to be under a “contract of service”
- Therefore, a church or charity will not automatically own the rights to works its volunteers or independent contractors create
- Disputes can arise over ownership of copyright works
- Often churches and charities will be surprised to learn what they do not own the copyright for

- Situations to watch for:
  - Volunteers
  - Independent contractors
    - Web designers
    - Logo designers
- For anyone who is not an employee, the organization will need to obtain an assignment of rights if it wants to own the copyright in works authored by that person
  - Include waiver of moral rights
- Even with the general rule regarding employees, it is recommended to clarify in writing, often by including appropriate terms in the employment contract to avoid future issues with employees

#### 4. Using Third-Party Material

- Content that is not created by the organization does not belong to the organization and therefore cannot be used without permission
- Employees and volunteers may not consider whether copyright applies to a work, or may assume that an exception applies or that they will somehow be personally exempted from responsibility
- If an employee or volunteer infringes copyright in the performance of their duties for the organization, then it is ultimately the organization that will be held responsible in most cases
- Use of collective licensing (e.g., CCLI) - several important considerations on what you can or cannot do with the content online (e.g., what is the license for, can you use the content online, etc.)

## 5. Internet Photo Copyright Infringement

- Employees of churches and charities may have at one time or another copied and pasted images from online sources such as Google.ca for use in publications, websites, etc.
- Although the infringement may not have been intentional, without obtaining express authorization from the copyright holder or licensee of the copyright, churches and charities may be liable for copyright infringement
- As a result, the copyright owner may send a letter requesting the church or charity to pay a large sum of money or threaten legal action

## 6. Social Media and Copyright

- Examples of Social Media: LinkedIn, Facebook, Twitter, Instagram, Pinterest, YouTube, Google+, etc.
- Ensure copyright of others (and your own) are not infringed
- Social media can expose your organization to liability for infringing the copyright rights of others
- Monitor social media sites for postings by employees and third parties that may infringe copyrights of others
- Review posted content and consider who is the owner of the work
- If the organization does not own the work, any reproduction of that work on social media can constitute copyright infringement

## G. CONCLUSION

→ Copyright is a very valuable asset to churches and charities

→ It is beneficial for churches and charities to familiarize themselves with the laws surrounding copyright and to implement policies and procedures in order to protect its copyright and to avoid any unintended consequences

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

**LEGAL ISSUES IN FUNDRAISING  
IN A VIRTUAL WORLD**

**By Terrance S. Carter, B.A., LL.B., TEP, Trademark Agent**

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 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p>The Annual <b>Church &amp; Charity Law™ Webinar</b> <i>Goes Virtual – November 5, 2020</i></p>
<p><b>Legal Issues in Fundraising in a Virtual World</b></p> <p>By <b>Terrance S. Carter, B.A., LL.B., TEP, Trademark Agent</b> tcarter@carters.ca 1-877-942-0001</p> <p>© 2020 Carters Professional Corporation</p>	
<p>CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001</p>	<p>Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.churchlaw.ca</p>

<p>2</p>
<p><b>A. INTRODUCTION</b></p> <ul style="list-style-type: none"><li>• As a result of COVID-19, many fundraising events and campaigns that have traditionally been carried out in person are now being either cancelled or becoming virtual</li><li>• Imagine Canada’s released a report in late May, 2020 indicating that charities in general have experienced significant declines in revenue as a result of COVID-19</li><li>• Many churches and charities are more than ever having to rely on the use of internet websites and social media to raise funds</li><li>• This presentation identifies legal issues that can arise when fundraising in a “virtual world”, as well as some of the risk management policies and procedures that boards of directors should consider</li></ul>
<p>www.charitylaw.ca <span style="float: right;">www.carters.ca</span></p>

## B. EXAMPLES OF VIRTUAL FUNDRAISING

- Association of Fundraising Professionals recently reported that the most popular areas where charities are expanding their fundraising activities include:

Donor retention and stewardship activity → 88%

Social media → 83%

Virtual events → 81%

Online fundraising → 79%

Fundraising through e-mail → 71%

- Most churches and charities will have their own website and many will use e-mail to reach out to their members and supporters for fundraising appeals

- Some charities may use social media and third party platforms, such as crowdfunding sites (e.g. CanadaHelps.org, CrowdFund.ca, GoFundMe.com) to do fundraising
- Other charities may rely on their supporters to raise funds on behalf of the charity through peer-to-peer and third-party campaigns (e.g. a social media challenge)
- Virtual fundraising can also includes Text-to-Give, Online Auctions and Virtual Events, such as live stream “Galas”, virtual charity runs, and online contests through the use of YouTube or Facebook Live, etc.

## C. LEGAL ISSUES IN VIRTUAL FUNDRAISING

### 1. Direct Fundraising on a Charity's Website

- The charity's own website must establish clear Terms and Conditions of Use, particularly when the charity is accepting online donations
- The Terms and Conditions of Use should, at a minimum:
  - Provide its charitable registration details
  - State how financial information will be collected and used by the charity or other third parties, such as third-party payment processing providers
  - Include instructions for how donors can make or request changes to pre-authorized recurring donations
  - Indicate how and when donation receipts are issued and/or available for download
  - Whether data is stored in Canada or elsewhere

- Other general provisions that should be in the Terms and Conditions of Use for a website accepting online donations should explain:
  - Minimum conditions for access (e.g., age, geographic location, membership) and list of prohibited activities, in coordination with a stand-alone Privacy Policy on the charity's website
  - Ownership and permitted use of trademarks and other intellectual property of the church or charity, including use on social media
- If the church or charity uses a third-party payment processing provider, prospective donors accessing the charity's website must also be made aware of the Terms and Conditions of Use of that provider

## 2. Privacy and Data Issues

### a) Personal Information, Data and Social Media

- “Personal information” is defined by the Personal Information Protection and Electronic Documents Act (“PIPEDA”) as “any information about an identifiable individual” (e.g. name, address, social insurance number, as well as photos or videos of individuals)
- PIPEDA generally applies only to commercial activities
- Images of identifiable individuals, including children, are personal information – Children must be protected
- Several provinces have enacted privacy legislation that replaces PIPEDA; Ontario only has health-related privacy legislation substantially similar to PIPEDA with respect to health information

### b) Donor Information

- Donor information constitutes personal information that must be protected by the charity, especially in the context of fundraising on the internet and social media
- Donor information may include the donor name, mailing address, email address, phone numbers, birthdate, name of family members, photos, videos, financial information, name of business, place of employment, preferred donation restrictions and even health information
- PIPEDA requires consent for “selling, bartering or leasing of donor, membership or other fundraising lists”
- If a donor list is obtained from a third party, ensure no computer program was used for scraping websites or generating a list of electronic addresses (address harvesting) in contravention of PIPEDA

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## c) Blackbaud Data Breach

In July 2020, Blackbaud, a popular cloud services platform used by thousands of charities for online fundraising, reported it had been a victim of a cyberattack in May 2020

The data accessed by the cyber criminals included donors' personal information, such as name, date of birth, address, telephone number and, as more recently reported by Blackbaud, certain financial information

Although PIPEDA may or may not apply to a particular church or charity affected by the Blackbaud breach, many organizations chose to disclose the breach to their donors in the interest of transparency

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## 3. CASL Issues

- Canada's Anti-Spam Legislation ("CASL") includes a prohibition on sending commercial electronic messages ("CEM") unless the sender has the express or implied consent of the receiver and the message contains prescribed information
- A CEM is generally an electronic message that encourages participation in broadly defined "commercial activity"
- Generally, CASL does not apply to social media, *i.e.*, tweets or posts on a Facebook profile
  - However, it can apply if caught by the definition of "electronic address", *e.g.*, Direct Messaging on Twitter, Facebook messenger, LinkedIn, *etc.*

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- Consent under CASL - express or implied
- Express consent does not expire. However, consent may be withdrawn at any time
- Implied consent may be found when:
  - There is an “existing business relationship” or “existing non-business relationship” (e.g., donors within 2 years)
  - The receiver has “conspicuously published” his or her address or his or her address was otherwise disclosed to the sender, such as by a business card
  - As provided for in regulations or elsewhere in CASL
- Consent by parents on behalf of minor children to receive email or text messages may not be enforceable
- CASL prescribes significant monetary penalties of up to \$10,000,000 for violations

## 4. Intellectual Property Issues

- Protecting intellectual property (“IP”):

→ There are different types of IP, but the primary focus for virtual fundraising is on trademarks and copyrights

→ A church’s or charity’s brand is one of its most important assets

→ With social media, branding reaches a large audience around the world in an instant

→ Churches and charities need to be pro-active in protecting their marks

→ Trademark registration of the brand can protect against poaching of a Charity’s brand



- Registration of a corporate name or business name does not by itself give trademark protection
- Ensure marks are properly used on website or social media e.g. train staff on proper usage, proper markings, and consistent usage, such as ™ or ®
- Need to secure and identify ownership of Copyright (see presentation by Sepal Bonni)
- Ensure IP of others is not infringed
  - The internet and social media can expose a church or charity to liability for infringing the IP rights of others, due to postings by employees and third parties, which may include trademarked or copyrighted material
  - Essential to identify and secure copyright of social media content through assignments and/or licences

## 5. Issues with Using Third-Party Platforms

- Third-party platforms, including social media or crowdfunding, are governed by their own “take-it-or-leave-it” Terms and Conditions
- These one-sided Terms and Conditions generally cover:
  - Collection, use and storage of personal information, including pictures, videos and financial information
  - Use and ownership by the provider of IP
  - Liability for representations made by the campaigner, and the exclusion the platform’s liability
  - Governing law and jurisdiction in case of a dispute
  - Refunds and withdrawal of funds from an account
  - Service fees as a percentage of each donation
  - Assignment of contract by platform to a third party

- Before accepting the Terms and Conditions of a third party platform, churches and charities should consider:
  - Is the provider complying with applicable privacy legislation to which the charity is subject with regard to the personal information of donors and volunteers ?
  - Who owns the donor’s information?
  - Can the provider send communications to donors on behalf of the church or charity?
  - Can fundraising be done without charity consent
  - Is the IP being used or shared on the platform protected?
  - What is the governing law and jurisdiction applicable in case of a dispute with the third party provider?
  - What are the rules with regard to refunds, withdrawals, fees, pre-authorized recurring donations?

## 6. CRA Regulatory Issues

- CRA will review online content, including sites to which a charity links, to see if content accords with the info provided in an application for charitable status
- Possible considerations by CRA as the regulator:

Does online fundraising promote programs outside of the stated charitable purposes of the charity?

Does the charity’s online fundraising provide a link to, and by implication agree or endorse, problematic materials or prohibited activities? e.g. partisan political activities

Does a virtual fundraising campaign direct gifts to a specific person as an undue private benefit?



Canada Revenue Agency

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## 7. Fundraising Through Influencer Marketing

- Influencer marketing falls under the scope of the *Competition Act*, which prohibits false and misleading advertising, and failure to disclose material information
- On January 13, 2020, the Competition Bureau published new guidance for influencers to provide adequate disclosures when they are being paid by advertisers (which can include charities)
  - These disclosures need to be as clear as possible and contextually adequate
- Additionally, *Ad Standards*’ published “Disclosure Guidelines”, which were last updated in January 2019, with a list of Do’s and Don’ts for “Influencer Marketing”, including the use of disclosure hashtags such as #ad or #sponsored, and the disclosure of any compensation given to an influencer

## 8. Cryptocurrency Donations

- Cryptocurrencies are virtual currencies that use distributed ledger technology (e.g. Blockchain networks) to facilitate payments without financial intermediaries, and for transparency, such as to trace donations and the beneficiaries involved, increasing donor confidence
- Receipting issues:
  - They are considered a commodity for income tax purposes (not “money” or “currency”) (see CRA’s “Guide for cryptocurrency users and tax professionals”, June 27, 2019)
  - Donations in cryptocurrencies are, therefore, subject to the rules for gifts-in-kind, and determination of fair market value (“FMV”) on the date of the donation is necessary for receipting purposes, including the deemed fair market value rule

- Mining cryptocurrencies by a charity, either directly or through a pooled fund, might not meet the “prudent investor standard” or, alternatively, may not constitute a permitted “related business”
- Initial Coin Offerings (“ICOs”), which involve the charity creating its own cryptocurrency may be subject to provincial securities legislation
- Cybersecurity issues:

→ Possible increased risk of hacking and real world crime (extortion and violence)

→ Costly mistakes if incorrect transfer because transactions are not reversible

→ Potential greater exposure of director and officer liability for possible mismanagement of assets

## D. WHAT CAN BE DONE TO MANAGE THE ISSUES?

- In order to help understand and minimize the legal risks associated with fundraising in a virtual world, some policies and practices that a church or charity may want to implement include, amongst others:

A Privacy Policy

A CASL Compliance Policy

An Intellectual Property Policy

A Social Media Policy

An Online Fundraising Policy

- These policies should be approved by the board of directors of a church or charity and reviewed on a regular basis

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**REGULATING CHARITIES DURING  
A PANDEMIC AND THE NEW  
VIRTUAL REALITY**

**By Tony Manconi, Director General of the Charities Directorate**

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Canada Revenue Agency / Agence du revenu du Canada

## Charities Directorate: Regulating charities during a pandemic and the new virtual reality

### Church & Charity Law Seminar

November 5, 2020

Canada

## At a glance...

- Impacts of the COVID-19 pandemic on the Directorate
- Resuming operations
- Ongoing consultations
- Impacts of COVID-19 on the charitable sector
- Advisory Committee on the Charitable Sector (ACCS)
- ACCS Priorities
- Guidance products
- Serving you virtually
- Updates on our program
- Call Us!

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## Impacts of the COVID-19 pandemic on the Directorate

- Beginning March 16, 2020:
  - Offices closed
  - Suspended nearly all of our operations in mid-March
  - Actioned critical operations
  - Established remote work for employees
  - Supported funding programs to assist charities

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## Resuming operations

- Steps taken to respond to the pandemic and to support charities and the sector:
  - March: Extended the filing deadline for the T3010, Registered Charity Information Return, to December 31, 2020
  - April: Ensured the client service call centre was back and up running
  - May: Prioritized efforts to ensure that the review of applications for registration was on track
  - September: Continued to resume compliance activities including audits, as well as the processing of voluntary revocations and revocations for failure to file

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## Ongoing consultations

- Consultation and collaboration with the sector and stakeholders has continued virtually
  - Technical Issues Working Group
  - Federal/Provincial/Territorial
  - The Advisory Committee on the Charitable Sector (ACCS)

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## Impacts of COVID-19 on the charitable sector

- Consultations identified the following issues:
  - Charities are suffering a loss of revenue, but increased demands for service.
  - Charities have challenges attracting and keeping volunteers and board members.
  - The charitable sector is in a huge need of investment in technological infrastructure.
  - Charities serving vulnerable populations and communities have been highly impacted.
  - Following the COVID-19 pandemic, the landscape will change for charities.

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## Advisory Committee on the Charitable Sector (ACCS)

- The ACCS is a consultative forum for the Government of Canada to:
  - engage in meaningful dialogue with the charitable sector;
  - advance emerging issues relating to charities; and
  - ensure the regulatory environment supports the important work that charities do
  
- The ACCS provides recommendations to the Minister of National Revenue and the Commissioner of the CRA.

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## ACCS priorities

- Five working groups were identified, which will examine the following priorities:
  - Modernizing the regulatory framework in Government as it relates to the charitable sector;
  - Supporting the work of charities serving vulnerable populations;
  - Exploring charity-related regulatory and legislative issues faced by Indigenous Peoples and organizations;
  - Examining the regulatory approach to charitable purposes and activities, including its impact on charities working with non qualified donees, and charities engaging in revenue-earning activities; and
  - Improving data collection and analysis related to the charitable sector.

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## Guidance products

- Public policy dialogue and development activities
- Relief of poverty and charitable registration
- Advancement of education and charitable registration
- Advancement of religion and charitable registration
- Canadian registered charities carrying out activities outside Canada
- Using an intermediary to carry out a charity's activities within Canada

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## Guidance products

### Working through intermediaries - proposed changes

- More clearly describe the types of intermediary arrangements that charities often implement
- Remove reference to "agent" and "agency agreement" and replace with "intermediary" and "intermediary agreement"
- Increase what is considered a minor use of resources (and therefore a written agreement is less important) from \$1000 to \$5000
- Update case law references and use more plain language
- Explain that an intermediary does not have to keep a charity's funds in a separate bank account as long as it accounts for them separately in its books and records
- Make it clear that the CRA will accept photocopies or scanned documents to support expenditures

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## Serving you virtually

- Ensuring our employees are equipped to work from home
- Moving from paper to electronic
- Digital services
- Adjusting our programs and activities

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## Updates on our program

- We are working to continue the delivery of several programs and projects:
  - Charities education program
  - Charity information sessions
  - Improvements to the registration process
  - My Business Account

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## Call us!

- Not sure about the rules?
- Want to make some changes?

Contact a representative Monday to Friday  
(except statutory holidays) between 9 a.m. and 5 p.m., local time:

- **By phone:**  
1-800-267-2384
- **By TTY service for people with a hearing or speech impairment:**  
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## Questions?

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