

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

## APRIL 2016

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### Upcoming Carters Events – Not to be Missed

[Carters Webinar Series - Spring 2016](#) is a series of four complimentary one-hour webinars designed to provide a detailed and practical explanation of current and essential legal issues for charities and not-for-profits. The next session is entitled "Going Social: Using Social Media to Accomplish Your Mission" on May 4, 2016 from 1:00 – 2:00 pm ET.

[Brochure](#) and [Registration](#) available at [www.carters.ca](http://www.carters.ca)

[Healthcare Philanthropy: Check-Up 2016](#), is being co-presented by Carters and Fasken Martineau on Thursday, June 23, 2016. SAVE THE DATE. Two topics will be presented as follows: "When is a Gift Not a Gift (and Why Should You Care)?" presented by Terrance S. Carter and "What to Do When Gifts Go Bad" presented by Theresa L.M. Man

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## RECENT PUBLICATIONS AND NEWS RELEASES

### Legislation Introduced to Implement 2016 Federal Budget

Theresa L.M. Man

On April 20, 2016, the Federal Government introduced [Bill C-15](#), *Budget Implementation Act, 2016 No. 1*, to implement certain proposals in the 2016 Federal Budget released on March 22, 2016 (“[Budget 2016](#)”). Proposals contained in the Budget 2016 affecting the charitable and non-profit sector are summarized in our [Charity and NFP Law Bulletin No. 381](#). Most of these proposals will be implemented by Bill C-15, if passed. The following summarizes the key technical changes being introduced. Please refer to *Bulletin No. 381* for an explanation of the background behind these changes.

#### (1) Investment in Limited Partnerships

A new subsection 253.1(2) of the [Income Tax Act](#) (“ITA”) will be added to permit registered charities and registered Canadian amateur athletic associations (“RCAAA”) to hold limited partnership interests. The new provision provides that where a registered charity or RCAAA holds an interest as a limited partner in a limited partnership, it will not be considered (for purposes of sections 149.1 and subsections 188.1(1) and (2)), solely because of its acquisition or holding of the limited partnership interest, to be carrying on any business or other activity of the partnership if the following conditions are met:

- by operation of any law governing the arrangement in respect of the partnership, the liability of the registered charity or RCAAA as a member of the partnership is limited;
- the registered charity or RCAAA deals at arm’s length with each general partner of the partnership; and
- the registered charity or RCAAA, or the registered charity or RCAAA, together with persons and partnerships with which it does not deal at arm’s length, does not hold interests in the partnership that have a fair market value of more than 20% of the fair market value of the interests of all members of the partnership.

As a result, a new subsection 149.1(11) will also be added so that limited partnerships of which a private foundation is, directly or indirectly, a member, would not be included when calculating the private foundation’s excess corporate holdings. These amendments apply in respect of investments in limited partnerships that are made or acquired after April 20, 2015. This is consistent with [CRA’s policy](#) to permit

charities and RCAAs to invest in limited partnerships since 2015, after the proposal was contained in the 2015 Federal Budget, notwithstanding that the proposal has not yet been enacted by Parliament.

## (2) Charitable donation credits

As a result of the introduction of the new 33% individual marginal tax rate, subsection 118.1(3) of the ITA will be amended to apply a new tax credit rate equal to the highest individual percentage to the extent that the total gifts for the year exceed \$200, and to the extent that the taxpayer has income that is subject to the top marginal tax rate. Specifically, for trusts to which subsection 122(1) applies to pay tax at a flat rate equal to the highest individual percentage, the new tax credit rate (33% for the 2016 taxation year) will apply to total gifts in excess of \$200. For individuals, (including graduated rate estates and qualified disability trusts) to which section 117 applies so that tax at the highest individual percentage only applies to taxable income above a certain threshold (\$200,000 for the 2016 taxation year), the new tax credit rate (33% for the 2016 taxation year) will apply to total gifts in excess of \$200, to the extent the individual has taxable income above that threshold. These changes will apply to gifts made after 2015.

## (3) GST/HST on Purely Cosmetic Services by Charities

Section 1 of Part V.1 of Schedule V to the [Excise Tax Act](#) (“ETA”) will be amended by including a new paragraph (p) so that a supply of a service rendered to an individual to enhance or otherwise alter the individual’s physical appearance, and not for medical or reconstructive purposes or a supply of a right entitling a person to such service, would be exempt from GST/HST. This amendment applies to any supply made after March 22, 2016.

## (4) Supply of Services/Properties Related to Donations to Charities or Public Institutions

A new section 164 of the ETA will be included so that where a charity or public institution receives a donation and provides a property or service to the donor in return, the part of the donation that exceeds the value of the property or services supplied would not be subject to GST/HST. This new rule requires that two conditions must be met: (a) the services or property provided must be included in calculating the value of the advantage for purposes of split-receipting, and (b) a donation receipt may be issued, or could be issued if the donor were an individual. New section 164 applies to supplies made after March 22, 2016.

## (5) Repeal of Certain Tax Credits

Various sections of the ITA will be amended to eliminate the Children’s Fitness and Arts Tax Credits for 2016 and to eliminate the Education and Textbook tax credits effective January 2017.

## Quebec Ends Duplicate Registration Process for Registered Charities

By Jennifer M. Leddy

The March 17, 2016, Québec Budget provides good news for charities that receive donations from Québec residents and are registered as charities by the Canada Revenue Agency (“CRA”) under the [Income Tax Act](#) (“ITA”). Previously, the province required that charitable registration also be obtained in that province if donations were received from Québec residents. Otherwise, the tax receipts given by the charity for donations from Québec residents could be denied by Revenu Québec, the provincial tax authority.

Recognizing that Québec was the only province to require this double registration and in order to “ensure equivalent treatment”, the 2016 budget provides that, effective January 1, 2016, charities that have been registered by CRA under the ITA will no longer be required to file a separate application for charitable registration in Québec, but will be deemed to have also been registered in Québec. Donations made prior to January 1, 2016, to a charity registered by CRA will also be deemed to have been made to a charity in Québec. Notwithstanding this simplification of the registration process, Québec has retained its power to “refuse, cancel or revoke a registration or to modify a designation.” For more information on the 2016 Québec Budget please see [The Québec Economic Plan: Additional Information](#).

## Legislation Update

By Terrance S. Carter

### *The Fairness in Charitable Gifts Act Debated in House of Commons*

On April 11, 2016, [Bill C-239, An Act to amend the Income Tax Act \(charitable gifts\), also known as The Fairness in Charitable Gifts Act](#) (“Bill C-239”) was debated in Parliament for the first time. As discussed in our [March 2016 Charity & NFP Law Update](#), Bill C-239 was introduced as a private member’s bill on February 25, 2016, by opposition MP Ted Falk. Bill C-239 proposes amending the [Income Tax Act](#) to increase the amount that an individual taxpayer is able to claim during a taxation year for donations made to charities. Specifically, Bill C-239, if passed, would increase the tax credit available for charitable donations by individuals to match the current tax credit available for political donations.

### **Reminder That Ontario Legislation on Forfeited Property to Come into Force in December 2016**

As described in our [January 2016 Charity & NFP Law Update](#), the Ontario government has passed new legislation to address situations wherein corporations, including charities and not-for-profits, dissolve without having properly disposed of all of their assets. On December 10, 2015, Bill 144, the [Budget](#)

[Measures Act, 2015](#) (“Bill 144”), received Royal Assent and enacted five new statutes, including the [Forfeited Corporate Property Act, 2015](#) (“FCPA”) and the [Escheats Act, 2015](#) (“EA”).

The FCPA and EA both come into force on December 10, 2016, and will address how forfeited property is dealt with in Ontario, along with implementing changes to the role of the Public Guardian and Trustee (“PGT”) in dealing with forfeited property. The FCPA will give the Minister of Economic Development, Employment and Infrastructure sole jurisdiction over forfeited corporate real property. The PGT under the EA, on the other hand, will retain discretionary authority to take possession, and dispose of, forfeited corporate personal property, as well as the property of heirless deceased persons. In addition, the new legislation will introduce changes in the processes by which claimants will be able to recover forfeited corporate property. As the FCPA and the EA may have application to incorporated charities and not-for-profits in Ontario facing either intentional or unintentional dissolution of their corporate status, including involuntary dissolution under the [Canada Not-for-Profit Corporations Act](#) for failure to continue, it will be important for such corporations to consult with their legal counsel to determine the impact of these new acts.

### **Impact of BC Provincial Budget on Charities and Not-for-profits**

On March 10, 2016, [Bill 10 – 2016: Budget Measures Implementation Act](#) (“Bill 10”) passed third reading and received Royal Assent in the B.C. Legislature, implementing a number of measures that were introduced in the British Columbia [Budget and Fiscal Plan 2016/2017-2018/2019](#) (“Budget 2016”) on February 16, 2016.

Of relevancy to charities, Budget 2016 provides that for each year of the fiscal plan, the B.C. government will distribute approximately \$250 million of its gaming income to charities and local governments. As well, effective February 17, 2016, a new non-refundable farmers’ food donation tax credit will be available to individuals and corporations that carry on the business of farming and donate a qualifying agricultural product to a registered charity that provides food to those in need or helps to operate a school meal program. The credit is available for the 2016, 2017, and 2018 tax years, after which it will be reviewed.

## **Upcoming Ontario *Municipal Elections Act* Amendments**

On April 19, 2016, the Ontario government announced that the Standing Committee on Finance and Economic Affairs (the “Committee”) will meet on May 5 and May 12, 2016 to consider [\*Bill 181, An Act to amend the Municipal Elections Act, 1996 and to make complementary amendments to other Acts\*](#) (“Bill 181”).

In addition to introducing a ranked balloting system for municipal elections. Bill 181 will also impose limitations on advertising. Currently, the City of Toronto is able to prohibit corporations, including charities and not-for-profits, as well as trade unions, from making contributions to candidates for city council. Bill 181 will re-enact this provision as section 88.15 in the [\*Municipal Elections Act, 1996\*](#), and will provide this authority to all other municipalities in Ontario.

Parties interested in making written submissions concerning Bill 181 to the Committee are asked to send them to the Clerk of the Committee by May 12, 2016, at 6:00 pm.

## **Ontario Expands Scope of Lobbying Legislation**

On April 15, 2016, the [\*Office of the Integrity Commissioner\*](#) of Ontario released an [\*announcement\*](#) indicating that substantive changes are being planned to the [\*Lobbyists Registration Act, 1998\*](#). These amendments will be made pursuant to the [\*Public Sector and MPP Transparency and Accountability Act, 2014\*](#), S.O. 2014, c. 13, which received Royal Assent on December 11, 2014 (the “Act”).

Amendments to the Act will require entities that have paid employees who lobby for more than 50 hours per year to register. This replaces the previous regime that required registration only when individual lobbying activities comprised a “significant” part of employee duties, defined as 20% of overall work hours. Additionally, registration itself will now be renewed every 6 months, as opposed to annually.

As well, the Act will also grant the Integrity Commissioner of Ontario investigative powers for matters of suspected non-compliance, penalties for which include: prohibition from lobbying for up to two years and public statements about the violation. These amendments will come into force upon proclamation, the date of which has yet to be announced.

## CRA News

By Jacqueline M. Demczur

On April 6, 2016, the CRA released a number of [GST/HST Info Sheets](#) regarding the Public Service Bodies' ("PSB") Rebate that may be claimed by charities and qualifying non-profit organizations ("NPOs"). As a general overview, charities and qualifying NPOs may be able to recover a percentage of the Goods and Services Tax ("GST") and/or the federal part of the Harmonized Sale Tax ("HST") paid or payable on its eligible purchases and expenses by claiming a PSB rebate. In addition, a charity or qualifying NPO resident in a participating province may also be able to claim a PSB rebate to recover a percentage of the provincial part of the HST paid or payable on its eligible purchases and expenses.

Through the various Info Sheets, the CRA has provided guidance on how a number of scenarios are to be addressed based upon a charity's or qualifying NPO's province of residence. For those charities and qualifying NPOs that are resident in only one participating province, then they should use the applicable Info Sheet for Prince Edward Island, Ontario, Nova Scotia, Newfoundland and Labrador, New Brunswick or British Columbia (GI 172 to 177 for charities and GI 180 to 185 for qualifying NPOs). (Note: British Columbia was a participating province from July 1, 2010 until March 31, 2013, meaning charities and qualifying NPOs in British Columbia may only apply for a PSB rebate for claim periods within these dates. Similarly, Prince Edward Island only became a participating province on April 1, 2013, meaning that the PSB rebate in Prince Edward Island is only available for claims that end on or after this date.)

Alternatively, where a charity or qualifying NPO is resident in one or more non-participating provinces and is not resident in a participating province, then it should use the applicable Info Sheet GI 178 or GI 186. However, where a charity or qualifying NPO is resident in two or more provinces, at least one of which is a participating province, then it should use the applicable Info Sheet GI 179 or GI 187. These Info Sheets are helpful to this type of charity and qualifying NPO applying for the PSB rebate by breaking down the process into the various steps necessary to determine whether the PSB rebate applies and, if so, how to do its calculation. In addition, these particular Info Sheets contain a number of illustrative examples regarding calculation of the PSB rebate at the different stages in the process.

## Federal Court of Appeal Dismisses Revocation Appeal

By Ryan M. Prendergast

On March 24, 2016, the Federal Court of Appeal (the “Court”) released its decision to dismiss an appeal of the proposed revocation (the “Revocation Proposal”) of the Minister of National Revenue (the “Minister”) in the matter of [\*Opportunities for the Disabled Foundation v Minister of National Revenue\*](#).

In three audits (taxation years 1995 to 1997, 1998 and 2004), CRA raised concerns about the Opportunities for the Disabled Foundation’s (the “Appellant”) “books and records, failures to devote all of its resources to charitable activities, incomplete/inaccurate information returns and gifts made to non-qualified donees”. As a result of these concerns, in 2006, the Appellant and CRA subsequently entered into an agreement that addressed these concerns and mandated corrective actions by the Appellant (the “Compliance Agreement”). The subsequent Revocation Proposal resulted from an audit for the 2010 taxation year, which identified concerns similar to those of the previous audits and in the Compliance Agreement. CRA then sent the Appellant the Revocation Proposal, stating that their concerns had not been addressed and that it proposed to revoke the Appellant’s charitable status.

Although there were various jurisdictional issues raised by the Appellant, Justice Ryer noted that “[t]he overarching issue in this appeal is whether the Minister erred in issuing the Revocation Proposal”. Accordingly, it was incumbent upon the Appellant to demonstrate that the Minister acted unreasonably in identifying the specific grounds for issuing the Revocation Proposal. For each of the grounds, however, the Court found the Appellant did not offer enough evidence to discharge its onus and that each ground, on its own, provided a sufficient basis to dismiss the appeal. The Court therefore found that the Minister had acted reasonably in issuing the Revocation Proposal.

Of note, one of the grounds for revocation relied upon by the Minister was that the T3010 information return filed by the Appellant was inaccurate or incomplete and therefore the Appellant had failed to file an information return as required by the [\*Income Tax Act\*](#). While the Appellant argued that any errors on its T3010 were minor, the Court found that the record demonstrated the inaccuracies were beyond minor and that simply filing an information return by the required deadline is not sufficient to comply with the requirement in the Act that the return meets the requirements of the “Act and applicable regulations”.

The decision is a reminder for charities of the importance of ensuring compliance with the *Income Tax Act*, and recognizing that a compliance agreement is also a binding obligation of the charity, which can lead to revocation of charitable status if not followed.



## **Tax Court Upholds Minister's Decision to Deny Charitable Tax Credits**

By Linsey E.C. Rains

The Tax Court of Canada (“TCC”) released an informal procedure decision in the matter of [Nazih c La Reine](#) on March 22, 2016. The TCC denied the taxpayer’s appeal of the Minister’s decision to allow only \$370 of the taxpayer’s \$2,240 claimed as a charitable donation for the 2013 tax year.

In particular, the TCC held that the taxpayer’s contributions to an Arabic language school and various other donations did not meet the requirements of the [Income Tax Act](#) (“ITA”) and [Income Tax Regulations](#) (“Regulations”). More specifically, the only receipt the Taxpayer produced that satisfied the receipting requirements under the ITA and Regulations was for a \$370 gift made to the Mosque of Aylmer.

The TCC denied the taxpayer’s claim and followed the Federal Court of Appeal’s reasoning in *Castro v The Queen* (discussed in our November 2015 [Charity and NFP Law Update](#)), which was [denied leave](#) to appeal by the Supreme Court of Canada on April 14, 2016. Although this case, as an informal procedure, does not have any precedential value, it serves as another practical example of the importance of registered charities complying with the receipting requirements of the ITA and Regulations.

## **Court of Appeal: Employee Injury Waiver Declared Void**

By Barry Kwasniewski, *Charity & NFP Law Bulletin* No. 384, April 28, 2016

On January 26, 2016, the Ontario Court of Appeal released a significant decision concerning the enforceability of personal injury liability waivers affecting the legal rights of employees to sue their employers for injuries arising in the course of their employment duties. In [Fleming v Massey](#) (“*Fleming*”), the Court of Appeal held that the waiver signed by the employee was not enforceable as a matter of public policy. In allowing the appeal, the Court of Appeal overturned the judgment of the trial judge, who had granted summary judgment dismissing the employee’s lawsuit based on the waiver. This *Charity & NFP Law Bulletin* will review the *Fleming* decision, which has implications for all Ontario employers, including charities and not-for-profits.

For the balance of the Bulletin, please see [Charity & NFP Law Bulletin No. 384](#).

## Supreme Court to Hear Google Appeal

By Sepal Bonni

On February 18, 2016, the Supreme Court of Canada (“SCC”) granted Google Inc.’s (“Google”) application for leave to appeal the decision in [\*Equustek Solutions v Google Inc.\*](#), regarding the power of Canadian courts to grant orders that have worldwide impact.

The facts which brought about the appeal arose from the attempt by Equustek Solution Inc.’s (“ESI”) to enforce their intellectual property rights against a former distributor of ESI’s products. The distributor was unlawfully appropriating ESI’s intellectual property, including trade-marks, and trade secrets, to manufacture counterfeit ESI products. ESI was successful in obtaining court orders against the former distributor prohibiting them from selling the competing products online. However, the distributor did not comply with the court order and the infringing products continued to be sold.

When the court orders proved ineffective, ESI sought a court order against Google, who was not a party to the dispute, in order to restrain it from publishing search results that sold or advertised the counterfeit products. The Supreme Court of B.C. granted a worldwide injunction against Google, and held that the court had jurisdiction to maintain the rule of law, and to protect its processes, which in an appropriate circumstance may include issuing an injunction against non-parties. The Court of Appeal upheld the injunction in an attempt to limit public access to the websites that the former distributor had been using to advertise and sell its products. The injunction required compliance not only with Google’s search results that displayed in Canada, but also the search results that displayed worldwide.

The Supreme Court of Canada briefly outlined the issues to be considered:

- Under what circumstances may a court order a search engine to block search results, having regard to the interest in access to information and freedom of expression, and what limits (either geographic or temporal) must be imposed on those orders?
- Do Canadian courts have the authority to block search results outside of Canada’s borders?
- Under what circumstances, if any, is a litigant entitled to an interlocutory injunction against a non-party that is not alleged to have done anything wrong?

The case will likely raise very important questions regarding the freedom to access information on the internet, and whether one country can determine what the rest of the world can see online. Additionally, guidance on remedies for intellectual property infringement from the Supreme Court of Canada is a rare

occurrence. Charities and not-for-profits seeking to enforce intellectual property rights in an online world where infringers may not be located in Canada will want to closely monitor this decision, as it may introduce novel tools to enforce intellectual property rights in the digital era where cross-border activities frequently occur.

## **Canada Signs MOU with US to Fight Spam**

By Ryan M. Prendergast

On March 24, 2016, the Canadian Radio-television and Telecommunications Commission (“CRTC”) signed the [Memorandum of Understanding between the United States Federal Trade Commission and the CRTC on mutual assistance in the Enforcement of Laws on commercial email and telemarketing](#) (“MOU”) with the United States Federal Trade Commission (“FTC”), which concerns unsolicited telecommunication and commercial electronic messages (spam). The MOU functions to strengthen cooperation between the CRTC and FTC in the enforcement of spam and telemarketing laws, and to facilitate research and education in this regard as well.

The MOU does not legally bind Canada or the US, but it “sets forth the Participants’ intent with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance...”. Section II.B.1 states that the Participants understand that it is in their best interest to:

1. Cooperate with respect to the enforcement against Covered Violations, including sharing complaints and other relevant information and providing investigative assistance;
2. Facilitate research and education related to unauthorized telemarketing and unauthorized telephone calls;
3. Facilitate mutual exchange of knowledge and expertise through training programs and staff exchanges;
4. Promote a better understanding by each Participant of economic and legal conditions and theories relevant to the enforcement of the Applicable laws; and
5. Inform each other of developments in their respective countries that relate to this Memorandum in a timely fashion.

The MOU also sets out procedures related to mutual assistance. For instance, both countries are to designate primary contacts for communication (i.e. the Chief Compliance and Enforcement Officer of the

CRTC). It also discusses limitations and the fact that both countries maintain discretion as to whether or not they decline a request for assistance or the extent to which they will participate. Over all, the MOU emphasizes the long-standing partnership between the two agencies and encourages U.S. and Canadian authorities to continue and expand information exchanges, and provide assistance for cross-border anti-spam enforcement purposes.

Although the MOU has little immediate impact on the charitable and not-for-profit sector in Canada, the experience of the FTC in investigating non-compliance by charities in the US with such rules may carry over to the CRTC. In this regard, charities or non-profit organizations that are impacted by Canada's anti-spam laws or telemarketing regulations should review their compliance to ensure that their practices do not become a lesson in non-compliance for the FTC.

## **BCSC Affirms Judicial Power to Vary Administrative Terms of Charitable Trust**

By Esther S.J. Oh

In [\*The Sidney and North Saanich Memorial Park Society v. British Columbia \(Attorney General\)\*](#), the British Columbia Supreme Court approved a trustee's application to modify several terms of a charitable trust that was established in 1965. The background facts and issues reviewed in the case are lengthy and complex. However, in general terms, the trust involved the administration of land and property located in the Town of Sidney for the benefit of nearby residents. One of the terms of the trust involved a requirement that the trustee maintain an area of the property (which had been expropriated long ago and no longer formed part of the trust property) for purposes of a war memorial. The Court granted the trustee's request, amongst others, to alter that portion of the trust so that the trustee could preserve another section of the trust lands for purposes of a war memorial.

Another provision of the trust required that if any lands forming part of the trust property was expropriated, the proceeds from the expropriation must only be used to purchase new lands and improve and maintain those new lands (i.e. and not to maintain the prior existing lands that were part of the original trust property). The Court allowed the amendment so that the trustee could apply the expropriation funds for all of the trust property, otherwise the prior existing trust property would fall into disrepair.

In arriving at the decision to approve the requested changes to the trust, the Court stated that it had "inherent jurisdiction for administrative scheme-making for charitable trusts. In cases where it cannot be said that the requirements to achieve the purposes of a charitable trust have become sufficiently

impracticable or impossible so as to engage the cy-près doctrine, the courts may nonetheless, pursuant to this administrative scheme-making jurisdiction, vary the administrative terms of a trust for the furtherance of charitable purposes.”

## **Anti-Terror and Money-Laundering Update**

By Terrance S. Carter, Nancy E. Claridge and Sean S. Carter

### **Update on FATF Revisions to Recommendation 8**

On April 18, 2016, the [Financial Action Task Force](#) (“FATF”) held a [Consultation and Dialogue Meeting](#) with Non-Profit Organizations (“NPOs”) in Vienna, Austria. The FATF is an inter-governmental body responsible for setting and monitoring international standards for combating money laundering and the financing of terrorism. [Recommendation 8 and its Interpretive Note of The FATF Recommendations \(International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation\)](#) deal specifically with combating the abuse of non-profit organizations, internationally. The meeting was held to encourage “open dialogue with representatives from a variety of NPOs on the FATF’s ongoing work to revise its standards on non-profit organizations”. It follows a November 2015 call for public consultation of the Interpretive Note to Recommendation 8 (the “Interpretive Note”) that sought to garner input to refine its terminology and application to the NPO sector.

With regard to the role of NPOs in terrorist financing, the FATF previously released “[The FATF Typologies Report on Risk of Terrorist Abuse in Non-Profit Organizations](#)” (the “Typologies Report”) in June 2014, which identifies factors that contribute to abuse of NPOs (as discussed in our [July/August 2014 Charity & NFP Law Update](#)). The Typologies Report was a precursor for the preparation of a recently revised best practices paper published by the FATF in June 2015, “[Best Practices Paper on Combatting the Abuse of Non-Profit Organizations \(Recommendation 8\)](#)” (the “Best Practices Paper”) that discusses strategies for implementing the recommendation (as discussed in our [July/August 2015 Charity & NFP Law Update](#)).

The meeting addressed the following issues

- How NPOs can play an important role in the fight against terrorism by helping to mitigate extremism,
- Ways in which the FATF standards can protect NPOs from terrorist abuse and facilitate their access to financial services when implemented effectively,

- The need for countries to understand, as a starting point, their NPO sector and its potential vulnerabilities to abuse by terrorists, taking into account that the majority of NPOs may represent little or no risk at all,
- The importance of applying measures to protect NPOs from terrorist abuse, in line with the FATF's risk-based approach, and proportionate with the risks identified, while at the same time respecting human rights, due process and the rule of law.

The FATF has also initiated a [Public Consultation on the Revision of Recommendation 8](#), to further involve the NPO sector in an open and transparent manner. Interested parties are invited to download a [public consultation template](#) and provide views and specific proposals, in English or French, by email, to [FATF.NPOconsultation@fatf-gafi.org](mailto:FATF.NPOconsultation@fatf-gafi.org) by Friday April 29, 2016 at 18:00 CET. The FATF states that these processes are being undertaken with a view to finalising revisions to Recommendation 8 and its Interpretive Note in June 2016.

### **FINTRAC Imposes Administrative Monetary Penalty on Bank**

On April 5, 2016, the [Financial Transactions and Reports Analysis Centre of Canada](#) (“FINTRAC”) published information about an administrative monetary penalty (“AMP”) of \$1,154,670 it issued against a Canadian bank. Neither the issuance of the AMP nor the name of the bank were listed on the [Public notice of administrative monetary penalties](#) section of FINTRAC's website, where violations are frequently published. However, the fact that FINTRAC imposed the AMP is apparent from the separate list of [Administrative monetary penalties imposed](#) that FINTRAC has published since 2008, which lists penalty amounts and the types of organizations on which they were imposed, but does not publish identifying information about the organizations.

FINTRAC is a federal agency that is responsible for monitoring money laundering and terrorist financing pursuant to the [Proceeds of Crime \(Money Laundering\) and Terrorist Finance Act](#) (PCMLTFA). The PCMLTFA provides that FINTRAC can provide public notice about violations at its discretion. FINTRAC's website provides [criteria for publication](#) of the identity and details of an AMP imposition, which provides that it may be published if any of the following are met, though FINTRAC ultimately retains discretion in this regard:

- The person or entity has committed a very serious violation; or
- The base penalty amount is equal to or greater than \$250,000, before adjustments are made in consideration of the person or entity's compliance history and ability to pay; or

- Repeat significant non-compliance on the part of the person or entity.

The unnamed bank was charged with numerous violations under the [\*Proceeds of Crime \(Money Laundering\) and Terrorist Finance Regulations\*](#).

This particular AMP is a reminder that money-laundering legislation will be enforced in Canada with very serious potential penalties. It may also influence banks and financial institutions in continuing their increasingly cautious approach when dealing with charities and not-for-profits for fear of exposing the bank to risk. For more information about this phenomenon, also known as “bank de-risking” please see “Bank De-Risking and its Impact on NFPs” in our January 2016 [\*Charity & NFP Law Update\*](#).

## IN THE PRESS

[Charity & NFP Law Update – March 2016 \(Carters Professional Corporation\)](#) was featured on *TaxNet Pro* and is available online to those who have subscription privileges. Future postings of the *Charity & NFP Law Update* will be featured in upcoming posts.

## RECENT EVENTS AND PRESENTATIONS

**Canadian Association of Gift Planners (CAGP) Conference** was held at the Banff Centre in Banff, Alberta, and included a presentation entitled “When is a Gift Not a Gift (And Why Should You Care)” presented by Terrance S. Carter and Theresa L.M. Man on Thursday April 7, 2016.

**Humanitarian Response Network** hosted the Shared Responsibility – The World Humanitarian Summit and Beyond. Terrance S. Carter participated in a panel discussion and shared a presentation entitled “Overview of the Anti-terrorism Legislative Regime in Canada”.

[Going Into Business? The Social Enterprise Spectrum](#) was presented by Terrance S. Carter on April 21, 2016 from 1:00 – 2:00 pm ET as the first of four webinars in the [Carters Webinar Series - Spring 2016](#). [Seminar Materials](#) and [On Demand / Replay](#) are available at [www.carters.ca](http://www.carters.ca)

## UPCOMING EVENTS AND PRESENTATIONS

Carters is holding its [Spring 2016 Webinar Series](#) to assist charities and not-for-profits with current and essential legal issues. These complimentary one-hour webinars will provide a detailed and practical explanation of the following topics. The second session is entitled “**Going Social: Using Social Media to Accomplish Your Mission**” on May 4, 2016 from 1:00 – 2:00 pm ET. [Brochure](#) and [Registration](#) available at [www.carters.ca](http://www.carters.ca)

**Canadian Council of Christian Charities (CCCC)** is hosting [The Pursuit '16 Conference](#) from April 27 to 29, 2016, in London, Ontario. Terrance S. Carter is presenting two sessions on Thursday April 28 as follows:

- [12 Steps to Effective Legal Risk Management for Churches and Charities](#)
- [Pitfalls in Drafting Gifting Agreements](#)

[Canadian Council for International Co-operation \(CCIC\)](#) is hosting **International Cooperation Days 2016** on May 11, 2016. Terrance S. Carter is presenting “Preparing for and Surviving a CRA Audit”.

[National Charity Law Symposium](#) will be held on Friday, May 27, 2016 and is being held at the Toronto Region Board of Trade in Toronto Ontario. [Registration](#) is available online. Theresa Man will be participating in a panel discussion on “**Accounting for and Allocating Costs**”



[Endowment and Foundation Investment Conference for Western Canada](#) will be held in Vancouver, B.C. Terrance S. Carter will be presenting on the topic of “Avoiding Pitfalls in Drafting Gift Agreements” on June 15, 2016.

[Healthcare Philanthropy: Check-Up 2016](#), is being co-presented by Carters and Fasken Martineau on Thursday, June 23, 2016. SAVE THE DATE. Two topics to be presented are as follows:

- “When is a Gift Not a Gift (and Why Should You Care)?” presented by Terrance S. Carter
- “What to Do When Gifts Go Bad” presented by Theresa L.M. Man

[Practicing Good NFP Governance in a Changing Environment](#) will be hosted by the **Institute of Corporate Directors, York Region Chapter** on the afternoon of Tuesday, May 3, 2016 from 3:30 – 6:30 pm at the Thornhill Golf & Country Club in Thornhill, Ontario. [Registration](#) is available online.

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## ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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