

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

FEBRUARY 2018

SECTIONS

Recent Publications and News Releases	2
In the Press	16
Recent Events and Presentations	16
Upcoming Events and Presentations	16
Contributors	18

HIGHLIGHTS

Federal Budget 2018: Impact on Charities and Not-for-Profits
CRA News <ul style="list-style-type: none">◆ CRA Reminder to Update Donation Tax Receipt URLs◆ P113 – Gifts and Income Tax 2017 Updated to Include Ecological Gifts
Legislation Update <ul style="list-style-type: none">◆ Members of Senate’s Special Committee on the Charitable Sector Appointed◆ Amendments to Ontario <i>Co-operative Corporations Act</i>◆ Amendments to NB <i>Companies Act</i>◆ <i>Lobbying Registration Act</i> (PEI)
Court Rejects Church Application for Permanent Injunction in Property Dispute
Court of Appeal Upholds Common Law Exclusion in Termination Clause
Interlocutory Injunction Denied for the 2018 Canada Summer Jobs Program
Reconciling Physician and Patient Rights
Baseball Trademark Gives Rise to Human Rights Claim
Internal Disciplinary Decision is Not Subject to Judicial Review
Privacy Commissioner Releases Draft Position Paper on Online Reputation
The Investment Spectrum for Charities, Including Social Investments
Charitable Sector Reform Paper by The Pemsel Case Foundation
Anti-Terrorism/Money Laundering Update <ul style="list-style-type: none">◆ Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime◆ FATF President Delivers Anti-Terrorist Financing Briefing to United Nations
Ottawa Region Charity & NFP Law Seminar Materials Available

[Spring 2018 Carters Charity & NFP Webinar Series](#)

Hosted by Carters Professional Corporation on Wednesdays starting March 28, 2018

Click here for [online registration](#).

Get on Our Mailing List:

To automatically receive the free monthly *Charity Law Update*,
Click [here](#) or send an email to info@carters.ca with “Subscribe” in the subject line.

RECENT PUBLICATIONS AND NEWS RELEASES

Federal Budget 2018: Impact on Charities and Not-for-Profits

By [Theresa L.M. Man](#), [Esther S.J. Oh](#), [Ryan M. Prendergast](#), and [Terrance S. Carter](#)

On February 27, 2018, Finance Minister Bill Morneau tabled the third budget of the Liberal Federal Government (“Budget 2018”). Like the previous two budgets, Budget 2018 once again emphasizes the Liberal election platform to focus on economic growth, job creation and supporting a strong middle class, but this time with a focus on gender equality and Indigenous peoples. However, and also similar to the previous two budgets, Budget 2018 does not include any new tax incentives for the charitable and not-for-profit (“NFP”) sector. In addition, Budget 2018 does not make any mention of the consultation on non-profit organizations (“NPOs”) that was originally proposed in Budget 2014 but has never materialised.

While Budget 2018 contains little of significance with regard to charities and NFPs, it is expected that more will be forthcoming from the Government over the next year as indicated by the Federal Government’s commitment in Budget 2018 to provide a response to the May 2017 report on political activities by charities, reviewed in [Charity & NFP Law Bulletin No. 403](#), as well as an anticipated report of the newly formed Senate Special Committee on the Charitable Sector reviewed in the [January 2018 Charity & NFP Law Update](#).

What Budget 2018 does include are proposed amendments to the *Income Tax Act* (Canada) (“ITA”) to permit property transfers to municipalities as qualifying expenditures for revocation tax purposes; removal of the requirement that registered universities outside of Canada be prescribed in the *Income Tax Regulations*; new reporting requirements for trusts subject to an exemption for charities and NPOs; support for local journalism, including possible charitable status for NFP journalism; as well as funding of various charitable and NFP sector initiatives. This Bulletin provides a summary and commentary of these and other provisions from Budget 2018 that impact charities and NFPs.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 417](#).

CRA News

By [Jacqueline M. Demczur](#)

CRA Reminder to Update Donation Tax Receipt URLs

A recent [update](#) on the Canada Revenue Agency's ("CRA") Twitter account on February 15, 2018, reminded qualified donees to update their official donation receipts with the CRA's new website URL. In accordance with section 3501(1)(j) of the *Income Tax Regulations*, official donation receipts must include the name and website of the CRA. According to the CRA's "[What information must be on an official donation receipt from a registered charity?](#)" webpage, charities and qualified donees will have until March 31, 2019 to update their receipts from the current www.cra-arc.gc.ca URL to the CRA's new www.canada.ca/charities-giving URL.

P113 – Gifts and Income Tax 2017 Updated to Include Ecological Gifts

On January 3, 2018, the CRA updated the [P113 - Gifts and Income Tax 2017](#) (the "Pamphlet") to reflect changes to the ecological gifts program introduced in the 2017 Federal Budget. The Pamphlet assists individuals who donate money or property, including gifts of ecologically sensitive land, to a registered charity or other qualified donee and is [updated every year](#). The changes to ecological gifts, as reflected in the Pamphlet, include changes to the approval of recipients, private foundations and personal servitudes, along with new rules for unauthorized changes of use and dispositions of property as of March 21, 2017, and are discussed in greater detail in [Charity & NFP Law Bulletin No. 399](#).

Legislation Update

By [Terrance S. Carter](#)

Members of Senate's Special Committee on the Charitable Sector Appointed

As reported in the [January 2018 Charity & NFP Law Update](#), on January 30, 2018, the Senate of Canada adopted a motion to appoint a [Special Committee on the Charitable Sector](#) ("Special Committee") to "examine the impact of federal and provincial laws and policies governing charities, nonprofit organizations, foundations, and other similar groups; and to examine the impact of the voluntary sector in Canada." At the time of writing, the Special Committee is composed of the following senators: Terry M. Mercer (Chair), Ratna Omidvar (Deputy Chair), Michael Duffy, Linda Frum, Diane Griffin, Yonah Martin and Nancy Greene Raine. As is the case with other committees, the Leader of the Government and the Leader of the Opposition, or their respective deputy Leaders in their absence, are *ex officio*

members. Additional information on the first meeting of the Special Committee, held February 26, 2018, as well as a schedule of future meetings is available [online](#).

Amendments to Ontario *Co-operative Corporations Act*

On February 23, 2018, the Ministry of Finance introduced [proposal number 18-MOF009](#) to amend RRO 1990, Regulation 178 under the *Co-operative Corporations Act*. The proposal follows the technical amendments to the *Co-operative Corporations Act* in Schedule 9 of [Bill 177, *Stronger, Fairer Ontario Act \(Budget Measures\)*](#), such as the transfer of responsibility for incorporating co-operative corporations from the Financial Services Commission of Ontario to the Ministry of Government and Consumer Services, which will come into force on a date to be set by proclamation. The proposal is open for consultation until March 25, 2018.

Amendments to NB *Companies Act*

On January 1, 2018, New Brunswick's [Bill 21, *An Act Respecting Agricultural Associations*](#), came into force, bringing amendments to New Brunswick's *Companies Act*. The amendments are part of the repeal of several sections of the *Agricultural Associations Act* and allow for agricultural associations to be continued under the *Companies Act*. The amendments also include a definition of agricultural associations as “an organization of district, county or provincial scope whose purpose is to hold exhibitions of livestock, poultry, agricultural produce and the products of kindred agricultural and homemaking arts” or “a community group of farmers organized for the general promotion of agriculture within that community.”

Lobbying Registration Act (PEI)

On December 20, 2017, the Legislative Assembly of Prince Edward Island passed [Bill 24, *Lobbyist Registration Act*](#), which is to come into force upon proclamation. Similar to other provincial lobbying legislation, the *Lobbyist Registration Act* will apply to lobbying activities on behalf of an organization such as “an association, a charitable organization, a coalition or an interest group.” Prince Edward Island was the last province without lobbying legislation.

Court Rejects Church Application for Permanent Injunction in Property Dispute

By [Ryan M. Prendergast](#)

The Court of Queen's Bench of Alberta released its decision in [Bruderheim Community Church v Board of Elders](#) on February 9, 2018, concerning a property dispute between the Bruderheim Community Church

("BCC") and the Bruderheim Moravian Church (an unincorporated association) claiming to be or represent the congregation known as the Bruderheim Moravian Church ("BMC"), as Applicants, and the Board of Elders of the Canadian District of the Moravian Church in America (the "Board") as Respondents. The property in dispute (the "Property") was land acquired by BMC in 1896 used as a place of worship. The Board was incorporated in 1909 and was specifically permitted to own property for the purposes of the work of the Board or the Moravian Church in America, and to hold property in trust. In 1912, the Property was subsequently transferred to the Board to be held in trust for BMC. However, title documentation concerning the Property was inconsistent in indicating that it was held in trust for BMC.

The dispute followed the BMC's near-unanimous decision to disassociate from the Moravian Church, Northern Province ("Northern Province"), and become an independent congregation. According to the Northern Province's constitution, all property owned by a congregation under its jurisdiction would vest in the Northern Province's governing body (the "Provincial Conference") upon the congregation's dissolution. As such, rather than be dissolved by dissociating itself from the Northern Province, the BMC considered the structure of a new church entity. The BMC voted in favour of new by-laws for an independent, self-governing and non-denominational BCC, with authority and responsibility vested in its active membership, and which was incorporated on April 11, 2017. The Board, however, concluding that BMC had no intention of associating with the denomination, recommended to the Provincial Conference that the BMC be "dissolved" within the meaning of its internal governing documents. The BMC was subsequently advised that all its property had reverted to the Northern Province and that the Property be vacated within two months.

The court considered the Applicants' application for a permanent injunction prohibiting the Respondent from interfering with their use and enjoyment of the Property. In its analysis of the evidence, the court held that a charitable trust had been created through the original grant of land, which stated that the Property was to be held "in trust for the purposes of the Congregation of the Moravian Church at Bruderheim." It further held that the plain meaning of the words in the trust declaration, including the term "Congregation of the Moravian Church at Bruderheim," indicated the settlor's intention for the Property to be used for a local congregation in Bruderheim in conjunction with a specific religious organization, the Moravian Church. As such, it held that in order to be beneficiaries of the trust, only those who were members of the Moravian Church could be considered to be part of the "Congregation of the Moravian Church at Bruderheim."

While the BMC had been members of the Moravian Church until the time of the BMC's disassociation from the Moravian church, the court found that the BMC ceased to be members of the Moravian Church upon disassociation. The newly formed BCC was not the "Congregation of the Moravian Church at Bruderheim," and the court therefore held that the Property was not held in trust by the Board for the benefit of the BCC. On this basis, the court denied the application for a permanent injunction.

The court cited various similar recent decisions in Canada, including *Pankerichan v Djokic*, discussed in [Church Law Bulletin No. 47](#), stating that "a relatively consistent method or pattern has emerged in these types of property disputes." This decision upholds the past case law to the extent that courts will attempt to resolve property disputes involving religious bodies without reference to doctrine or other religious matters in cases where the dispute can be resolved by referring to the religious body's governing documents, history, and context.

Court of Appeal Upholds Common Law Exclusion in Termination Clause

By [Barry W. Kwasniewski](#)

On January 8, 2018, the Court of Appeal for Ontario released its decision in [Nemeth v Hatch Ltd.](#) In this case, the court considered an appeal of the dismissal of an action by Joseph Nemeth ("Nemeth") against Hatch Ltd., his former employer, for damages resulting from the termination of his employment without cause. In its decision, the court determined that the termination clause in Nemeth's employment contract, which did not explicitly limit his common law notice entitlement, was nonetheless legally enforceable and did in fact limit his entitlement. This Bulletin reviews this decision with regard to the termination clause, and focuses on the importance of properly drafted termination clauses for charities and not-for-profits when negotiating employment contracts with their employees.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 415](#).

Interlocutory Injunction Denied for the 2018 Canada Summer Jobs Program

By [Jacqueline M. Demczur](#)

On January 30, 2018, the Federal Court delivered its decision in [Right to Life Association of Toronto and Area, Blaise Alleyne and Matthew Battista v Canada \(Minister of Employment, Workforce, and Labour\)](#). In this case, the Right to Life Association of Toronto and Area (the "RTL"), its president, and a prospective summer student (the "Applicants") introduced a motion seeking an interlocutory injunction to stay the

decision of the Minister of Employment, Workforce Development and Labour (the “Minister”) to add a new mandatory attestation requirement to the application for the 2018 Canada Summer Jobs Program (the “Attestation”). The Attestation consists of four statements, including the following:

Both the job and the applying organization’s core mandate respect individual human rights in Canada, including the values underlying the Canadian *Charter of Rights and Freedoms* as well as other rights, including reproductive rights and the right to be free from discrimination on the basis of sex, religion, race, national or ethnic origin, colour, mental or physical disability or sexual orientation, or gender identity or expression

The Canada Summer Jobs 2018 [Application Guide](#) further explains that the government “recognizes that women’s rights are human rights. This includes sexual and reproductive rights — and the right to access safe and legal abortions.”

The motion for an interlocutory injunction aimed to temporarily suspend the deadline to apply for the 2018 Canada Summer Jobs Program, last extended to February 9, 2018, until the court decided on the merits of an underlying application for judicial review. That application challenged the constitutionality of the Attestation as being compelled speech by the government and thus infringing upon the Applicant’s freedom of conscience, thought, belief, opinion, expression, and right to equality. In dismissing the motion for interlocutory injunction, the Federal Court held the Applicants had not met the elements of the three-part test established by the Supreme Court of Canada in *RJR-Macdonald Inc v Canada (Attorney General)*(1994).

The Applicants had to establish that a serious issue had been raised in the underlying application for judicial review, demonstrate a real probability that irreparable harm would result from not granting the interlocutory injunction, and that, on a balance of convenience, the harm to the Applicants by denying the interlocutory injunction would be greater than that to the Minister and the public interest. In this regard, the motion judge held that the Applicants had failed to demonstrate that they would suffer irreparable harm if the interlocutory injunction was not granted, and that the balance of convenience favoured dismissing the motion because a stay of the Minister’s decision to include the Attestation would cause irreparable harm to the public interest.

On January 23, 2018, after the hearing of the motion, the Canada Summer Jobs 2018 Program’s website published a “[Supplementary Information](#)” page containing hypothetical examples of faith-based organizations with anti-abortion beliefs that would be eligible to apply. However, by the application deadline of February 9, 2018, the Attestation remained as originally introduced and the decision of

whether the Attestation infringes upon the rights protected under the *Charter of Rights and Freedoms*, expected to be decided later this year, will only address this issue for 2019. As such, charities and not-for-profits with an interest in the Canada Summer Jobs Program will need to continue to monitor this case going forward.

Reconciling Physician and Patient Rights

By [Jennifer M. Leddy](#)

On January 31, 2018, the Divisional Court of Ontario released its long and detailed decision in [*The Christian Medical and Dental Society of Canada v College of Physicians and Surgeons of Ontario*](#). Two applications were brought by a group of individual physicians and organizations (the “Applicants”) challenging the constitutional validity of two policies of the College of Physicians and Surgeons of Ontario (the “CPSO”), the medical profession’s provincial self-governing body. The challenged policies require physicians, even those who object to certain procedures (*e.g.* abortions, medical assistance in dying) on moral or religious grounds, to provide patients with an “effective referral”, meaning a timely referral, in good faith, to a non-objecting, available, and accessible physician, other health-care professional or agency (the “CPSO Policies”). This Bulletin reviews how the court concluded that the CPSO Policies infringed the physicians’ right to freedom of religion under the *Charter of Rights and Freedoms* (the “*Charter*”) but could be justified under section 1 of the *Charter* as reasonable limits demonstrably justified in a free and democratic society.

For the balance of this Bulletin, please see [Church Law Bulletin No. 53](#).

Baseball Trademark Gives Rise to Human Rights Claim

By [Sepal Bonni](#)

Similar to laws in other countries, Canada’s trademark regime prohibits the registration of trademarks that would offend the public. According to the *Trade-marks Act*, no mark that is “scandalous, obscene or immoral” can be adopted as a trademark. What constitutes a “scandalous, obscene or immoral” trademark is a subjective decision that is made by the Canadian Intellectual Property Office (“CIPO”) with very little interpretation of this provision by Canadian courts. CIPO’s [Trademarks Examination Manual](#) states the following on the subject:

- A scandalous word or design is one which is offensive to the public or individual sense of propriety or morality, or is a slur on nationality and is generally regarded as offensive. It is generally defined as causing general outrage or indignation.
- A word is obscene if marked by violations of accepted language inhibitions or regarded as taboo in polite usage. This word is generally defined as something that is offensive or disgusting by accepted standards of morality or decency; or offensive to the senses.
- A word or design is immoral when it is in conflict with generally or traditionally held moral principles, and generally defined as not conforming to accepted standard of morality.

Despite this prohibition, the Cleveland Indians Baseball Company, LLC is the owner of four trademark registrations in Canada, some of which were recently the subject of an application before the Human Rights Tribunal of Ontario (“HRTO”). This means that they avoided the prohibition to the registration of trademarks that are “scandalous, obscene, or immortal” when they were registered in 1988 and 2012.

However in 2016, Anishnaabe elder Douglas Cardinal (“Cardinal”) commenced an HRTO application alleging that Major League Baseball (“MLB”) discriminated against him in contravention of Canadian human rights laws. More specifically, he sought an order enjoining the MLB and the Cleveland Indians Baseball Company, LLC from displaying, broadcasting, communicating or otherwise disseminating within Ontario images, *etc.*, using the word “Indian” or any form of that name and the Cleveland Indians Baseball Company’s “Chief Wahoo” logo.

At the HRTO, the MLB argued that the issue at hand was not a human rights dispute, but rather a trademark dispute that should be heard by the Federal Court. Essentially, the lawyers for the MLB were arguing that the case should not be heard on jurisdictional grounds. However, the HRTO agreed to hear the case despite the objections of MLB’s lawyers and paved the way to challenge the legitimacy of the use of offensive trademarks thereby dismissing arguments from the MLB that having a registered trademark in Canada grants the owner a right to use the mark without limitation or restriction. MLB sought a judicial review of the tribunal decision.

In that regard, on January 30, 2018, the Ontario Superior Court of Justice released its decision in [*Major League Baseball v Cardinal*](#). With regard to the MLB’s jurisdictional argument, the court held that although trademarks fall under the Federal Court’s jurisdiction, the Federal Court does not have jurisdiction over Cardinal’s discrimination claim contrary to Canada’s human rights laws. The court was

not persuaded that the application posed a true question of jurisdiction and dismissed the application for judicial review.

Although this case turns on issues of jurisdiction, it is a good warning to charities and not-for-profits that the legal appetite is changing for trademarks that may have been traditionally accepted in the past. To avoid such potential issues, charities and not-for-profits should carefully reconsider their branding to ensure that they are not using marks, registered or unregistered, that at one time may have been acceptable but are now offensive or may be considered discriminatory, in accordance with provincial human rights legislation.

Internal Disciplinary Decision is Not Subject to Judicial Review

By [Esther S.J. Oh](#)

On January 22, 2018, in [Milberg v North York Hockey League](#), the Ontario Superior Court dismissed an application pursuant to section 2(1) of the *Judicial Review Procedure Act* (“JRPA”) for judicial review of a decision made by the North York Hockey League (the “NYHL”) to preclude Mr. Milberg from attending any NYHL games for the remainder of the season (“Suspension”). The Suspension was made due to Mr. Milberg’s behavior during a confrontation with a ticket attendant at his 11 year old son’s hockey games. The incident leading to the Suspension occurred when the cashier at the hockey game indicated that she could not accept the \$100 bill Mr. Milberg offered to pay for the tickets. Mr. Milberg became upset and confronted the ticket attendant with inappropriate and vulgar language even though there was a sign posted at the cashier’s station indicating “no \$100 bills.” After the incident Mr. Milberg was requested to attend at the offices of NYHL’s Chief Operating Officer to discuss the situation. During that meeting Mr. Milberg admitted his wrongdoing and, after over an hour of discussions, Mr. Milberg was given the Suspension.

In bringing the application for judicial review, Mr. Milberg argued that he was subjected to an internal discipline process by the NYHL in the absence of any rules or procedures. In that regard, Mr. Milberg argued that he was denied procedural fairness because he did not receive adequate notice of the infraction and possible sanctions, he was denied the right to a meaningful hearing, and Mr. Milberg was not advised of any avenues for appeal. Mr. Milberg also argued there had been no written decision provided to him, and that he had not been given access to the consultation process that led to the Suspension.

In dismissing the application, the court found that it had no jurisdiction to provide relief under the JRPA as the matter was governed by private law. In arriving at this decision, the court stated “...just because [a decision] has a public dimension to it does not make it a matter of public law. The decision or action in issue must also be an ‘exercise of public authority’. In my view, this authority must ultimately emanate from the government.” The court also stated as follows:

Private actors routinely make decisions that have implications for the public more broadly. However, if the decisions do not amount to an exercise of power emanating from the legislature, the Court’s jurisdiction over such matters should flow from the private law, and the related remedies available to litigants in the private sphere, and not the JRPA.

On a separate issue, the court recognized that a remedy might be available under private law and noted that courts have the jurisdiction to grant injunctions to prevent or restrain injuries to the infringement of rights which can be enforced at law or equity. On this issue, the court further stated:

I have no doubt that if the ... NYHL ... had arbitrarily or maliciously interfered with the [Mr. Milberg]’s ability to attend his son’s games, there would be a basis for a court to intervene. In such an instance, the interference may amount to a breach of an implied contractual right to attend. Similarly, if the decision was discriminatory or otherwise engaged rights protected under the [Ontario] *Human Rights Code* an interim remedy would likely be granted.

However, that is not the situation here. The actions of [the NYHL] can hardly be described as arbitrary or capricious. [Mr. Milberg] does not dispute confronting the employee at the stadium and using the vulgar language in that confrontation. [The NYHL] discussed the situation with [Mr. Milberg] at length, and [Mr. Milberg] was given a full opportunity to explain himself. The decision to suspend was directly related to [Mr. Milberg]’s rude and vulgar remarks to the attendant.

In its closing statements, the court indicated that:

“[i]n a situation like the one here, as long as [Mr. Milberg] has knowledge of the reasons for the sanction and had an opportunity to be heard by the decision maker, the requirements of procedural fairness would be satisfied ‘even if there was no structured hearing in the judicial sense of the word.’”

This case serves as an important reminder to charities and not-for-profits that the courts continue to be reluctant to become involved in the internal affairs of an organization where steps taken by an organization to interfere with the rights of an individual generally reflects the requirements of procedural fairness. This case also clarifies that the requirements of procedural fairness that apply to a given situation may be flexible depending on the background facts involved.

Privacy Commissioner Releases Draft Position Paper on Online Reputation

By [Esther Shainblum](#)

On January 26, 2018, the Office of the Privacy Commissioner of Canada (the “OPC”) released the [Draft OPC Position on Online Reputation](#) (the “Paper”), drafted as part of an OPC consultation on online reputation (the “Consultation”). The Consultation is being conducted more generally as part of the OPC’s work on “Reputation and Privacy”, one of the OPC’s four strategic privacy priorities for 2015-2020. The OPC’s goal is to “seek to create an environment where individuals may use the Internet to explore their interests and develop as persons without fear that their digital trace will lead to unfair treatment.” The validity of this goal was supported by the submissions made to the OPC during the Consultation, many of which highlighted the need for individuals to have some control over their online reputation.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 416](#).

The Investment Spectrum for Charities, Including Social Investments

By [Terrance S. Carter](#)

A resource paper providing an overview of the options available when investing charitable funds in Ontario, available at [charitylaw.ca](#), was presented at the Ontario Bar Association’s 2018 Institute on February 6, 2018. The paper discusses the three categories of investments provided for in both federal and provincial legislation: i) the prudent investor standard under the *Trustee Act* (sometimes described as “prudent investments”, “ordinary investments” or “conventional financial investments”), with a focus on obtaining a financial return; ii) program related investments under the CRA’s CG-014 Community Economic Development Activities and Charitable Registration Guidance, with a focus on “directly further[ing] one or more of a charity’s charitable purposes”; and more recently, iii) social investments under the *Charities Accounting Act*, with a hybrid focus of directly furthering the purposes of the charity *and* achieving a financial return.

The full text of the paper can be accessed here: [The Investment Spectrum for Charities, Including Social Investments](#).

Charitable Sector Reform Paper by The Pemsel Case Foundation

By [Ryan M. Prendergast](#)

The Pemsel Case Foundation, an Alberta charitable corporation named after the 1891 decision of the House of Lords establishing the four principal common law heads of charity, has released a paper on charity law reform (the “Paper”). Following the 2016 Pemsel Case Foundation paper focused on the *Income Tax Act* definition of “charitable organization”, the Paper reviews the significance of the common law meaning of charity, in terms of “charitable activities” as opposed to “charitable purposes” in the context of the rules currently governing the registration and maintenance of charitable status. The Paper also comments on policy considerations and recommendations for legal reform, including the rules regarding the disbursement quota, foreign aid and other gifts to non-qualified donees, business activities, the acquisition of control of a corporation, long-term debt, and political activities.

To access the full paper, see [here](#).

Anti-Terrorism/Money Laundering Update

By [Terrance S. Carter](#), [Nancy E. Claridge](#) and [Sean S. Carter](#)

Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime

The Department of Finance Canada published a discussion paper entitled [Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime](#) (the “Paper”) on February 7, 2018. The Paper will support Parliament’s study of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “*Proceeds of Crime Act*”), as well as its consideration of money laundering and terrorist financing issues. The Paper also suggests it will assist Parliament’s larger investigation and study into how to advance the efficiency and effectiveness of Canada’s anti-money laundering and anti-terrorist financing regime (the “Regime”) to ensure that private and public sector resources are better aligned to current technological, business and threat realities.

The Paper outlines potential policy measures that would improve the *Proceeds of Crime Act* to better support the Regime and to enhance Canada’s legislative framework. These policy measures are organized around five key themes, namely: Legislative and Regulatory Gaps; Enhancing the Exchange of Information While Protecting Canadians’ Rights; Strengthening Intelligence Capacity and Enforcement; Modernizing the Framework and its Supervision; and Administrative Definitions and Provisions.

Beyond these broad themes for policy measures, the Paper makes specific reference to key tensions that exist in legislating and implementing the Regime, including the fact that while reporting entities play an important role in detecting and deterring money laundering and terrorist financing, there is an outstanding need to minimize the Regime's compliance burden and cost. The Paper also notes that the Regime should involve a risk-based approach wherever appropriate, focussing more attention, time and resources on higher risk transactions and parties, and less on those with lower risk.

The Department of Finance Canada is seeking views on its potential policy directions. The Regime has been developed and expanded, particularly in the past 15 years, and careful attention is required to its further development and changes. The Regime is not only about collecting ever-increasing amounts of information (personal and business), but also establishing and streamlining information sharing both domestically (between agencies and departments such as the RCMP, the CRA and FINTRAC) and internationally. The Paper is open for input from stakeholders until April 30, 2018.

FATF President Delivers Anti-Terrorist Financing Briefing to United Nations

Santiago Otamendi, the President of the Financial Action Task Force ("FATF") delivered a [briefing](#) to the United Nations Counter-Terrorism Committee ("UNCTC") on December 14, 2017, discussing the importance of preventing and disrupting financial flows to terrorist organizations and briefing the UNCTC on the FATF's risk-based approach to fighting terrorist financing. The FATF and the UN work in close partnership, with the FATF charged with finding effective ways to implement and reinforce obligations set out by the UN, and its standards complementing resolutions adopted by the UN Security Council.

Looking to the past, Mr. Otamendi discussed the FATF's consolidated terrorist financing strategy set out in 2016, which aims to "cut-off the financing of terrorism, particularly for serious terrorist threats such as ISIL and Al-Qaeda, to reinforce safeguards that will deny terrorists access to the financial system and prevent them from exploiting vulnerable countries as safe havens, and to ensure that financial intelligence is effectively used." Of particular interest to charities and not-for-profits in implementing this strategy, the FATF has produced a Best Practices Paper on preventing terrorist abuse of the not-for-profit sector, as discussed in [Anti-Terrorism and Charity Law Bulletin No. 42](#). The FATF has also revised Recommendation 8, which sets out best practices on combatting the abuse of non-profit organizations, which is discussed in greater detail in [Anti-Terrorism and Charity Law Alert No. 46](#), in order to more broadly implement the risk-based approach.

Looking to the future, Mr. Otamendi stated that the FATF is considering a new set of actions to ensure a continued understanding of the evolving terrorist threats. This includes looking at new technology for providing financial services and for meeting regulatory requirements. This also includes working with the FinTech and RegTech sectors to raise greater awareness of both the risks of money laundering and terrorist financing and of the FATF requirements, as well as to help with integrating risk management into their services. The FATF has also begun holding workshops for judges and prosecutors in order to help countries effectively use criminal justice tools to combat terrorist financing and money laundering.

Ottawa Region Charity & NFP Law Seminar Materials Available

By [Terrance S. Carter](#)

The Ottawa Region Charity & Not-for-Profit Law Seminar, hosted by Carters in Ottawa, on February 15, 2018, was attended by over 400 leaders from the charity and not-for-profit sector. The Honourable Justice David Brown of the Court of Appeal of Ontario, and Tony Manconi, Director General of the Charities Directorate of CRA, were guest speakers. The Seminar was designed to provide practical information to assist charities and not-for-profits in understanding and complying with recent developments in the law. All [handouts](#) and presentation materials are now available at the links below:

- [Introduction, Agenda and Speaker Details](#)
- [Essential Charity and NFP Law Update](#) by Jennifer M. Leddy
- [Remuneration of Directors of Charities: What's New?](#) by Ryan M. Prendergast
- [Critical Privacy Issues Involving Children's Programs](#) by Esther Shainblum
- [Recent Changes in Corporate Law Affecting Federal and Ontario Corporations](#) by Theresa L.M. Man
- [The Impact of Bill 148 on Charities and Not-for-Profits](#) by Barry W. Kwasniewski
- [Governance Disputes Involving Charities and Not-for-Profits: A View from the Bench](#) by The Honourable Justice David M. Brown
- [Corporate Documents and Procedures to Help Avoid Governance Disputes](#) by Esther S.J. Oh
- [The Expanding Investment Spectrum for Charities, including Social Investments](#) by Terrance S. Carter

- [Challenges in Regulating the Charitable Sector: Looking Back and Going Forward](#) by Tony Manconi, Director General

IN THE PRESS

[Charity & NFP Law Update – January 2018 \(Carters Professional Corporation\)](#) was featured on *Taxnet Pro*TM and is available online to those who have OnePass subscription privileges.

[Senate Adopts Motion to Appoint Special Committee on Charitable Sector](#) was featured in the AFP e-wire on February 22, 2018.

RECENT EVENTS AND PRESENTATIONS

[The Investment Spectrum for Charities, Including Social Investment](#) was presented by Terrance S. Carter at the OBA Institute 2018 will be held on February 6, 2018 in Toronto.

[New and Exciting Changes to Ontario and Federal Corporate Legislation](#) was presented by Theresa L.M. Man at the CSAE Winter Summit in Niagara Falls on February 8, 2018.

[The Ottawa Region Charity & Not-for-Profit LawTM Seminar](#) presented by Carters Professional Corporation in Ottawa, Ontario, on Thursday February 15, 2018. Guest Speakers included The Honourable Justice David M. Brown of the Court of Appeal of Ontario, and Tony Manconi, Director General of the Charities Directorate of the CRA. [Handout materials](#) are available at www.carters.ca.

[Legal Issues in Social Media for Charities and NFPs](#) was presented by Terrance S. Carter at the Chartered Professional Accountants Canada's Not-for-Profit Executive Forum 2018 on February 27, 2018.

UPCOMING EVENTS AND PRESENTATIONS

[CAGP 25th National Conference on Strategic Philanthropy](#), will be held in Winnipeg, Manitoba, on April 11 and 12, 2018. The following topics will be presented:

- Due Diligence In Gift Documentation by Theresa L.M. Man and Terrance S. Carter on April 11, 2018

- Legal Issues In Fundraising On Social Media by Terrance S. Carter on April 12, 2018

[Spring 2018 Carters Charity & NFP Webinar Series](#) will be hosted by Carters Professional Corporation on Wednesdays starting March 28, 2018. Click here for [online registration](#) Topics to be covered are as follows:

- **The Expanding Investment Spectrum for Charities, Including Social Investments** will be presented by Terrance S. Carter B.A., LL.B., TEP, Trade-mark Agent on Wednesday, March 28th - 1:00 - 2:00 pm ET
- **The Impact of Bill 148 on Charities and Not-for-Profits** will be presented by Barry W. Kwasniewski, B.B.A., LL.B. on Friday, April 6th - 1:00 - 2:00 pm ET
- **Recent Changes in Corporate Law Affecting Federal and Ontario Corporations** will be presented by Theresa L.M. Man, B.Sc., M.Mus., LL.B., LL.M. on Wednesday, April 25th - 1:00 - 2:00 pm ET
- **Critical Privacy Issues Involving Children's Programs** will be presented by Esther Shainblum, B.A., LL.B., LL.M. CRM on Wednesday, May 9th - 1:00 - 2:00 pm ET
- **Remuneration of Directors of Charities: What's New?** will be presented by Ryan M. Prendergast, B.A., LL.B. on Wednesday, May 30th - 1:00 - 2:00 pm ET
- **Drafting Bylaws: Pitfalls to Avoid** will be presented by Esther S.J. Oh, B.A., LL.B. on Wednesday, June 13th - 1:00 - 2:00 pm ET

CONTRIBUTORS

Editor: Terrance S. Carter

Assistant Editors: Nancy E. Claridge, Ryan M. Prendergast and Adriel N. Clayton



Michelle E. Baik, i.B.B.A., J.D. - Called to the Ontario Bar in 2015, Michelle has joined Carters' Litigation Practice Group. Michelle has broad experience in civil litigation having articulated and been an associate with an insurance defence boutique law firm in Toronto. She worked as Legal Counsel for one of the largest banks in Canada. Michelle obtained a degree in International Bachelor of Business Administration from the Schulich School of Business, and her J.D. degree from the University of Windsor. Michelle's practice areas include general civil, commercial and not-for-profit related litigation, administrative law, insurance defence litigation, loss transfer claims, and personal injury litigation.



Sepal Bonni, B.Sc., M.Sc., J.D., Trade-mark Agent - Called to the Ontario Bar in 2013, Ms. Bonni practices in the areas of intellectual property, privacy and information technology law. Prior to joining Carters, Ms. Bonni articulated and practiced with a trade-mark firm in Ottawa. Ms. Bonni represents charities and not-for-profits in all aspects of domestic and foreign trade-mark prosecution before the Canadian Intellectual Property Office, as well as trade-mark portfolio reviews, maintenance and consultations. Ms. Bonni assists clients with privacy matters including the development of policies, counselling clients on cross-border data storage concerns, and providing guidance on compliance issues.



Terrance S. Carter, B.A., LL.B, TEP, Trade-mark Agent – Managing Partner of Carters, Mr. Carter practices in the area of charity and not-for-profit law, and is counsel to Fasken Martineau 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 Butterworths, 2017), and co-author of *Branding and Copyright for Charities and Non-Profit Organizations* (2014 LexisNexis Butterworths). He is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*, and is a Past Chair of the Canadian Bar Association and Ontario Bar Association Charities and Not-for-Profit Law Sections. He is editor of www.charitylaw.ca, www.churchlaw.ca and www.antiterrorismlaw.ca.



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 Martineau DuMoulin LLP (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., L.L.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 Masters 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.



Adriel N. Clayton, B.A. (Hons), J.D. - Called to the Ontario Bar in 2014, Adriel Clayton rejoins the firm to manage Carters' knowledge management and research division, as well as to practice 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*.



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 *Lexpert* and *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*.



Barry W. Kwasniewski, B.B.A., LL.B. – Mr. Kwasniewski joined Carters' Ottawa office in 2008, becoming a partner in 2014, 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 provides legal opinions and advice pertaining to insurance coverage matters to charities and not-for-profits.



Jennifer 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."



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* and *Best Lawyers in Canada*. 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 an executive member of the Charity and Not-for-Profit Section of the OBA and the CBA Charities and Not-for-Profit Law Section. Ms. Man has also written articles for numerous publications, including *The Lawyers Weekly*, *The Philanthropist*, *Hilborn:ECS* and *Charity & NFP Law Bulletin*.



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*. Ms. Oh has written numerous articles on charity and not-for-profit legal issues, including incorporation and risk management for 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.



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 is a regular speaker and author on the topic of directors' and officers' liability and on the topic of anti-spam compliance for registered charities and not-for-profit corporations, and has co-authored papers for the Law Society of Ontario. In addition, Ryan has contributed to *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.



Esther Shainblum, B.A., LL.B., LL.M., CRM - 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 practicing health law and corporate/commercial law at McMillan Binch and spent a number of years working in policy development at Queen's Park. Ms. Shainblum practices in the areas of charity and not-for-profit law, health law, privacy law and lobbyist registration.



Luis R. Chacin, LL.B., M.B.A., LL.M. - Luis graduated from Osgoode Hall Law School in 2017 with a Master of Laws in Canadian Common Law. Prior to this, he worked in the financial services industry in Montreal and Toronto for over 9 years, assisting both individual and institutional clients. Having previously worked as legal counsel in Venezuela, Luis has a broad perspective on both the civil and the common law traditions. He is involved in fundraising activities for various organizations and is interested in real estate, investments and taxation issues, particularly as they pertain to charities and non-profit corporations.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

Links not Working: If the above links do not work from your mail program, simply copy the link text and paste it into the address field of your internet browser.

Get on Our E-Mailing List: If you would like to be added to our electronic mailing list and receive regular updates when new materials are added to our site, click [here](#) or send an email to info@carters.ca with “Subscribe” in the subject line. Feel free to forward this email to anyone (internal or external to your organization) who might be interested.

Privacy: We at Carters know how important your privacy is to you. Our relationship with you is founded on trust and we are committed to maintaining that trust. Personal information is collected solely for the purposes of establishing and maintaining client lists; representing our clients; and to establish and maintain mailing lists for the distribution of publications as an information service. Your personal information will never be sold to or shared with another party or organization. For more information, please refer to our [Privacy Policy](#).

Copyright: All materials from Carters are copyrighted and all rights are reserved. Please contact us for permission to reproduce any of our materials. All rights reserved.

Disclaimer: This is a summary of current legal issues provided as an information service by Carters Professional Corporation. It is current only as of the date of the summary and does not reflect subsequent changes in the law. The summary is distributed with the understanding that it does not constitute legal advice or establish the 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.

CARTERS PROFESSIONAL CORPORATION SOCIÉTÉ PROFESSIONNELLE CARTERS

PARTNERS:

Terrance S. Carter B.A., LL.B. tcarter@carters.ca
(Counsel to Fasken Martineau DuMoulin LLP)
Jane Burke-Robertson B.Soc.Sci., LL.B. (1960-2013)
Theresa L.M. Man B.Sc., M.Mus., LL.B., LL.M. tman@carters.ca
Jacqueline M. Demczur B.A., LL.B. jdemczur@carters.ca
Esther S.J. Oh B.A., LL.B. estheroh@carters.ca
Nancy E. Claridge B.A., M.A., LL.B. nclaridge@carters.ca
Jennifer M. Leddy B.A., LL.B. jleddy@carters.ca
Barry W. Kwasniewski B.B.A., LL.B. bwk@carters.ca
Sean S. Carter B.A., LL.B. scarter@carters.ca
Ryan M. Prendergast B.A., LL.B. rprendergast@carters.ca

ASSOCIATES:

Esther Shainblum, B.A., LL.B., LL.M., CRM eshainblum@carters.ca
Kristen D. Morris B.A., J.D. (on parental leave) kmorris@carters.ca
Sepal Bonni B.Sc., M.Sc., J.D. sbonni@carters.ca
Adriel N. Clayton, B.A. (Hons), J.D. aclayton2@carters.ca
Michelle E. Baik, i.B.B.A., J.D. mbaik@carters.ca

STUDENT-AT-LAW

Luis R. Chacin, LL.B., M.B.A., LL.M. lchacin@carters.ca

Orangeville Office

211 Broadway, P.O. Box 440
Orangeville, Ontario, Canada L9W 1K4
Tel: (519) 942-0001
Fax: (519) 942-0300

Mississauga Meeting Location

2 Robert Speck Parkway, Suite 750
Mississauga, Ontario, Canada, L4Z 1H8
Tel: (416) 675-3766
Fax: (416) 675-3765

Ottawa Office

117 CentrepoinTE Drive, Suite 350
Ottawa, Ontario, Canada K2G 5X3
Tel: (613) 235-4774
Fax: (613) 235-9838

Toronto Meeting Location

Brookfield Place - TD Canada Trust Tower
161 Bay Street, 27th Floor, PO Box 508
Toronto, Ontario, Canada M5J 2S1
Tel: (416) 675-3766
Fax: (416) 675-3765