

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

## APRIL 2019

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### [Healthcare Philanthropy Seminar](#)

Wednesday, May 22, 2019

Co-hosted by Carters and Fasken in Toronto. Click [here](#) for registration details.

### [Spring 2019 Carters Charity & NFP Webinar Series](#)

Hosted by Carters Professional Corporation on Wednesdays starting April 17, 2019

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### [CBA Charity Law Symposium](#)

Monday, May 6, 2019

Hosted by the Canadian Bar Association Charity & Not-for-Profit Law Section. Click [here](#) for registration details.

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## RECENT PUBLICATIONS AND NEWS RELEASES

### **OPC Signals Policy Change for Data Transfers Across Borders**

By [Esther Shainblum](#)

On April 9, 2019, the Office of the Privacy Commissioner of Canada (“OPC”) released the report of its investigation of the 2017 data breach involving Equifax Canada Co. (“Equifax Canada”) and its US-based parent company, Equifax Inc. (the “Report”). The Report signals a sea change on the part of the OPC with respect to cross-border transfers of personal information – a change that could have significant potential implications for charities and not-for-profits.

The Report also identifies a number of contraventions of the *Personal Information Protection and Electronic Documents Act* on the part of both Equifax Canada and Equifax Inc. This *Charity & NFP Law Bulletin* provides an overview of the Report and the potential impact on charities and not-for-profits.

For the balance of this *Bulletin*, please see [Charity & NFP Law Bulletin No. 445](#).

### **Legislation Update**

By [Terrance S. Carter](#)

#### **Bill C-97, *Budget Implementation Act, 2019, No. 1***

On April 8, 2019, [Bill C-97, \*Budget Implementation Act, 2019, No. 1\*](#) (“Bill C-97”) was introduced in the House of Commons and received first reading. Bill C-97 proposes to implement certain provisions that impact charities and not-for-profits that were introduced in the 2019 Federal Budget (“Budget 2019”). In this regard, Bill C-97 implements legislative amendments to the *Income Tax Act* and *Excise Tax Act* that were included in the Notice of Ways and Means Motions in Budget 2019 that include: (1) support for Canadian journalism through qualified donee status, a refundable labour credit, and personal income tax credit for digital subscriptions; (2) legislative amendments to remove the requirement that property be of “national importance” in order to qualify for the enhanced tax incentives for donations of cultural property; and (3) health-related proposals, such as the medical expense tax credit for medical cannabis and tax exemptions for certain biologicals, medical devices and health care services.

Additionally, and as proposed in Budget 2019, Bill C-97 includes draft legislative amendments to strengthen Canada’s anti-money laundering and anti-terrorist financing regime. In this regard, and of interest to charities and not-for-profits, the *Criminal Code of Canada* will be amended to criminalize

concealment of the origin of funds in the case of recklessness. Additionally, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* will be amended to allow the Governor in Council to make regulations defining “virtual currency” and “dealing in virtual currencies”, and to amend disclosure obligations relating to designated information.

Further details on the above proposed changes, as introduced in Budget 2019, are available in [Charity & NFP Law Bulletin No. 443](#).

### **Proposed Regulatory Amendments under the *Child Care and Early Years Act, 2014* and *Education Act***

On April 4, 2019, the Ontario Regulatory Registry announced a [consultation](#) to seek feedback on proposed regulatory amendments under the *Child Care and Early Years Act, 2014* (“CCEYA”) and *Education Act*. The proposed amendments are based on feedback from previous consultations with the child care sector, and are intended to ease compliance for licensees and providers, which may include charities and not-for-profits.

The amendments would reduce administrative burdens by removing duplicative requirements under O Reg 137/15 (General) and O Reg 138/15 (Funding, Cost Sharing and Financial Assistance) under the CCEYA. Further, the amendments would increase the choice and availability of child care services by giving licensees and providers the flexibility to offer programming options that meet their community’s needs through amendments to O Reg 137/15 and O Reg 138/15 under the CCEYA, and O Reg 221/11 (Extended Day Programs) under the *Education Act*. Finally, the amendments would clarify and align requirements in order to create a consistent standard of care across Ontario for all child care settings through amendments to O Reg 137/15 under the CCEYA and O Reg 221/11 under the *Education Act*.

### **Ontario Bill 66, *Restoring Ontario’s Competitiveness Act, 2019***

On April 3, 2019, Ontario [Bill 66, \*Restoring Ontario’s Competitiveness Act, 2019\*](#) was brought into force after receiving Royal Assent. Bill 66 amends the *Employment Standards Act, 2000*, among other acts, to reduce the regulatory burden on businesses, including charities and not-for-profits, when entering into work hour agreements and averaging agreements with employees, as well as with regard to employment standards educational posters required under the *Employment Standards Act, 2000*. Further details on the changes introduced through Bill 66 are available in the [January 2019 Charity & NFP Law Update](#).

## **CRA Publishes Compliance Guides on Digital Currency**

By [Ryan M. Prendergast](#)

On March 8, 2019, the Canada Revenue Agency (“CRA”) published an information website on [Digital Currency](#), which defines “digital currency” by way of reference to Bitcoin stating that “Bitcoins are not controlled by central banks or any country, [...] can be traded anonymously, [...] can be bought and sold in return for traditional currency, and can also be transferred from one person to another.” The information website further states that transactions involving digital currency are governed, for tax purposes, by the rules for barter, which are described in the CRA’s [Interpretation Bulletin IT-490, Barter Transactions](#). The information website also states that gains or losses resulting from buying and selling digital currency like a commodity may constitute taxable income or capital, as determined in accordance with [Interpretation Bulletin IT-479R, Transactions in Securities](#). Finally, the information website states that the CRA is very active in pursuing cases of non-compliance.

On the same date, the CRA also released its [Guide for cryptocurrency users and tax professionals](#) (the “Cryptocurrency Guide”) which defines “cryptocurrency” as a type of “alternative currency” such as Bitcoin, and as a “digital asset” (also referred to as a “crypto asset” or “altcoin”), that works as a medium of exchange but that is not legal tender. This suggests that the CRA considers the terms “digital currency”, “digital asset”, “cryptocurrency”, “crypto asset”, “alternative currency”, and “altcoin”, at least to some extent, interchangeable.

The Cryptocurrency Guide states that the CRA “generally” treats cryptocurrency like a commodity for purposes of the ITA and that transactions involving cryptocurrencies are “generally” treated as either business income or capital gain, depending on the circumstances. In this regard, the Cryptocurrency Guide describes when earnings or losses from a disposition of cryptocurrency may be considered either business income/losses or capital gains/losses, including a number of examples involving cryptocurrency trading and cryptocurrency mining, and when cryptocurrency should be considered capital property or inventory.

The Cryptocurrency Guide further states that “in general” possessing or holding a cryptocurrency is not taxable and that only a disposition “could” have tax consequences, such as with regard to: i) the sale or gift of cryptocurrency; ii) a trade or exchange of cryptocurrency, including the exchange of one type of cryptocurrency for another; iii) the conversion of cryptocurrency into government-issued currency, such as Canadian dollars; and iv) the use of cryptocurrency to buy goods or services.

Regarding gifts of cryptocurrency, and of interest to charities and not-for-profits, CRA document 2013-0514701I7 provides that the fair market value of Bitcoin at the time of the transfer to a qualified donee must be used to determine the eligible amount of the gift for tax purposes and, subject to the deeming rule applicable to gifts in kind, the eligible amount of the gift may be less than its fair market value. The CRA website [Determining fair market value of non-cash gifts](#) provides additional information on gifts in kind.

As such, the Cryptocurrency Guide recommends that reasonable methods be used in order to value all transactions for each type of cryptocurrency or separate digital asset, for example, by consistently choosing an exchange rate taken from the same exchange broker or an average of midday values across a number of high-volume exchange brokers. The Cryptocurrency Guide also requires that adequate books and records be kept for all cryptocurrency transactions for at least 6 years, including the date of the transactions, the receipts of purchase or transfer of cryptocurrency, the value of the cryptocurrency in Canadian dollars at the time of the transaction, the digital wallet records and cryptocurrency addresses, a description of the transaction and the other party (even if it is just their cryptocurrency address), the exchange records, accounting and legal costs, and the software costs related to managing tax affairs.

Neither the Cryptocurrency Guide nor the webpage on Digital Currency address issues related to cryptocurrency and registered charities. However, reference to these documents will be important in the context of registered charities receiving gifts of and receipting cryptocurrency. In this regard, the reaffirmation that cryptocurrency is considered by the CRA to generally be a commodity and subject to the deeming rules applicable for gifts in kind will be significant in issuing receipts, as well as the books and records that should be kept related to transactions in order to support any valuation given.

## **CRA Responds to 2017 Consultation Panel Report on Political Activities of Charities**

By [Terrance S. Carter](#)

On March 7, 2019, the Minister of National Revenue issued its [response](#) (the “Response”) to the [Report of the Consultation Panel on the Political Activities of Charities](#) published in May 2017 (the “Report”). The Report provided various recommendations on the administrative and legislative framework governing political activities at the time, discussed in [Charity & NFP Law Bulletin No. 403](#). While the Federal Government had committed to providing a formal response in 2017, that timeline was not kept. However, although an official written response was not provided, the government did take various steps in response

to the recommendations in the Report. The Response now marks the government's final response to each of the four recommendations outlined in the Report.

Recommendation 1 is to "revise the CRA's administrative position and policy." The Response points to the draft guidance on public policy dialogue and development activities ("PPDDAs"), discussed in [Charity & NFP Law Bulletin No. 438](#), for which the CRA is currently accepting feedback.

Recommendation 2 is to "implement changes to the CRA's administration of the *Income Tax Act* (ITA)." The Response indicates that funding of up to \$5.3 million is being provided over the next five years to the CRA for enhanced sector outreach and education. The CRA has also implemented the Charities Education Program. Further, the Response states that the additional administrative changes and initiatives will be made, such as new communication and engagement methods, and updating its webpages that discuss the audit process and other topics of interest to Indigenous communities.

Recommendation 3 is to "amend the [ITA] by deleting any reference to non-partisan political activities to explicitly allow charities to fully engage without limitation in [PPDDAs]." The Response points to the legislation introduced through Bill C-86, *Budget Implementation Act, 2018*, which implemented the PPDDA regime, also discussed in [Charity & NFP Law Bulletin No. 438](#). It further indicates that the suspension on the Political Activities Audit Program has been lifted and that affected charities will be contacted by the CRA. Finally, the Response also states that, as a result of the Bill C-86 amendments, the government has discontinued its appeal in the *Canada Without Poverty v AG Canada* decision, discussed in [Charity & NFP Law Bulletin No. 425](#).

Recommendation 4 is to "modernize the legislative framework governing the charitable sector." The Response states that the government is establishing a permanent Advisory Committee on the Charitable Sector, as discussed in the [March 2019 Charity & NFP Law Update](#). \$3.2 million in new funding will be provided to the CRA over the next five years to support this initiative.

While the Response has been long-awaited, it is clear that the government has taken the recommendations of the Report into consideration through various government initiatives. The Response therefore brings a certain degree of finality to the debate over political activities and the evolution of PPDDAs over the last two years, and provides a helpful overview of the work that the government has undertaken in response to the Report.

## Ontario Bill 74 Creates Province-Wide Super Agency to Replace LHINs

By [Esther Shainblum](#)

On April 18, 2019, [Bill 74, The People's Health Care Act, 2019](#) (“Bill 74”) received Royal Assent. Schedule 1 of Bill 74 enacts the *Connecting Care Act, 2019* (the “Act”), which will come into force on a date to be set by proclamation. While the Act is expansive, the following is a brief overview of select portions that may affect charities and not-for-profits.

The Act will establish a new province-wide health “super agency”, known as Ontario Health, which will ultimately take over the province’s Local Health Integration Networks (“LHINs”) – which themselves recently took over the former Community Care Access Centres – as well as a number of independent provincial health agencies, including Cancer Care Ontario. The Act also provides Ontario Health and the Minister of Health and Long Term Care (“Minister”) with broad powers to integrate the province’s health system. Ontario Health can integrate the health system through funding changes (subsection 31(a)), through facilitating and integrating the integration of persons, entities or services (subsection 31(b)) or by issuance of a facilitation decision pursuant to which parties or services are integrated by agreement of the parties (section 32).

Under section 33, the Minister may also make integration orders pursuant to which the Minister will require health service providers or integrated care delivery systems (“ICDs”, a group of persons or entities designated by the Minister that meets the conditions prescribed in the Act) to integrate, including:

- provide all or part of or cease to provide all or part of a service;
- cease operating, dissolve or wind up its operations;
- amalgamate with one or more persons or entities;
- co-ordinate services or partner with another person or entity; and/or
- transfer all or substantially all of its operations to one or more persons or entities.

While the Act is part of a larger [health care reform plan](#) through which ICDs, other groups of providers and other organizations will provide a coordinated continuum of care to a defined geographic population, the Act does not provide for any particular governance structure for ICDs, and notably does not require them to be not-for-profit.

There are some constraints currently in place for LHINs that will also be placed on the Minister’s integration powers regarding religious-based, not-for-profit and charitable providers, as follows:

- Paragraph 33(2)(a) of the Act provides that the Minister shall not unjustifiably, as determined under section 1 of the *Canadian Charter of Rights and Freedoms*, require a religious organization to provide a service that is contrary to the religion related to the organization.
- Paragraph 33(2)(b) of the Act provides that the Minister shall not require the transfer of property held for a charitable purpose to a person or entity that is not a charity.
- Paragraph 33(2)(c) of the Act provides that the Minister shall not require a person or entity that is not a charity to receive property from a person or entity that is a charity and to hold the property for a charitable purpose.
- Paragraph 33(2)(g) of the Act provides that the Minister shall not require a not-for-profit health service provider or ICD to amalgamate with for-profit health service providers or ICDs.
- Paragraph 33(2)(h) of the Act provides that the Minister shall not require a not-for-profit health service provider or ICD to transfer all or substantially all of its operations to a for-profit health service provider or ICD.

There are no similar constraints on the powers of Ontario Health under sections 31 and 32.

However, subsection 37(1) of the Act provides that if an integration decision requires a health service provider or ICD to transfer property that it holds for a charitable purpose, all gifts, trusts, bequests, devises and grants shall be deemed to be gifts, trusts, bequests, devises and grants to the transferee. Subsection 37(2) provides that, if such property being transferred was originally gifted for a specific purpose pursuant to a will, deed or other document, the transferee must use it for the specified purpose. From a charities law perspective, if the specified purpose can no longer be fulfilled, such as in a case in which the charitable property was originally gifted to support the operations of a charity that has been ordered to cease operations, the charity's stakeholders may want to consider seeking legal advice in order to ensure that its charitable assets are dealt with appropriately and, as much as possible, in accordance with the donors' intentions.

The sweeping changes introduced by the Act will likely result in several years of uncertainty in Ontario's health care system, affecting thousands of organizations, entities and individuals. There may be risks to smaller providers, including charitable and not-for-profit providers, particularly if they have charitable assets that they wish to deploy in accordance with donors' intentions. Charities and not-for-profits involved in the provision of health care in Ontario may need to obtain independent legal advice in order to develop appropriate strategies for managing or addressing these risks under the new legislation.



## Applying for Federal Incorporation and Charitable Status

By [Esther S.J. Oh](#) and [Terrance S. Carter](#)

This *Charity Law Bulletin* (“*Bulletin*”) provides a brief overview of the general steps that are required in order to incorporate a federal corporation under the *Canada Not-for-profit Corporations Act* (“CNCA”), and apply for registration as a “charity” under subsection 149.1(1) of the ITA. This *Bulletin* assumes that the charity will carry out its activities primarily in the Province of Ontario, and therefore this *Bulletin* provides some commentary on a few of the more important issues relevant to charities operating in that province. This *Bulletin* does not provide a complete summary of all issues to be considered when incorporating and applying for charitable status given the complexity of the requirements that may apply to an organization under the CNCA and the ITA. Organizations wanting to incorporate and apply for charitable status should work with their legal counsel to review and address all applicable issues.

This *Bulletin* will focus on the incorporation procedures to be undertaken pursuant to the current regime established by Corporations Canada under the CNCA. While charities operating across Canada will also need to consider other compliance issues including, but not limited to, extra-provincial registrations, privacy, fundraising, investment powers, as well as legal risk management issues, those legal issues are beyond the scope of this *Bulletin*. This *Bulletin* has been prepared using plain language as much as possible in order to facilitate understanding of the issues described in this *Bulletin* by those volunteers of charities who may not necessarily have any legal background. As such, footnotes to authorities are not included, although references to resource websites are provided where appropriate.

For the balance of this *Bulletin*, please see [Charity & NFP Law Bulletin No. 446](#).

## Employee Dismissed for Vaping Cannabis and Driving Employer’s Car

By [Barry W. Kwasniewski](#)

On April 18, 2018, a labour arbitration board in Saskatchewan (the “Board”) released its decision in [The Town of Kindersley v Canadian Union of Public Employees Local 2740](#) in which the Board upheld an employer’s decision to dismiss a unionized employee for improper use of his medically prescribed cannabis. This decision is a reminder to charities and not-for-profits that the accommodation of an employee’s needs with respect to medical cannabis does not give an employee licence to use the substance in whichever way the employee sees fit. Rather, employees are expected to abide by company policies, rules, and workplace accommodation agreements and also conduct themselves responsibly in their use of

the substance. While this decision was released in 2018, the principles relating to workplace accommodation and the use of medically prescribed cannabis are important, especially in light of the recent legalization of recreational cannabis in Canada in October 2018, and the potential of the increased use of both medical and recreational use of cannabis across Canada as discussed in [Charity & NFP Law Bulletin No. 431](#).

For the balance of this *Bulletin*, please see [Charity & NFP Law Bulletin No. 447](#).

## Changes to Trademarks Definition and Registrability Coming

By [Sepal Bonni](#)

As previously reported in the [November 2018 Charity & NFP Law Update](#), significant changes to Canada's trademark law will take effect on June 17, 2019.

One notable change is that the definition of "trademark" will be amended from "a *mark* that is used by a person..." to "a *sign or combination of signs* that is used or proposed to be used by a person..." The word "sign" is also defined as "includ[ing] a word, a personal name, a design, a letter, a numeral, a colour, a figurative element, a three-dimensional shape, a hologram, a moving image, a mode of packaging goods, a sound, a scent, a taste, a texture and the positioning of a sign". The *Trademarks Act* has therefore been significantly broadened to include protection for these non-traditional trademarks. However, these non-traditional trademarks may be more difficult to secure and may require the applicant to furnish evidence of extensive use and promotion prior to obtaining a registration certificate.

The new law also includes utilitarian function as a universal bar to registrability, codifying Canadian case law. In particular, the amendments to the Act state that "a trademark is not registrable if, in relation to the goods or services in association with which it is used or proposed to be used, its features are dictated primarily by a utilitarian function." This prohibition against utilitarian function will apply to all marks under the amended Act, not only to distinguishing guises, as is currently the case. Further, it appears that the amendments to the Act do not make it possible to overcome functionality objections by filing evidence of acquired distinctiveness, as is the case in the USA.

An example of this doctrine is the USA case involving Hershey Chocolate & Confectionary Corporation ("Hershey"). Hershey filed a trademark application for the design of their candy bar that was described by Hersey as "a configuration of a candy bar that consists of twelve equally-sized recessed rectangular panels arranged in a four panel by three panel format with each panel having its own raised border within

a large rectangle”. The United States Patent and Trademark Office examiner denied the application on the basis that even if the individual features of the candy bar design were not considered functional, the combination of all of the features together were considered functional, since the configuration was to help break the chocolate bar into bite sized pieces. However, ultimately, Hersey provided extensive evidence that established the design as a whole had acquired distinctiveness and the configuration was granted trademark protection in the USA. It will be interesting to see how a similar case will be decided in Canada with the new prohibition.

Charities and not-for-profits should continue to monitor these amendments and strategies should be devised to maximize the scope of protection of trademark portfolios.

## **Court Denies Leave to Non-Profit to be Represented by Non-Lawyer**

By [Ryan M. Prendergast](#)

On March 19, 2019, the Ontario Superior Court of Justice denied leave to a non-profit corporation, the Humane Society of Canada for the Protection of Animals and the Environment (the “Society”), to be represented by a person who is not a lawyer. This motion, which was decided in [Canada Trust v Public Guardian and Trustee, 2019 ONSC 1768](#), was in the context of an estate matter where the deceased had willed the residue of her estate to be divided equally among four charities, including the Society. The executor sought court direction on the question of whether it would be in the public interest to execute the gift, worth approximately \$90,000, to the Society due to the Society’s “serious deficiencies in its management” that resulted in its charitable revocation, as reported in the [July/August 2015 Charity & NFP Law Update](#). The Society moved for leave to be represented by Mr. Michael O’Sullivan, a non-lawyer who is the chairman and CEO of the Society, the Humane Society of Canada Foundation, and also a director of a the Ark Angel Foundation, whose charitable revocation was reported in the [February 2019 Charity & NFP Law Update](#). Mr. O’Sullivan further deposed that it was his view that “a charity’s money should not be spent on lawyers.”

In finding that Mr. O’Sullivan was not reasonably capable of advocating on behalf of the Society, the court looked to his past conduct representing the other corporations as well as his conduct so far in the present application. The court commented that Mr. O’Sullivan’s advocacy in one proceeding “doubled the Society’s liability to the plaintiff” because of unfounded allegations and frivolous requests, while another proceeding resulted in the award of substantial costs against the corporation “taking into account its

vexatious conduct and unfounded allegations of impropriety against others.” In the present application, the court noted that Mr. O’Sullivan’s written materials demonstrated that he did not understand the issues nor how to present them to the benefit of the Society, which would result in frivolous positions and cost more money to the Society and parties impacted by the proceeding. Further, because he was also the sole witness to proceeding, the court found that taking on an additional role as an advocate would cause confusion.

As such, the court denied leave to the Society to be represented by Mr. O’Sullivan and ordered it to file a notice of appointment of solicitor within 15 days, exceeding which it would not be entitled to participate in the application. Further, the court awarded costs to the executor, fixed at \$22,000, to be deducted from the gift at issue, and the remaining \$68,000 to be paid into court until further order. The court also added the Public Guardian and Trustee (“PGT”) to the application as a party to have conduct over the application, despite the Society’s objection. The court commented that the PGT had a “long-established role in the exercise of the *parens patriae* function of the Crown”, had the expertise in the matter, and also conducted the investigation. As a result, the court stated that the “Public Guardian is the only logical candidate” to have carriage over the application.

It is not uncommon for charities to receive gifts from the estate of donors. When executing gifts from the estate to charities, the executor may raise concerns regarding the public benefit of such a gift if the organization has been shown to have issues in the way it is operated. As such, charities need to ensure that their assets and operations are properly managed. Further, the case serves as a reminder that it is best to consult with legal professionals when dealing with court proceedings. While being self-represented may appear to save money at the outset, a representative who is unfamiliar with court procedure or unable to advocate effectively for the organization may end up costing it more money and more reputational damage. Since the finance of charities come primarily from donors, the use of its assets, especially in court proceedings, should be spent responsibly and carefully.

## **Consultation on Social Finance Fund Announced**

By [Jacqueline M. Demczur](#)

Employment and Social Development Canada (“ESDC”) is seeking public input through an [online engagement process](#) (“Consultation”) concerning support for social purpose organizations (“SPOs”) through a Social Finance Fund. The Social Finance Fund was initially proposed through the 2018 Fall

Economic Statement, as discussed in [Charity & NFP Law Bulletin No. 435](#). Through the Consultation, which was announced on March 18, 2019, ESDC indicated that it is exploring avenues for supporting SPOs “in building their capacity to innovate and move towards participation in social finance opportunities.” To carry this out, ESDC aims to offer support for SPOs over a two-year period, with the aim of helping them scale their practices and improve their participation in the social finance market.

The Consultation follows after the September 2018 release of the Social Innovation and Social Finance Strategy Co-Creation Steering Group’s report on social innovation and social finance (“Report”), discussed in the [September 2018 Charity & NFP Law Update](#). The Report proposed twelve recommendations, including recommendations that would improve participation in social finance opportunities and specifically to “improve social purpose organizations’ access to federal innovation supports.”

A [Discussion Guide](#) has been published that provides a background on social innovation and social finance in Canada and discusses how ESDC’s Investment and Readiness Stream will support SPOs. In this regard, it indicates that the Investment and Readiness Stream will fund projects that support investment readiness, with a focus on four areas, including: (1) building SPOs’ technical capacity to access investments, funds and revenue sources; (2) impact measurement and knowledge mobilization; (3) emergence and growth of social finance intermediaries; and (4) early-stage innovations.

ESDC is seeking feedback, particularly from SPOs and associated groups; national and regional service delivery organizations, social finance intermediaries and associated groups; and entrepreneurs, social innovators, academics, experts and associated groups. The Consultation is open until May 31, 2019, and interested groups may respond by completing an [online questionnaire](#), or by email to [nc-social\\_innovation\\_sociale-gd@hrsdc-rhdcc.gc.ca](mailto:nc-social_innovation_sociale-gd@hrsdc-rhdcc.gc.ca).

## Special Senate Committee Update

By [Jennifer M. Leddy](#)

In April, the Special Senate Committee on the Charitable Sector (the “Committee”) continued to hear from witnesses on the impact of laws and policies on the charitable and not-for-profit sector and the impact of the voluntary sector in Canada. Videos of the hearings are available on the [Committee website](#) and transcripts are normally made available a couple weeks after the meeting.

On April 1, 2019, the Committee heard from various departments of the government, including the CRA, Public Services and Procurement Canada, Department of Finance, as well as Innovation, Science, and Economic Development Canada, amongst others. Other witnesses included the chief economist of Imagine Canada, the senior community planning consultant from the Social Planning Network of Ontario, and a professor in the department of politics and public administration at Ryerson University. A selection of topics discussed included government initiatives, such as the CRA's IT Modernization Project ("CHAMP"), and attracting individuals to the non-profit sector. Employment and human resources in the non-profit sector were identified as being of particular significance and recommendations were made, for example, to implement a federal student loan forgiveness program for those working in the non-profit sector.

On April 8, 2019 the Committee heard witnesses from the volunteer sector, including representatives from United Way Canada, Association of Fundraising Professionals, Imagine Canada, and the Muttart Foundation. Topics discussed focused on adapting the understanding of volunteerism to include the contribution of the younger generation, issues of funding, and strategies to improve employment in the sector such as improving job stability.

The Committee also held a round table discussion with legal experts to discuss various matters relating to the regulation of charities. Amongst the topics discussed were: the types of registered charities; the "destination of funds" test; the 3.5% disbursement quota; and an "expenditure responsibility test" compared to the test for direction and control and donations of private shares and real estate.

The April 1 and April 8, 2019 meetings were the last series of meetings held by the Committee, which will now begin to prepare its report, which is expected to be released in September 2019.

## **IN THE PRESS**

[\*\*Charity & NFP Law Update – March 2019 \(Carters Professional Corporation\)\*\*](#) was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.

[\*\*Federal Budget 2019: Impact on Charities and Not-for-Profits\*\*](#), *Charity & NFP Law Bulletin* No. 443 was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.

[\*\*Federal Budget Allows Donations to Canadian Journalism\*\*](#) is an article by Theresa L.M. Man and Ryan M. Prendergast that was published on April 15, 2019 in *The Lawyer's Daily*. This article is based on

*Charity & NFP Law Bulletin* No. 443 which was authored by Theresa Man, Ryan Prendergast, Esther Shainblum, Terrance Carter and Sean Carter.

[Robust Social Media Policy Vital for Charities, Not-For-Profits](#) is an article by Terrance S. Carter and Luis Chacin that was published on April 18, 2019 in *The Lawyer's Daily*.

## **RECENT EVENTS AND PRESENTATIONS**

[Practice Management Tools](#) was presented by Ryan M. Prendergast and Terrance S. Carter at the Ontario Bar Association Young Lawyer Division - Charity Program in Toronto on April 5, 2019. The handout is available at the Ontario Bar Association website for those who have membership login details.

**Gift Acceptance Policies – Hot Policies for Hot Gifts** was presented by Theresa L.M. Man and Terrance S. Carter at the CAGP 26th National Conference on Strategic Philanthropy in Montreal, Quebec, on April 10, 2019.

[Legal Challenges in Social Media for Charities and NFPs](#) was presented by Terrance S. Carter on Wednesday April 17, 2019. This is the first session of six in the [Spring 2019 Carters Charity & NFP Webinar Series](#) and is available “on demand” [here](#).

## **UPCOMING EVENTS AND PRESENTATIONS**

[Healthcare Philanthropy Seminar](#), co-hosted by Carters and Fasken in Toronto will be held on Wednesday May 22, 2019. Click [here](#) for registration details.

[Spring 2019 Carters Charity & NFP Webinar Series](#) will be hosted by Carters Professional Corporation on Wednesdays starting April 17, 2019. Click here for [online registration](#) for one or more individual sessions. Topics to be covered are as follows:

- **Protecting Your Brand in the Digital Age** by Sepal Bonni on Wednesday May 1, 2019 from 1:00 to 2:00 pm ET
- **Critical Privacy Update for Charities and NFPs** by Esther Shainblum on Wednesday May 15, 2019 from 1:00 to 2:00 pm ET

- **Charities and Politics: Where Have We Been and Where Are We Going** by Ryan M. Prendergast on May 22, 2019 from 1:00 to 2:00 pm ET
- **The Coming of the ONCA (We Hope) and What to Start Thinking About** by Theresa L.M. Man on Wednesday June 5, 2019 from 1:00 to 2:00 pm ET
- **Clearing the Haze: Managing Cannabis in the Workplace in Ontario** by Barry W. Kwasniewski on Wednesday June 12, 2019 from 1:00 to 2:00 pm ET

[CBA Charity Law Symposium](#), hosted by the Canadian Bar Association Charity & Not-for-Profit Law Section, will be held on Monday May 6, 2019. Jacqueline M. Demczur will present on the topic **Primer on Donor Advised Funds and Current Issues**.

[Volunteer Ottawa](#) is hosting a VO Workshop entitled **Duties and Liabilities of Directors and Officers of Charities and NFPs** on May 14, 2019 from 9:30 to 11:30 am.



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**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*<sup>TM</sup>.



**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 advice pertaining to insurance coverage matters to charities and not-for-profits.



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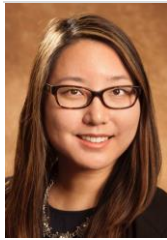
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**Esther Shainblum, B.A., LL.B., LL.M., CRM** – Ms. Shainblum practices at Carters Professional Corporation in the areas of charity and not for profit law, privacy law and health law. From 2005 to 2017 Ms. Shainblum was General Counsel and Chief Privacy 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.



**Christina Shum, B.M.T., J.D** – Ms. Shum graduated from Osgoode Hall Law School in 2018 and is Student-at-Law at Carters. While attending Osgoode, Christina interned at International Justice Mission where she provided research on bonded labour laws, and summered at CGI where she focused on contractual matters in IT law. She also volunteered as a community mediator and was Vice-President of Osgoode’s Women’s Network and Co-President of the Osgoode Peer Support Centre. Prior to attending law school, Christina obtained her Bachelors of Music Therapy from the University of Windsor and her Associate diploma in piano performance from the Royal Conservatory of Music.

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