

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

## MARCH 2019

### SECTIONS

Recent Publications and News	
Releases	2
In the Press	15
Upcoming Events and Presentations	15
Contributors	17

### HIGHLIGHTS

#### CRA News

- ◆ New Advisory Committee on the Charitable Sector Announced
- ◆ Reminder to Update Receipts

#### Corporate Update

- ◆ New Regulations Amending the *Canada Not-for Profit Corporations Regulations*
- ◆ New Regulations Amending the *Canada Cooperatives Regulations*

#### CRA Announces New Reporting Requirements in Light of PPDDA Changes

#### Federal Budget 2019: Impact on Charities and Not-For-Profits

#### Waiver Held Unenforceable for Not Contemplating Circumstances of Claim

#### Court of Appeal Upholds Decision to Dismiss s. 6 CAA Application Defamation Action Against Charity Can Proceed

#### Court of Appeal Rejects Tort of Harassment

#### Act Soon Before New Trademarks Law Comes Into Effect

#### Adjudicator Reviews Scope of Obligation to Search for Records under PHIPA

#### Statistics Canada Publishes New Study on Non-Profit Sector

#### Special Senate Committee Update

#### Anti-Terrorism/Money Laundering Update

- ◆ Changes to Canada's AML/ATF Regime in Budget 2019
- ◆ Charity Alleged to have Links to Terrorist Group
- ◆ Public Safety Canada Updates List of Suspected Terrorist Groups
- ◆ Update to US National Terrorist Financing Risk Assessment

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

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

Click here for [online registration](#) for one or more sessions.

### **Healthcare Philanthropy Seminar**

**SAVE THE DATE – Wednesday, May 22, 2019**

Co-hosted by Carters and Fasken in Toronto. Registration details will be available on our website soon.

### **Get on Our Mailing List:**

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

## RECENT PUBLICATIONS AND NEWS RELEASES

### **CRA News**

By [Terrance S. Carter](#)

#### **New Advisory Committee on the Charitable Sector Announced**

In a [news release](#) dated March 7, 2019, the Minister of National Revenue, the Honourable Diane Lebouthillier, announced the nomination of Hilary Pearson and Bruce MacDonald as co-chairs of the newly formed permanent [Advisory Committee on the Charitable Sector](#) (“ACCS”). The ACCS was first announced in the 2018 Fall Economic Statement, discussed in [Charity & NFP Law Bulletin No. 435](#), and is described as a “consultative forum for the Government of Canada to engage in meaningful dialogue with the charitable sector, to advance emerging issues relating to charities, and to ensure the regulatory environment supports the important work that charities do.”

The ACCS is [committed to](#) engaging with the charitable sector through meaningful dialogue with charities, and will provide recommendations to the Minister of National Revenue (“MNR”) and the Commissioner of the Canada Revenue Agency (“CRA”) on important and emerging issues that charities and other qualified donees face. The ACCS will meet a minimum of twice per year, and will provide ongoing reports to the MNR and Commissioner of the CRA.

#### **Reminder to Update Receipts**

As reported in the [February 2018 Charity & NFP Law Update](#), charities and qualified donees will need to update their official donation receipts with the CRA’s new website URL in order to comply with section 3501(1)(j) of the *Income Tax Regulations*. This section requires that official donation receipts include the name and website of the CRA. Charities and qualified donees will have until March 31, 2019 to update their receipts from the CRA’s previous [www.cra-arc.gc.ca](#) URL to the CRA’s more recent [www.canada.ca/charities-giving](#) URL. Since failure to issue a receipt in accordance with the *Income Tax Regulations* can be grounds for revocation, it will be important for charities to ensure that their receipts are in compliance.

## Corporate Update

By [Theresa L.M. Man](#)

### **New Regulations Amending the *Canada Not-for Profit Corporations Regulations***

As reported in the [June 2018 Charity & NFP Law Update](#), Corporations Canada conducted public consultations beginning on May 31, 2018 to update its fee schedules for services provided under the *Canada Not-for-profit Corporations Act* (“CNCA”). Following these consultations, new [Regulations Amending the Canada Not-for-profit Corporations Regulations](#) were published in the *Canada Gazette* on March 16, 2019, to amend various fees under the *Canada Not-for-profit Corporations Regulations*. The Regulatory Impact Analysis Statement indicates that fees under the CNCA have not been amended since 2011. It further indicates that the objectives of these proposed amendments are to encourage the use of low-cost service delivery methods, promote compliance with the CNCA, and support greater corporate transparency.

Examples of proposed changes include: reducing the fees for certain on-line services (such as filing annual returns); adding new on-line services (such as seeking priority services for incorporation and amendment for a fee, obtaining free copies of corporate records, or obtaining certified copies of corporate records); increasing the fees for certain non-online services (such as issuing certificates of incorporation or amendment, obtaining certificate of compliance or existence, and obtaining restated articles even if they were filed with articles of amendment); removing certain fees (such as filing articles of amendment in relation to changes of registered office address and/or number of directors); and imposing new fees (such as requesting exemption certificates for those matters that are currently free of charge). In this regard, section 94 and the fee schedule in the *Canada Not-for-profit Corporations Regulations* will be replaced.

A new escalator clause will be included in new section 94.1 requiring the fees set out in the fee schedule be adjusted on April 1, 2024, and every five years thereafter by increasing them by one percent and rounding down to the nearest multiple of five dollars. This approach would eliminate the need for annual increases to the service fees to minimize costly changes including to the Corporations Canada IT system.

The amendments will come into force on January 15, 2020.

### **New Regulations Amending the *Canada Cooperatives Regulations***

Similar to the amending regulations under the CNCA, new [Regulations Amending the Canada Cooperatives Regulations](#) amending various fees under the *Canada Cooperatives Regulations* were also published in the *Canada Gazette* on March 16, 2019. These amendments also followed the public

consultations conducted by Corporations Canada reported on in the [June 2018 Charity & NFP Law Update](#). In accordance with the Regulatory Impact Analysis Statement, fees for various services under the *Canada Cooperatives Act* (“Coop Act”), set out in Schedule 3 of the regulations have remained the same since 2001. The amendments are also intended to promote compliance with the Coop Act and to support greater corporate transparency. Although there are only limited on-line services for cooperatives, the proposed changes in the fees are intended to better align with the cost of delivering services. In addition, the proposed changes will clarify that the service fee is intended to cover the cost of reviewing the application and not for the issuance of the certificate, and therefore is payable when an application is filed. A new escalator clause will be included to require the fees set out in the fee schedule be adjusted on April 1, 2024, and every five years thereafter by increasing them by one percent and rounding down to the nearest multiple of five dollars.

The amendments will come into force on January 15, 2020.

## **CRA Announces New Reporting Requirements in Light of PPDDA Changes**

By [Terrance S. Carter](#) and [Ryan M. Prendergast](#)

As a result of changes to the *Income Tax Act* concerning the new public policy dialogue and development activities (“PPDDA”) regime, as discussed in [Charity & NFP Law Bulletin No. 438](#), reporting requirements for registered charities have changed. In response to these changes, the CRA announced on March 15, 2019 that it would be revising the T3010 Registered Charity Information Return for November 2019.

As the legislative changes implementing the PPDDA regime are retroactive, changes to reporting requirements under the T3010 are applicable immediately. However, as the T3010 has not yet been amended, registered charities filing their annual return will be required to submit the current T3010 as if it applied to PPDDAs until the amendments are made. In this regard, the CRA has posted an [instructional guide](#) (the “Guide”) to assist charities with proper filing.

The Guide advises charities to answer section C5 and Schedule 7, both currently concerning political activities, as if they applied to PPDDAs instead of political activities. Section C5 has been simplified, with question (a) being replaced with the question “Did the charity carry on any public policy dialogue and development activities during the fiscal period?” The remaining questions concerning amounts spent by

charities are to be ignored in light of the removal of quantitative limits on political activities. Section C5 (b), (c), and (d) are to be left blank.

Where charities have answered “yes” to this question, they will also need to complete Table 1 in Schedule 7 as if it read, “Describe the charity’s public policy dialogue and development activities, and explain how these relate to its charitable purposes.” Tables 2 and 3 concerning the nature of political activities and funding are to be left blank. Additionally, Line 5030 concerning political activities in Schedule 6 is to be left blank.

The Guide provides similar instructions for Form T2050, Application to Register a Charity under the *Income Tax Act*. As well, the Guide indicates that charities are to ignore the question “Was any part of the gift intended for political activities?” in Form T1236, Qualified Donees Worksheet/Amounts Provided to Other Organizations.

In the meantime, the question arises concerning why PPDDAs are being singled out as a charitable activity in the T3010 and T2050. Given that PPDDAs under the *Income Tax Act* are stated as being charitable activities (provided that they are not partisan and are carried out in support of the charitable purposes of the charity), it is not clear why the T3010 and T2050 would need to treat those activities as different from any other activities undertaken by a charity to achieve its charitable purposes.

## **Federal Budget 2019: Impact on Charities and Not-For-Profits**

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

On March 19, 2019, Finance Minister Bill Morneau tabled the [fourth budget](#) of the Liberal Federal Government (“Budget 2019”). Similar to previous budgets by the Liberal Government, Budget 2019 again focuses on investing in the middle class, economic growth, as well as advancing reconciliation with Indigenous peoples in Canada.

This *Charity & NFP Bulletin* provides a summary and commentary on these and other provisions from Budget 2019 that impact the charitable, not-for-profit, and health sectors. In this regard, Budget 2019 includes a number of important tax incentives and amendments. The most important are the addition of registered journalism organisations as qualified donees, as well as amendments to the *Income Tax Act* and the *Cultural Property Export and Import Act* to ensure that existing special tax incentives will continue to be available for donations of cultural property of outstanding significance to designated institutions in Canada, such as museums and public art galleries, notwithstanding a recent court decision that had raised

uncertainty in this regard. In addition, amendments are proposed to the *Excise Tax Act* to expand the list of GST/HST-exempt health care services to include a multidisciplinary health care service, as well as the creation of a \$755 million Social Finance Fund.

For the balance of this *Bulletin*, please see [Charity & NFP Law Bulletin No. 443](#).

## Waiver Held Unenforceable for Not Contemplating Circumstances of Claim

By [Barry W. Kwasniewski](#)

On February 19, 2019, the Supreme Court of British Columbia released its decision in [Peters v Soares](#), in which the court refused to enforce two liability waivers with respect to an individual who had been injured in a competition as a jiu-jitsu student of a martial arts academy. In holding both waivers unenforceable, the court affirmed the importance of using language that can demonstrate what each party was contemplating at the time of signing, and the need for organizations to keep proper records of such waiver agreements in order to be able to identify the exact terms to which a participant had agreed. This decision is important for charities and not-for-profits which utilize liability waivers, in that it demonstrates that courts will closely scrutinize the language of liability waivers to determine if they are to be enforced.

For the balance of this *Bulletin*, please see [Charity & NFP Law Bulletin No. 444](#).

## Court of Appeal Upholds Decision to Dismiss s. 6 CAA Application

By [Jacqueline M. Demczur](#)

On March 11, 2019, the Ontario Court of Appeal released its decision in [Faas v Centre for Addiction and Mental Health Foundation](#), affirming the [lower court's](#) decision (which was discussed in the [June 2018 Charity & NFP Law Update](#)) in rejecting a section 6 application under the *Charities Accounting Act*. The application, if granted, would have required the Public Guardian and Trustee (“PGT”) to investigate the use of donated funds by a public foundation and registered charity, the Centre for Addiction and Mental Health Foundation (“CAMH”).

By way of context, a donation of \$1-million had been made by the Faas Foundation and its principal, Andrew Faas (“Faas”) to CAMH for the development of a workplace mental health program, using a written Donor Investment Agreement (“DIA”) that contained terms requiring CAMH to provide an annual status report to the donor. Subsequently, Mr. Faas became dissatisfied with the progress of the program’s development, its design and implementation by CAMH and the disclosure of information provided by

CAMH, including financial accounting. As a result, Mr. Faas brought a section 6 application on the basis that it was in the public interest for the PGT to investigate whether the donation had been used for its designated purpose as agreed to in the DIA.

In dismissing the appeal, the Court of Appeal found that the motion judge did not err in finding that there were no grounds to order an investigation by the PGT and that such investigation would not serve any identifiable public interest, as Mr. Faas' section 6 application was "based on conjecture" and "[n]o mischief has been identified, and no misuse of funds is apparent from the record." The Court of Appeal held that the motion judge was "entitled to accept that evidence" that there had been no mismanagement of funds, and that the donation was being properly used for its designated purpose. As such, the Court of Appeal affirmed the lower courts' finding that Mr. Faas did not have a right to a "detailed accounting of CAMH's program and its use of funds."

Section 6 investigations are conducted at the cost of the public and, as demonstrated in this appeal decision, courts do not grant such applications unless there is an identifiable mischief and the application is for the benefit of the public. Nevertheless, charities should be careful when expending any donated funds to ensure that such donations are used to further their charitable purposes and, where specific restricted terms are imposed on a gift by a donor and agreed to by the charity, in accordance with the said restricted terms.

## **Defamation Action Against Charity Can Proceed**

By [Terrance S. Carter](#)

On March 4, 2019, the Court of Appeal for Ontario released its decision in [\*Lascaris v B'nai Brith Canada\*](#), in a defamation lawsuit arising out of an article and a social media "tweet" published by the respondent charity stating that the appellant, a then-candidate in the 2015 federal election for the Green Party of Canada, had advocated on behalf of terrorists on social media.

At the Superior Court, the motion judge had dismissed the action against the charity on the basis that it was a strategic lawsuit against public participation ("SLAPP lawsuit") pursuant to section 137.1 of the *Courts of Justice Act*. However, the Court of Appeal held that the action had none of the elements of a SLAPP lawsuit and that accusing any person of supporting terrorists is a serious and damaging allegation which is likely to cause harm to that person's reputation.

In its final remarks before remitting the matter back to the Superior Court, the Court of Appeal held that:

I do not mean to suggest that the views of the [charity] are not without merit or importance. However, fair disagreements over policies and principles can be undertaken, indeed ought to be undertaken, through responsible discourse. Whatever disagreements there may be between the appellant's views and the respondent's views, those views can be exchanged and debated without the need for personal attacks. [emphasis added]

This case is an important reminder for charities and not-for-profits to adopt and implement appropriate operational policies, such as a social media or a communications policy, that carefully consider the legal risks of using social media. Such considerations will be particularly important for charities that become engaged in public discourse under the new regime of public policy dialogue and development activities.

## **Court of Appeal Rejects Tort of Harassment**

By [Barry W. Kwasniewski](#)

On March 15, 2019, the Ontario Court of Appeal (the "Court") released its decision in [Merrifield v Canada \(Attorney General\)](#), overturning a lower court decision (discussed in the [Charity & NFP Law Bulletin No. 402](#)) that had established a freestanding tort of harassment. In the lower court decision, Merrifield, a police officer, successfully sued his employer, the Royal Canadian Mounted Police, for harassment as well as intentional infliction of mental suffering ("IMSS") and was awarded a judgment of \$100,000 for general damages as a result of such harassment.

On appeal, the Court found that the trial judge had erred in recognizing a tort of harassment, in the application of the test for IMSS, and that the judge had made palpable and overriding errors in "much of her fact-finding." Of interest to charities and not-for-profits is the Court's analysis with respect to its refusal to recognize a separate tort of harassment. The Court noted that "common law change is evolutionary in nature: it proceeds slowly and incrementally rather than quickly and dramatically." As examples, the Court cited *Bhasin v Hrynew* (in which the Supreme Court of Canada recognized a duty of honest contractual performance) and *Jones v Tsige*, which was discussed in [Charity Law Bulletin No. 277](#), (in which the Ontario Court of Appeal recognized the tort of intrusion upon seclusion) and emphasized that these cases merely confirmed an *existing* duty and tort.

While the Court did not "foreclose the development" of the tort of harassment, it stated that there was a lack of compelling evidence in this case to support the existence of the tort. The Court found that the cases relied upon by the trial judge confirmed "neither the existence of the tort nor its elements." Further, the Court had not been provided with any foreign judicial authority supporting the recognition of the tort, nor



any academic authority or policy rationale that would compel the Court to nevertheless recognize a tort of harassment and its requisite elements.

While the *Merrifield* appeal decision confirms that, for now, an employee cannot sue an employer for the common law tort of harassment, charities and not-for-profits must be mindful that employees still have statutory protections against harassment under any of the enumerated grounds in subsection 5(2) of the Ontario *Human Rights Code*. As such, charities and not-for-profits still need to implement effective workplace harassment policies to manage the risk with respect to harassment claims.

## **Act Soon Before New Trademarks Law Comes Into Effect**

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. As this date is fast approaching, charities and not-for-profits are reminded of the need to consider some of the key changes that will impact the way they approach protection of their intellectual property, both now and in the future.

In this regard, charities and not-for-profits should carefully review their trademark portfolios prior to June 17, 2019 and begin filing any outstanding trademark applications while the filing fees remain modest. After June 17, 2019, the filing fees will be increasing significantly, as trademarks will be registered on a fee per class basis. The current government flat filing fee of \$250 CAD, regardless of the number of classes, will soon be replaced by a \$330 CAD filing fee per class, plus \$100 CAD for each additional class of goods and services.

The most significant change to Canada's trademark regime is the simplification of the application process by removing the current "use" requirements. Trademark applicants will no longer be required to have first used the trademark, whether in Canada or abroad, prior to registration. This will open the door to trademark squatters and trolls to register marks that are currently unregistered. As has been stressed in the past, charities and not-for-profits with unregistered marks should be monitoring their marks and should act quickly to register their marks, or risk squatters and trolls registering their marks and requesting large sums of money in exchange for the registration certificate.

Currently, registered trademarks must be renewed every 15 years from the date of registration or their last renewal. However, as of June 17, 2019, this renewal period will be shortened from 15 years to 10 years. In addition to the shortened renewal period, the fee for renewals will increase significantly for multi-class

registrations, as discussed above. In order to take advantage of the lower renewal fees and maintain all classes of goods and services for one fixed-fee, charities and not-for-profits that own registered trademarks should renew these registrations before June 17, 2019.

## **Adjudicator Reviews Scope of Obligation to Search for Records under PHIPA**

By [Esther Shainblum](#)

On February 20, 2019, the Information and Privacy Commissioner of Ontario (“IPC”) released [PHIPA Decision 89](#) (the “Decision”) in response to a complaint under Ontario’s *Personal Health Information Protection Act, 2004* (“PHIPA”). In this case, an individual had sought access to his late wife’s personal health records in his capacity as her estate trustee from the Mississauga Halton Local Health Integration Network (the “LHIN”). In response, the LHIN issued a decision granting him access to the personal health information, but stated that all non-health related information would be severed from the records in accordance with subsection 52(3) of PHIPA.

Following a complaint with the Office of the IPC, the LHIN agreed to conduct further searches for additional records and issued a revised decision to provide the individual with health care records in the possession of the wife’s care service providers. However, the individual complained further that additional records existed, namely a copy of his late wife’s last will that was allegedly provided to a person/nurse, and moved the complaint to the adjudication stage before the IPC.

In the Decision, the IPC considered whether the LHIN had conducted a reasonable search for the records. In doing so, the adjudicator applied the principles established in previous IPC decisions that had canvassed reasonable search orders issued under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* and found them to be relevant to PHIPA. Having considered the LHIN’s evidence, the adjudicator stated that health information custodians are not required by PHIPA to “prove with absolute certainty that further records do not exist”, but rather only to provide “sufficient evidence to demonstrate that they have made a reasonable effort to identify and locate responsive records.” It further stated that “a reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records that are reasonably related to the request.”

In this case, the adjudicator found that the individual’s request was for “the complete health record” of his wife, which was different from a request for “any records of his and his wife’s communications with the

LHIN and its predecessor organization.” In this regard, the adjudicator found that the wife’s will was a peripheral record and was not directly related to health care provision, and that it therefore fell outside the scope of the request. The adjudicator also stated that the requester must provide a reasonable basis for concluding that additional records exist. The adjudicator considered the scope of the search conducted by the LHIN, as well as the nature of the employees who had carried it out, all of whom were experienced employees knowledgeable in the subject matter of the request. Based on the evidence given, the adjudicator held that the LHIN had made a reasonable effort to locate the records reasonably requested, and dismissed the complaint.

Section 52 of PHIPA provides individuals with a right of access over their own personal health information, and the Decision is a useful reminder to “health information custodians”, including certain charities and not-for-profits, such as hospitals, long-term care homes, home care providers and community care access centres, of the scope of their legal duty to provide access to such information in accordance with section 54. Such organizations need only provide sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records in accordance with the factors laid out in the Decision. Further, in cases where requesters insist that they have not received a complete record, the onus is not on the health information custodian to prove that the records do not exist. Rather, the requester must provide a reasonable basis for concluding that additional records exist.

## **Statistics Canada Publishes New Study on Non-Profit Sector**

By [Jennifer M. Leddy](#)

On March 5, 2019, Statistics Canada released [\*Non-profit institutions and volunteering: Economic contribution, 2007 to 2017\*](#) (the “Study”), a technical and statistics-focussed study of the Canadian not-for-profit sector between 2007 and 2017. Undertaken in partnership with Imagine Canada, the Study provides an overview of the economic contributions of the “non-profit sector”, as defined in accordance with the [\*United Nations Handbook of Satellite Accounts on Non-profit and Related Institutions and Volunteer Work\*](#). This spans a wide range of organizations falling under three broad categories including: (1) “community non-profit institutions” such as those that are faith-based or engage in social services, advocacy, or sports and recreation; (2) “business non-profit institutions” such as chambers of commerce, unions and condominium associations; and (3) “government non-profit institutions” such as hospitals and universities.

The Study provides various gross domestic product (“GDP”) statistics for the non-profit sector, and indicates that the non-profit sector’s economic activity totalled \$169.2 billion in 2017. This amounts to 8.5% of Canada’s GDP. Volunteer activities, if given an economic value and included in the study, would have added another estimated \$41.8 billion to the economy in 2013. Across provinces, the Study also found the percentage of individual provincial or territorial economy’s GDP that the non-profit sector accounted for varied across the provinces and territories, with Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Prince Edward Island, and Quebec having the highest percentage.

Concerning funding and income, the Study indicates major sources of income varied between the categories of non-profits. For example, the Study found that the largest source of income for community non-profit institutions was government funding, representing 30% of their income, with donations from households representing only 17.8% of their income. Business non-profit institutions derived 61.6% of their income from sales of goods and services, and government non-profit institutions unsurprisingly derived a vast majority of their funding from other government institutions.

The Study also outlines employment in the non-profit sector, indicating that employment rose by 1.1% in 2017. This is a result of the growth of employment in government and business non-profits, however, as the Study also indicates that employment in community non-profits declined by approximately 6,000 jobs, or 1% during the same period.

The Study outlines the overall nature of the non-profit sector across Canada and provides some interesting and enlightening statistics that demonstrate the strength and size of the non-profit sector in Canada. Charities and not-for-profits may therefore have an interest in reviewing the study to better understand their role and contribution toward the non-profit sector as a whole.

## **Special Senate Committee Update**

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

The Special Senate Committee on the Charitable Sector (the “Committee”) held three meetings in February and March 2019 to hear from witnesses in its study of the impact of laws and policies on the charitable and not-for-profit sector and the impact of the voluntary sector in Canada. One meeting was held on February 25 and two meetings were held on March 18. Videos of each meeting are available on the [Committee website](#), and transcripts are also posted online, usually a few weeks after the meetings occur.

On February 25, 2019, the Committee heard from a number of witnesses representing small and large charitable organizations from across Canada involved in the development of youth leadership, refugee work, faith-based camps, academic circles and others. Challenges that were highlighted by some of the witnesses include the need to attract and retain volunteers in the sector, as well as financial barriers faced by smaller organizations that have difficulty paying a sustainable living wage to employees while maintaining low-cost programs accessible to low-income beneficiaries. Some of the recommendations presented by witnesses included removal of the capital gains tax on donations of real estate and company asset donations to help support charitable giving to universities; an exemption for charitable organizations from Canada's anti-spam legislation due to the administrative burden and updating the data collected on the charitable sector.

On the morning of March 18, 2019, the Committee heard from executives of charitable and non-profit organizations, individual witnesses, and other professionals from the sector. Topics presented at the hearing included the need for sustained government support for the sector (as opposed to disjointed legislative responses to specific problems that may arise from time to time); a clear legislative framework to outline the legal parameters that apply to the sector, given that a number of the current laws are confusing and open to both abuse and lack of use; a review of requirements that apply to "non-profit organizations" under paragraph 149(1)(l) of the *Income Tax Act*; and updating of antiquated legal requirements that apply to fundraising opportunities for charities, such as raffles and 50/50 draws. Given the importance of charitable fundraising to support charitable programs, several initiatives were presented to increase trust in charitable fundraising, as well as a recommendation that professional fundraising be accepted as a legitimate practice.

Also during the morning, the Canadian Council of Christian Charities ("CCCC") presented its comments regarding the continuation of advancement of religion as a charitable purpose because of its many public benefits. In that regard, CCCC noted that Canadian society benefits from having a strong core of Canadians whose religious beliefs and teachings inspires them to find fulfillment in serving others; and that Statistics Canada data reveals that religious people support secular charities financially and through volunteerism, more than nonreligious people do, greatly increasing the support that the non-religious have available to them. In addition, CCCC noted that many non-religious people benefit from community support programs run by places of worship, such as marriage and parenting seminars, after school programs, tutoring, seniors' programs and others.

In the afternoon of March 18, 2019, the Committee heard from more representatives and individuals involved in the sector, including representatives of Canadian charities providing international humanitarian services, including Islamic Relief Canada, a Canadian-Muslim humanitarian organization. Witnesses shared about the financial and operational challenges faced when trying to comply with onerous requirements that apply to registered charities to exercise “direction and control” over humanitarian programs carried out overseas (as well as other requirements that apply under the *Income Tax Act* and CRA requirements), while attempting to fulfil programming objectives, such as achieving localized sustainable development goals encouraged by Global Affairs Canada. Committee meetings will continue on April 1, 2019.

## **Anti-Terrorism/Money Laundering Update**

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

### **Changes to Canada’s AML/ATF Regime in Budget 2019**

Tabled on March 19, 2019, Budget 2019 proposes changes to strengthen Canada’s AML/ATF regime, including changes to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and the *Criminal Code*. For additional information on Budget 2019 with regard to these changes, see [Charity & NFP Law Bulletin No. 443](#).

### **Charity Alleged to have Links to Terrorist Group**

On February 23, 2019, the revocation of charitable registration of the Anatolia Cultural Foundation was [published in the Canada Gazette](#). The [summary of reasons for revocation](#) available on the website of the CRA Charities Directorate states that the charity failed to meet a number of compliance requirements, such as failure to demonstrate direction and control with regard to gifts to a non-qualified donee and failure to file a Charity Information Return (T3010). The charity was also found to have been involved through its various funding and gifting arrangements, either knowingly or unknowingly, with extending the benefits of its status as a registered charity to fund the activities of various organizations, including militia groups and political groups, linked to or openly supporting the Kurdistan Workers Party (PKK), an organization listed as a terrorist entity in Canada since December 10, 2002.

Charities involved in activities outside Canada should have adequate due diligence procedures in place to reduce the risk of unknowingly providing any kind of support to any of the entities listed by Public Safety Canada as a suspected terrorist group.

## **Public Safety Canada Updates List of Suspected Terrorist Groups**

On February 11, 2019, the [list of entities](#) believed to be involved in or associated with terrorism, a list maintained by the Governor in Council on the recommendation of the Minister of Public Safety and Emergency Preparedness pursuant to section 83.05 of the *Criminal Code*, was updated to include Harakat Sawa'd Misr (also known as Hasam), a nationalist movement attempting to overthrow the government of Egypt.

## **Update to US National Terrorist Financing Risk Assessment**

On December 20, 2018, the United States Department of Treasury published its [2018 National Terrorist Financing Risk Assessment](#) (the "Report"). The Report provides an overview of the risks of terrorist financing in the United States and recognizes that the charitable sector as a whole does not present a uniform or unacceptably high risk of exploitation for money laundering and terrorist financing. The Report acknowledges that the existing regime of enforcement, oversight, outreach and self-regulation initiatives has been largely effective at reducing the exploitation of charitable organizations for terrorist financing.

However, the Report states that, while charitable organizations operating solely inside the US face a low risk of abuse, the risk is higher for charitable organizations with operations outside the US, where terrorist groups, such as the Islamic State of Iraq and Syria (ISIS) are more active, including Afghanistan, Pakistan, Somalia, Syria, and Yemen. In this regard, the Report explains that terrorist supporters abuse charitable organizations operating outside the US as a front or cover to raise and move funds, personnel, military supplies, and other resources, as well as to deliver humanitarian assistance with the purpose of radicalizing vulnerable communities.

## **IN THE PRESS**

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

## **UPCOMING EVENTS AND PRESENTATIONS**

[Ontario Bar Association Young Lawyer Division - Charity Program](#) will be held in Toronto on Friday, April 5, 2019. Ryan M. Prendergast and Terrance S. Carter will present on the topic "Practice Management Tools."

[CAGP 26<sup>th</sup> National Conference on Strategic Philanthropy](#), will be held in Montreal, Quebec, on April 10, 2019. The topic “Gift Acceptance Policies – Hot Policies for Hot Gifts” will be presented by Theresa L.M. Man and Terrance S. Carter.

[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:

- **Legal Challenges in Social Media for Charities and NFPs** by Terrance S. Carter on Wednesday April 17, 2019 from 1:00 to 2:00 pm ET
- **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 5, 2019. Jacqueline M. Demczur will present on the topic Primer on Donor Advised Funds and Current Issues.

**SAVE THE DATE – Healthcare Philanthropy Seminar**, co-hosted by Carters and Fasken in Toronto will be held on Wednesday May 22, 2019. Registration details will be available on our website soon.



## CONTRIBUTORS

Editor: Terrance S. Carter

Assistant Editors: Adriel N. Clayton and Ryan M. Prendergast



**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 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, 2019), and co-author of *Branding and Copyright for Charities and Non-Profit Organizations* (2014 LexisNexis). He is recognized as a leading expert by *Lexpert*, *The Best Lawyers in Canada* and *Chambers and Partners*, 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](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca) and [www.antiterrorism.ca](http://www.antiterrorism.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 (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.



**Luis R. Chacin**, LL.B., M.B.A., LL.M. - Luis was called to the Ontario Bar in June 2018, after completing his articles with Carters. Prior to joining the firm, Luis worked in the financial services industry in Toronto and Montreal for over nine years, including experience in capital markets. He also worked as legal counsel in Venezuela, advising on various areas of law, including pensions, government sponsored development programs, as well as litigation dealing with public service employees. His areas of practice include Corporate and Commercial Law.



**Nancy E. Claridge**, B.A., M.A., LL.B. – Called to the Ontario Bar in 2006, Nancy Claridge is a partner with Carters practicing in the areas of charity, anti-terrorism, real estate, corporate and commercial law, and wills and estates, in addition to being the firm's research lawyer and assistant editor of *Charity & NFP Law Update*. After obtaining a 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*<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.



**Jennifer M. Leddy, B.A., LL.B.** – Ms. Leddy joined Carters' Ottawa office in 2009, becoming a partner in 2014, to practice charity and not-for-profit law following a career in both private practice and public policy. Ms. Leddy practiced with the Toronto office of Lang Michener prior to joining the staff of the Canadian Conference of Catholic Bishops (CCCCB). In 2005, she returned to private practice until she went to the Charities Directorate of the Canada Revenue Agency in 2008 as part of a one year Interchange program, to work on the proposed "Guidelines on the Meaning of Advancement of Religion as a Charitable Purpose."



**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 vice chair of 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*.



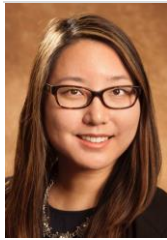
**Esther S.J. Oh, B.A., LL.B.** – A partner with Carters, Ms. Oh practices in charity and not-for-profit law, and is recognized as a leading expert in charity and not-for-profit law by *Lexpert*. Ms. Oh has written numerous articles on charity and not-for-profit legal issues, including incorporation and risk management for [www.charitylaw.ca](http://www.charitylaw.ca) and the *Charity & NFP Law Bulletin*. Ms. Oh is a regular speaker at the annual *Church & Charity Law Seminar*<sup>TM</sup>, 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 has co-authored papers for the Law Society of Ontario, and has written articles for *The Lawyers Weekly*, *Hilborn:ECS*, Ontario Bar Association *Charity & Not-for-Profit Law Section Newsletter*, *Charity & NFP Law Bulletins* and publications on [www.charitylaw.ca](http://www.charitylaw.ca). Ryan has been a regular presenter at the annual *Church & Charity Law Seminar™*, Healthcare Philanthropy: Check-Up, Ontario Bar Association and Imagine Canada Sector Source.



**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.

## 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](mailto: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. (Counsel to Fasken)	tcarter@carters.ca
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
Sepal Bonni B.Sc., M.Sc., J.D.	sbonni@carters.ca
Adriel N. Clayton, B.A. (Hons), J.D.	aclayton2@carters.ca
Luis R. Chacin, LL.B., M.B.A., LL.M.	lchacin@carters.ca

### STUDENT-AT-LAW

Christina Shum, B.M.T., J.D.	cshum@carters.ca
------------------------------	------------------

### Toronto Office

67 Yonge Street, Suite 1402  
Toronto, Ontario, Canada  
M5E 1J8  
Tel: (416) 594-1616  
Fax: (416) 594-1209

### Orangeville Office

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

### Ottawa Office

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