

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

## FEBRUARY 2020

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### [2020 Carters Charity & NFP Webinar Series](#)

Hosted by Carters Professional Corporation on Wednesdays starting April 15, 2020  
Click here for [online registration](#) for one or more sessions.

### **Healthcare Philanthropy Seminar**

**SAVE THE DATE – Friday, June 19, 2020**

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

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If passed, Bill C-7 would amend the *Criminal Code* to repeal the requirement that a person's natural death be reasonably foreseeable in order for that person to be eligible for medical assistance in dying, specify that persons whose sole underlying medical condition is a mental illness are not eligible for medical assistance in dying, create safeguards before medical assistance in dying may be provided, permit medical assistance in dying to a person who has lost the capacity to consent as long as it is on the basis of a prior agreement entered into with the medical practitioner or nurse practitioner providing medical assistance in dying, among other amendments.

### **Ontario Bill 175, *Connecting People to Home and Community Care Act, 2020***

On February 25, 2020, [Bill 175, \*Connecting People to Home and Community Care Act, 2020\*](#) ("Bill 175") was introduced at the Legislative Assembly of Ontario and carried after first reading. If passed, Bill 175 will amend the *Connecting Care Act, 2019* and *Ministry of Health and Long-Term Care Act*, provide for a transitional repeal of the *Home Care and Community Services Act, 1994*, among a number of consequential amendments to other provincial acts. Bill 175 will replace all references to "integrated care delivery systems" in the *Connecting Care Act, 2019*, discussed in the [April 2019 Charity & NFP Law Update](#), with references to "Ontario Health Teams", which is the terminology used by all stakeholders. Of note, Bill 175 would open the door for Ontario Health to authorize a health service provider or Ontario Health Team to govern the funding and oversight of home and community care services.

On the same date, the Minister of Health, recognizing that "home and community care is part of an integrated system and is not a stand-alone service", released a [consultation](#) on proposed regulations under the *Connecting Care Act, 2019* and other legislation in anticipation of the enactment of Bill 175. The consultation is open until April 14, 2020.

### **Ontario Bill 136, *Provincial Animal Welfare Services Act, 2019* Now Proclaimed**

On January 1, 2020, a number of provisions of the [Provincial Animal Welfare Services Act, 2019](#) ("PAWS-2019") came into force by [proclamation](#), repealing the *Ontario Society for the Prevention of Cruelty to Animals Act* and making consequential amendments to the *Animal Health Act, 2009* and the *Dog Owners' Liability Act*. As discussed in the [November 2019 Legislation Update](#), PAWS-2019 was introduced as a result of the Ontario Superior Court of Justice decision in *Bogaerts v Attorney General of Ontario*, discussed in the [January 2019 Charity & NFP Law Update](#) and the [June 2019 Legislation Update](#), with regard to the constitutionality of the government's delegation of search and seizure powers to a private organization, the Ontario Society for the Prevention of Cruelty to Animals. Of note, PAWS-2019 provides

for the appointment of a Chief Animal Welfare Inspector and deputy Chief Animal Welfare Inspectors, with statutory powers to investigate offences under the legislation, apply for warrants, when appropriate, as well as other enforcement powers.

## **Donation Receipts Signed by and in Favour of Charity Officer Denied**

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

On January 30, 2020, the Tax Court of Canada (“TCC”) released its decision in [Ampratwum-Duah v The Queen](#), denying the appeal by Rev. Augustine Ampratwum-Duah (the “Appellant”) of three concurrent reassessments respecting denial of charitable donations the Appellant had claimed for the 2005, 2006 and 2007 taxation years. Specifically, the Appellant testified he had made charitable deductions, in the total amounts of \$3,550, \$9,120 and \$6,346 for his 2005, 2006 and 2007 taxation years respectively to the then-recognized charity, named “City Chapel Ministries International” (“CCMI”), of which the Appellant was the religious leader. Each of the three donation receipts put in evidence (one for each year) had been signed by the Appellant in his capacity as CCMI’s religious leader. The TCC stated that no corroborating evidence such as bank account or church records were submitted in evidence, nor were any other CCMI officials, such as the then-Treasurer, called to testify on the basis that no such records were available because the donations had been made more than six years earlier.

The Appellant argued that his receipts should constitute sufficient evidence of the donations, that his income was sufficient to support the claimed amounts, and that too many years had passed to be able to obtain bank records. The CRA argued that no gift had been made, the Appellant had access as religious leader to CCMI records, and alleged the Appellant had signed his own donation receipts. The CRA also cited section 230 of the *Income Tax Act* (Canada) (“ITA”), which requires taxpayers to keep corroborating books and records sufficient to determine their tax liabilities for at least six years or until the expiration of any objection or appeal.

In dismissing the appeal, the TCC found for the Respondent, on the basis that the requirement in subsection 230(6), that supporting books and records be retained and available until an appeal has been concluded, was not complied with. The TCC stated that corroborating books and records (both bank and CCMI supporting records) were reasonably required in this case, particularly since the Appellant was the sole signatory of the CCMI receipts. The TCC clarified that it had not found that the claimed donations were not made, but instead that there was insufficient evidence required by subsection 230(6) to







Unincorporated associations are incapable of owning or holding property. In this regard, the court indicated that they also cannot be beneficiaries or settlors of a trust, as a valid trust requires the settlor, trustee and beneficiary to have capacity. Despite TSA incorporating in 2005, the court found that since TSA was incapable of holding an interest in Camp Jackson at first instance, there was no interest that the incorporated TSA could succeed either as settlor or beneficiary.

The court then considered whether the 1960 Transfer established a valid trust. It considered the “three certainties” (*i.e.* certainty of intention, subject matter, and objects), and found that Mr. Jackson intended to create a trust through the 1960 Transfer by him to the three trustees, and that the trust clearly described the subject matter as being Camp Jackson. However, concerning certainty of objects, it questioned whether the trust was in favour of persons or a charitable purpose, and whether the class of beneficiaries were described in sufficiently certain terms for trust to be performed.

Although the court did not find a private trust, it held that there was a valid charitable purpose trust. It found that the 1960 Transfer was “of benefit to society, sufficiently public in nature, exclusively charitable and without political purpose,” given the restriction that Camp Jackson must be used “only for the promotion of youth welfare.” It held that this restricted purpose fell within “advancement of education,” and satisfied the certainty of object requirement. Further, it stated that the charitable purpose trust continued with the 1971 Transfer to Kinsmen.

In contrast to the 1960 and 1971 Transfers, the court found that the 1983 Transfer omitted reference to Scouts taking title as trustee. The court concluded that this omission was deliberate. Although TSA argued that Scouts could only take the title as held by the transferor (*i.e.* as trustee), the court found that Mr. Jackson consented to the disposition of Camp Jackson to Scouts in accordance with his restriction. The court therefore held that Scouts took full legal title to Camp Jackson through the 1983 Transfer. On these grounds, the court dismissed TSA’s application and allowed Scouts’ application in part, with a declaration the Provincial Council for Ontario; Boy Scouts of Canada holds legal title to Camp Jackson, and a declaration that TSA has no beneficial interest in Camp Jackson.

This case is a good illustration of the difficulties associated with real property ownership by unincorporated associations. Further, it is a helpful reminder of the importance of clearly drafted trust documents to outline the intention of parties when entering into a trust arrangement.







## Recent Issues in Privacy: Case Law Update

By [Esther Shainblum](#)

Three recent court decisions illustrate the rapid pace of change in the Canadian privacy landscape and the uncertainty in predicting the parameters of individual privacy rights. These cases, discussed below, are (i) the Ontario Superior Court of Justice's decision in [Yenovkian v Gulian](#), in which the court recognized the new privacy tort of "publicity placing a person in a false light"; (ii) the Ontario Superior Court of Justice's decision in [Stewart v Demme](#), in which a class action was certified for a privacy breach claim, apparently narrowing a previous, inconsistent decision of the court; and (iii) the Court of Queen's Bench of Alberta's decision in [R v Bykovets](#), in which it was held that there is no reasonable expectation of privacy in IP addresses. This *Bulletin* provides brief summaries of these decisions, all of which will have application to charities and not-for-profits in a privacy context.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 463](#).

## New Canadian UDRP Provider for Resolving Domain Name Disputes

By [Sepal Bonni](#)

As digitalization moves forward at a rapid pace, disputes over domain names can arise for charities and not-for-profits, particularly where abusive registrations have been made in bad faith by third parties. Domain name dispute arbitrations are governed by global uniform rules. Canadian domain name disputes regarding ".ca" domain names are decided under the Canadian Internet Registration Authority's Dispute Resolution Policy. Disputes regarding generic top level domains ("gTLD") such as ".com", ".org", and ".net", are dealt with pursuant to the Uniform Domain Name Dispute Resolution Policy ("UDRP"). The [UDRP](#) was established by the [Internet Corporation for Assigned Names and Numbers](#) ("ICANN"), which is an international non-profit corporation that coordinates the Domain Name System across the world. The UDRP sets out the legal framework for resolving domain name disputes between a domain name registrant and a third party when there has been an abusive registration. It applies to all generic top-level domain ("gTLD") names (e.g. .com, .org, and .net), as well as some country code top-level domains, such as .au. The UDRP is particularly helpful to trademark owners who wish to recover domain names that have been registered in bad faith and are infringing their registered trademarks. Trademark owners looking to file a complaint under the UDRP now have an additional provider where they can submit their complaints. On November 7, 2019, the [Canadian International Internet Dispute Resolution Centre](#) ("CIIDRC") started









- Difficulties in collecting evidence of the impact of counter-terrorism legislation and measures on principled humanitarian action, by failing to engage constructively with civil society actors on counter-terrorism legislation;
- Financial de-risking, where banks refuse to provide services to humanitarian organizations to avoid onerous compliance requirements; and
- The increased burden of counter-terrorism legislation on donor agreements including provisions regarding recruitment, procurement and programming where such obligations must be passed on to any implementing partners, contractors or sub-grantees.

In this regard, the Paper also offers a few key recommendations targeted to the UN Security Council, donors and the FATF. These recommendations include adding humanitarian exemptions and exceptions to counter-terrorism legislation and measures; improving wording and language of UN Security Council Resolutions; increased systematic monitoring of and reporting on the impact of sanctions regimes and counter-terrorism measures on humanitarian work; greater transparency and accountability of UN counter-terrorism bodies; and the development of risk-sharing measures among donors, humanitarian organizations and financial institutions.

## **Essential Trademark Issues for Charity and Not-For-Profit Lawyers**

By [Terrance S. Carter](#)

For registered charities and other not-for-profits, their trademarks may be one of the most valuable assets that they own. As such, failure to protect such assets could have serious consequences for the directors of those organizations as well as for the organizations themselves. For instance, with regard to charities, the common law places a high fiduciary duty on directors to act as trustee-like stewards of the charitable property entrusted to them and to take reasonable steps to protect those assets. For this reason, it is important that directors of charities, as well as not-for-profits, understand the appropriate steps that are involved in protecting the organization's trademarks. To avoid the situation where a charity or not-for-profit is precluded from addressing an intellectual property challenge because the appropriate steps were not taken in a timely manner, it is important for a lawyer when initially consulting with a charity or not-for-profit to identify.

This paper was prepared for the Ontario Bar Association's Institute 2019: Audits, Working with Indigenous Communities, and Key Updates in Charity and Not-For-Profit Law. To reference the full paper, see "[Essential Trademark Issues for Charity and Not-For-Profit Lawyers.](#)"

## **Theresa L.M. Man Named to CRA Technical Issues Working Group**

Carters is proud to announce that Theresa L.M. Man is serving as a member of the CRA Charities Directorate's [Technical Issues Working Group](#) for a two-year term during 2020 and 2021. The Technical Issues Working Group advises the CRA on registered charity and qualified donee regulation issues, and is composed of CRA and Department of Finance Canada officials, as well as members of the charitable sector. Its mandate is to provide a forum to discuss trends and technical issues in the charitable sector, in order to explore workable solutions, and expand the Directorate's understanding of this sector.

## **IN THE PRESS**

[Charity & NFP Law Update – January 2020 \(Carters Professional Corporation\)](#) was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.

## **RECENT EVENTS AND PRESENTATIONS**

[Essential Trademark Issues for Charity and Not-For-Profit Lawyers](#) was presented by Terrance S. Carter at the Ontario Bar Association's Institute on Tuesday, February 4, 2020. [Paper](#) and [Handout](#) are posted at our website.

**The Changing Compliance Landscape for Charities and NFPs** was presented by Terrance S. Carter at the CSAE Winter Summit held on Thursday, February 6, 2020 in Alliston, Ontario.

Terrance S. Carter participated in a panel discussion at the **CPA Canada Not-for-Profit Forum 2020** that covered the most significant issues and opportunities in the not-for-profit sector, on Monday, February 10, 2020, in Vancouver, B.C. Others on the panel include Alison Brewin from Vantage Point and Paul Nazareth from the Canadian Association of Gift Planners.

**The 13th Annual Ottawa Region Charity & NFP Law Seminar** was hosted by Carters Professional Corporation in Ottawa, Ontario, on Thursday February 13, 2020 with more than 350 in attendance.

## UPCOMING EVENTS AND PRESENTATIONS

**The Social Purpose Real Estate Law Conference** will be hosted by the University Of Toronto Faculty Of Law on March 27, 2020. Nancy E. Claridge will participate on a three-person panel on real estate issues.

[2020 Carters Charity & NFP Webinar Series](#) will be hosted by Carters Professional Corporation on Wednesdays starting April 15, 2020. Click here for [online registration](#) for one or more individual sessions. Topics to be covered are as follows:

- **New Trademarks Act Now in Force: What it Means for Your Charity or NFP** by Sepal Bonni on Wednesday, April 15th - 1:00 - 2:00 pm ET
- **You Can't Fire Me for That: I'm Off Duty!** by Barry W. Kwasniewski on Wednesday, April 29th - 1:00 - 2:00 pm ET
- **Governance 101 for Charities & NFPs: Back to the Basics** by Theresa L.M. Man on Wednesday, May 6th - 1:00 - 2:00 pm ET
- **Evolving Trends in Philanthropy: More Than Just Charitable Donations** by Terrance S. Carter on Wednesday, May 20th - 1:00 - 2:00 pm ET
- **Navigating Privacy Breaches for Charities and NFPs** by Esther Shainblum on Wednesday, June 3rd - 1:00 - 2:00 pm ET
- **Managing Sexual Abuse Claims: The New Reality for Churches & Charities** by Esther S.J. Oh and Sean S. Carter on Wednesday, June 17th - 1:00 - 2:00 pm ET
- **Registered Journalism Organization: New Entry for Qualified Donees** by Ryan M. Prendergast on Wednesday, June 24th- 1:00 - 2:00 pm ET

[Privacy Law Summit](#) hosted by the Ontario Bar Association will include a session on Practical Advice for Drafting and Negotiating Privacy-Related Provisions in Health-Sector Vendor Agreements on April 1, 2020. Esther Shainblum will moderate this panel discussion.

[CAGP National Conference on Strategic Philanthropy](#) will be held in Regina, Saskatchewan on April 23, 2020. Theresa L.M. Man will present on the topic of “Foreign or Non-resident Donors.” Terrance Carter will participate in giving an update on the work of the CRA Advisory Committee on the Charitable Sector.

[CBA Charity Law Symposium](#) will be held on May 22, 2020. Theresa L.M. Man will present on the topic of “CNCA 10 Years In: Lessons Learned and Pitfalls to Avoid.”

**SAVE THE DATE – Healthcare Philanthropy Seminar**, co-hosted by Carters and Fasken in Toronto will be held on Friday, June 19, 2020. Registration details will be available on our website soon.

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**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, 2020), and co-author of *Branding and Copyright for Charities and Non-Profit Organizations* (2019 LexisNexis). He is recognized as a leading expert by *Lexpert*, *The Best Lawyers in Canada* and *Chambers and Partners*. Mr. Carter is a member of CRA Advisory Committee on the Charitable Sector, and is a Past Chair of the Canadian Bar Association and Ontario Bar Association Charities and Not-for-Profit Law Sections. He is editor of [www.charitylaw.ca](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca) and [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca).



**Sean S. Carter**, B.A., LL.B. – Sean Carter is a partner with Carters and the head of the litigation practice group at Carters. Sean has broad experience in civil litigation and joined Carters in 2012 after having articulated with and been an associate with Fasken (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 government sponsored development programs, as well as litigation dealing with public service employees. His areas of practice includes Business Law and IT 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 Master's degree, she spent several years developing legal databases for LexisNexis Canada, before attending Osgoode Hall Law School where she was a Senior Editor of the *Osgoode Hall Law Journal*, Editor-in-Chief of the *Obiter Dicta* newspaper, and was awarded the Dean's Gold Key Award and Student Honour Award.



**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*, *Best Lawyers in Canada*, and *Chambers and Partners*. In addition to being a frequent speaker, Ms. Man is co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* published by Thomson Reuters. She is chair of the CBA Charities and Not-for-Profit Law Section, a member of the Technical Issues Working Group of Canada Revenue Agency's (CRA) Charities Directorate, and a member and past chair of the OBA Charities and Not-for-Profit Law Section. Ms. Man has also written on charity and taxation issues for various publications.



**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.



**Urshita Grover, H.B.Sc., J.D.** – Ms. Grover graduated from the University of Toronto, Faculty of Law in 2019 and is a Student-at-Law at Carters. While attending law school, Urshita worked at a technology law firm, Limpert & Associates, assisting on client matters and conducting research in IT law, and also worked as a research intern for a diversity and inclusion firm, Bhasin Consulting Inc. She has volunteered with Pro Bono Students Canada, and was an Executive Member of the U of T Law First Generation Network. Prior to attending law school, Urshita obtained her Honours Bachelor of Science degree from the University of Toronto, with majors in Neuroscience and Psychology.

## ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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