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

MARCH 2020

SPECIAL COVID-19 EDITION

<table>
<thead>
<tr>
<th>SECTIONS</th>
<th>HIGHLIGHTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recent Publications and News Releases</td>
<td>Carters’ Response to COVID-19</td>
</tr>
<tr>
<td>In the Press</td>
<td>Due Diligence by Directors and Officers of Charities and NFPs in Response to COVID-19</td>
</tr>
<tr>
<td>Upcoming Events and Presentations</td>
<td>Employer Obligations and Considerations in Response to the COVID-19 Pandemic</td>
</tr>
<tr>
<td>Contributors</td>
<td>NFP Board and Members’ Meetings Amidst COVID-19 Pandemic</td>
</tr>
<tr>
<td></td>
<td>COVID-19 and the Performance of Contracts</td>
</tr>
<tr>
<td></td>
<td>Privacy and Data Security in Response to COVID-19</td>
</tr>
<tr>
<td></td>
<td>Federal and Ontario Measures in Response to COVID-19 Impacting Charities and Not-for-Profits</td>
</tr>
</tbody>
</table>

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.

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Carters’ Response to COVID-19

Carters would like to update our clients about the steps being taken by our firm in light of national and international health authorities’ best practices recommendations to help limit the risk of transmission of COVID-19, as well as protect clients and ensure the health and safety of our staff and lawyers. At the same time, as an essential workplace in Ontario in accordance with provincial directives, Carters is committed to ensuring that the delivery of legal services for our clients remains a top priority.

Click here to read more about the action that Carters is currently taking.

Due Diligence by Directors and Officers of Charities and NFPs in Response to COVID-19

By Terrance S. Carter and Ryan M. Prendergast

On March 11, 2020, the Director-General of World Health Organization (“WHO”) declared that the COVID-19 outbreak is a worldwide pandemic. COVID-19 has resulted in unprecedented action by governments and businesses to help “flatten the curve” of new cases of infection to manageable levels over the coming months. As well, the premier of Ontario and several other provinces have declared states of emergency and shut-down of non-essential business. In response, directors and officers of charities and not-for-profits (“NFPs”) need to consider what are the appropriate due diligence steps that they need to take in order to fulfill their fiduciary duty to protect the best interests of their organisation, reflecting the care and skill of what a reasonably prudent person would do under similar circumstances.

This Bulletin provides a brief overview of some of the basic issues that directors and officers of charities and NFPs will need to consider in light of the COVID-19 pandemic, recognising that the circumstances of each organisation are unique and that “no one size fits all.” As well, the suggestions in this Bulletin do not replace the need for specific legal advice in order to determine what needs to be done in a particular fact situation.

For the balance of this Bulletin, please see Charity & NFP Law Bulletin No. 464.
Employer Obligations and Considerations in Response to the COVID-19 Pandemic
By Barry W. Kwasniewski

Ever since COVID-19 was declared as a pandemic by the WHO on March 11, 2020, there has been a great deal of uncertainty about, among other things, an employer’s obligations towards its employees. In this unprecedented time, employers need to take into account their obligations and the rights of employees in making operational decisions, and to ensure that they are complying with the most up-to-date legislative requirements and government directives. This Bulletin provides an overview of some of the legal requirements and considerations that, as employers, charities and NFPs should be aware of, including the recently announced legislative changes by the federal government, as well as the Ontario government.

For the balance of this Bulletin, please see Charity & NFP Law Bulletin No. 465.

NFP Board and Members’ Meetings Amidst COVID-19 Pandemic
By Theresa L.M. Man

Not only has the spread of the unprecedented COVID-19 pandemic affected many aspects of our lives, the operations of many NFPs, including registered charities, are also affected. In particular, many NFPs are considering how to adjust their way of holding board meetings and members’ meetings without holding in-person meetings. While it is generally an easy switch from holding in-person board meetings to electronic board meetings by conference calls or video calls, the impact of COVID-19 on how to hold members’ meetings often involves complicated considerations.

This Bulletin reviews factors that would need to be considered by NFPs when determining alternative mechanisms to holding board meetings and members’ meetings, in particular annual general meetings, when it is no longer possible to hold in-person meetings.

For the balance of this Bulletin, please see Charity & NFP Law Bulletin No. 466.

COVID-19 and the Performance of Contracts
By Luis R. Chacin and Adriel N. Clayton

Most charities and NFPs are having to deal with the impact of the COVID-19 outbreak, which the World Health Organization characterized as a pandemic on March 11, 2020, as well as the measures taken by governments declaring states of emergencies and ordering the shut-down of non-essential businesses in an effort to “flatten the curve”. Businesses, as well as charities and NFPs, have seen their operations come
to a halt, disrupting or threatening the performance of contracts with business services providers and other counterparties, such as conference venues, real estate transactions, and the delivery or receipt of goods and services generally. This Bulletin provides a brief overview of the impact of COVID-19 and other supervening events on contractual obligations with regard to force majeure clauses and the common law doctrine of frustration. However, this Bulletin does not constitute and is not a substitute for the need to retain legal counsel to advise a charity or NFP on what it can do in a particular fact situation.

For the balance of this Bulletin, please see Charity & NFP Law Bulletin No. 467.

**Privacy and Data Security in Response to COVID-19**

By Esther Shainblum

Responses to the COVID-19 pandemic could intersect with privacy and data security concerns in a number of ways. The following is a brief review of some of the privacy and data security issues that are arising in the context of the COVID-19 pandemic. Charities and NFPs should take privacy and data security matters into account when determining the steps that they are taking to manage the situation.

For the balance of this Bulletin, please see Charity & NFP Law Bulletin No. 468.

**Federal and Ontario Measures in Response to COVID-19 Impacting Charities and Not-for-Profits**

By Terrance S. Carter and Jacqueline M. Demczur

In the wake of the COVID-19 pandemic, both the federal government and Ontario government are providing assistance, support, and online resources in hopes of alleviating some of the burden and problems that many Canadians are currently facing. In addition to the relief provided by the various governments in the employment context, discussed in greater detail in Charity & NFP Law Bulletin No. 465, there is also support for small businesses, including charities and NFPs, being offered. Given the fluidity of the situation, new measures may continue to be introduced at any given moment. The following is therefore not comprehensive, but rather is a brief summary of various measures provided by the federal and Ontario governments at the time of writing, and may be subject to change at any given time.

For the balance of this Bulletin, please see Charity & NFP Law Bulletin No. 469.
IN THE PRESS

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

Navigating Privacy Breaches for Charities, NFPs written by Esther Shainblum was featured in The Lawyer’s Daily on March 10, 2020. This article was originally published by The Lawyer’s Daily (www.thelawyersdaily.ca), part of LexisNexis Canada Inc.

Governance for Charities, Not-for-Profits: Back to Basics written by Theresa L.M. Man was featured in The Lawyer’s Daily on March 23, 2020. This article was originally published by The Lawyer’s Daily (www.thelawyersdaily.ca), part of LexisNexis Canada Inc.

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 online panel discussion 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 has been postponed. More details will follow when this event is rescheduled.
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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, www.churchlaw.ca and www.antiterrorismlaw.ca.

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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 include 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™.

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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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.

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ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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