

FASKEN



## **Check-Up 2020: Healthcare Philanthropy in a COVID-19 World**

Friday, June 19, 2020

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# Check-Up 2020: Healthcare Philanthropy in a COVID-19 World

June 19, 2020

<b>Index</b>	<b>Tab</b>
<b>Agenda</b>	<b>1</b>
<b>Overview of Fasken</b>	<b>2</b>
<b>Overview of Carters</b>	<b>3</b>
<b>Presentations</b>	<b>4</b>
<b>2020 Update - Charity Law in the Pandemic</b> <i>Jacqueline Demczur – Partner, Carters Professional Corporation</i>	
<b>The Impact of COVID-19 on Donor Agreements</b> <i>Corina Weigl – Partner, Fasken</i>	
<b>Due Diligence and Crisis Management During a Pandemic</b> <i>Terrance Carter – Managing Partner, Carters Professional Corporation</i>	
<b>Advancing Your Health Mission During COVID-19</b> <i>Laurie Turner – Partner, Fasken</i>	
<b>Fasken Resource Materials</b>	<b>5</b>
<b>Carters Resource Materials</b>	<b>6</b>
<b>Biographies</b>	<b>7</b>

# Check-Up 2020: Healthcare Philanthropy in a COVID-19 World

June 19, 2020

## Agenda

- 9:00 am – 9:05 am**      **Opening Remarks**  
*Terrance Carter – Managing Partner, Carters Professional Corporation*  
*Lynne Golding – Partner, Fasken*
- 9:05 am – 9:30 am**      **2020 Update – Charity Law in the Pandemic**  
*Jacqueline Demczur – Partner, Carters Professional Corporation*
- 9:30 am – 9:55 am**      **The Impact of COVID-19 on Donor Agreements**  
*Corina Weigl – Partner, Fasken*
- 9:55 am – 10:20 am**      **Due Diligence and Crisis Management in the Pandemic**  
*Terrance Carter – Managing Partner, Carters Professional Corporation*
- 10:20 am – 10:45 am**      **Advancing Your Health Mission During COVID-19**  
*Laurie Turner – Partner, Fasken*
- 10:45 am**                      **Closing Remarks**  
*Lynne Golding – Partner, Fasken*  
*Terrance Carter – Managing Partner, Carters Professional Corporation*



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## Fasken at a Glance

Fasken's more than 700 lawyers, in ten offices across four continents, are always ready to navigate legal challenges and capitalize on business opportunities for you.

As a leading international business law and litigation firm, we offer experience and expertise across a number of countries and a wide range of industries and practice areas to suit the needs of organizations worldwide.

Clients rely on us for practical, innovative and cost-effective legal services. We solve the most complex business and litigation challenges, providing exceptional value and putting clients at the centre of all we do.

### Our Clients

We advise corporate clients, government agencies, regulatory authorities, non-profit bodies and individual clients. As our client, you benefit from our:

- **Commitment to quality** – Our legal practice is rooted in the relationships we build with clients. That means a comprehensive and sustained focus on the highest level of service throughout our entire Firm to meet and anticipate your evolving needs. Quite simply, we start building relationships by listening to you, our client. We gauge our success from clients like you who continue to entrust us with their most pressing matters.
- **Cogent advice** – Known for our ability to think strategically and deliver practical solutions, we have extensive experience acting for clients on domestic and international issues. Our lawyers are often asked to comment on legal issues affecting business and are quoted regularly in the media.
- **International reach** – To meet your needs worldwide, we have teams of lawyers and professionals working in our offices across Canada, Europe, Africa and Asia.



# Our Expertise

We have top-ranked lawyers in a wide range of industries and practice areas:

## Practice Areas

- Antitrust/Competition & Marketing
- Banking & Finance
- Corporate Finance and Securities
- Corporate Social Responsibility Law
- Corporate/Commercial
- Environmental
- Estate Planning
- Government Relations and Strategy
- Indigenous Law
- Insolvency & Restructuring
- Intellectual Property
- International Trade & Customs Law
- Investment Management
- Labour, Employment & Human Rights
- Litigation and Dispute Resolution
- Mergers & Acquisitions
- Political Law
- Privacy and Cybersecurity
- Private Client Services
- Private Equity & Venture Capital
- Procurement
- Real Estate
- Tax Law

## Industries

- Construction
- Energy
- Financial Services
- Franchising
- Health
- Infrastructure & Public-Private Partnerships
- Insurance
- Life Sciences
- Mining
- Real Estate
- Retail
- Technology, Media and Telecommunications
- Transportation

## Markets

- Africa
- Americas
- Asia Pacific
- Europe

## Rankings & Awards

*Chambers Canada (2019)* awards Fasken Employment Law Firm of the Year for 2018 and recognizes 93 of our lawyers in 36 practice areas

*IFLR 1000 Financial and Corporate (2019)* recognizes 48 of our lawyers in 11 practice areas across Canada, South Africa and England

Fasken receives **Mansfield Certification**. This designation confirms that for the last year the Firm has considered women and/or visible minorities in 30% or more of at least 70% of all its senior positions

Fasken achieves **ISO27001 Certification**. This means our Information Security Management System is compliant with the ISO27001 standards and guidelines

*The Legal 500 Canada (2019)* ranks our Firm as top tier in six areas and recognizes 99 of our lawyers across 30 areas of practice

*Chambers UK (2019)* ranks Fasken in Energy & Natural Resources: Mining, and recognizes two of our lawyers

*The Best Lawyers in Canada (2019)* awards Fasken Labour and Employment Law Firm of the Year and recognizes 201 of our lawyers in 56 practice areas

*Chambers Global (2018)* recognizes 54 of our lawyers in 19 practice areas across the Global-wide, African-wide, South African and Canadian categories

*Benchmark Canada (2018)* recognizes 65 of our litigators, including two lawyers listed in its Top 25 Women in Litigation and six listed in its 40 & Under Hot List

*Who's Who Legal (2018)* recognizes Fasken as the Global Mining Law Firm of the Year, for the fourth straight year. The Firm is a ten-time winner of this award

*Chambers High Net Worth (2018)* ranks our Firm top tier (Band 1) in Private Wealth Law and recognizes three of our lawyers in the area, including two as top tier (Band 1)



## Rankings

*Chambers Canada (2020)* ranks our Firm nationwide in Charities/Non-profits and recognizes one of our lawyers in the area

*The Canadian Legal Expert Directory (2020)* recognizes two of our lawyers for their expertise in Charities/Not-For-Profit Law

*The Best Lawyers in Canada (2020)* recognizes one of our lawyers for their expertise in Charities/Non-Profit Law

## Charities and non-profits

Charities and non-profits enrich the lives of people and communities every day. But managing charitable organizations is a heavy responsibility. Directors, officers and employees of charitable organizations face increased regulations and growing scrutiny of both their operations and governance. Fasken's Charities and Non-Profit Law Group can help you navigate the complex laws and regulations governing the creation, organization, and ongoing administration of charities and non-profit entities.



**Industry knowledge** — The lawyers in the Group have in-depth experience in charitable giving; creation of charitable entities; tax considerations; litigious matters; and general advice relating to governance, compliance and regulatory issues, fundraising, and directors' duties and obligations.



**Multidisciplinary approach** – To address the wide range of issues that can come up in this industry, our team includes specialists from multiple disciplines. With tax, labour and litigation experts, we have the breadth of expertise to effectively support your needs.



**Client-focused approach** – Our customer service culture builds partnerships with our clients. We place great emphasis on timeliness, communication, and understanding our clients' business and legal objectives.



**Local expertise and international reach** – We have multidisciplinary teams of lawyers working in offices across Canada in Vancouver, Calgary, Toronto, Ottawa, Montréal, Québec City, and around Asia, Africa and Europe.

## Recent Experience

Working with **high net worth families** to establish private foundations, donor advised funds and charitable trusts.

Advising on **donor agreements, administration and governance** of the charity, advice regarding investment policies.

Work with **foreign charities** who wish to establish a presence in Canada.

## Other Recent Experience

Advice regarding carrying on **activities abroad** (US, UK and other jurisdictions).

Advise **foreign charities accepting gifts** from Canadian donors.

Working with charities in regard to **amalgamations, transfer of donor, endowment funds and governance matters**;

Acting for **charities involved in litigation matters** regarding estate gifts, regarding enforcement of pledges, inter-charity fights, fights regarding governance issues, director and member meeting protocols, fights regarding existing board, proxy flights, etc;

Advising regarding **HST issues** relating to non-profit charities.

Advising charities on **structuring** regarding business sector and social impact.

## Did you know...

With more than 20 professionals in Canada who practice Charities and Non-Profit Law, our advice extends to charitable activities on a regional, national and international scope.



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## Rankings

*Chambers Canada (2020)* ranks our Firm nationwide in Healthcare and recognizes one of our lawyers in the practice area

*IFLR1000 (2020)* recognizes one of our lawyers in the Healthcare practice area.

*The Best Lawyers in Canada (2019)* lists three of our lawyers for Health Care Law

*Chambers Canada (2018)* ranks our Firm nationwide in Healthcare and recognizes one of our lawyers in the practice area

## Health Law

Booming demand for health care is pushing the public health care sector to provide patients with more for less. More access, more solutions and more choice but at lower costs. At the same time, private health sector providers are seeking to help meet those needs and to fill the gaps. To meet your strategic goals, you need a sophisticated legal team schooled in the complexities of health care delivery, administration, technology and regulation. Fasken's Health Law Practice Group is a multidisciplinary team of health law experts who can ensure your challenges are properly addressed.



**Knowledge of the sector** – We have an in-depth understanding of the health care sector. Not only does our team understand the applicable laws and policies but also the key players within the sector.



**National perspective** – With offices in the major population centres across Canada, we are familiar with both federal and provincial legislation and regulations governing health care. Equally important, we are privy to local and regional innovations and can advise clients on innovations and lessons learned from other jurisdictions.

## Recent Experience

Advised **Edesa Biotech** in the acquisition of Stellar Biotechnologies in a reverse merger transaction. Following the closing of the share exchange transaction and given effect to the reverse share split, the combined company has approx. 7,138,233, shares issued and outstanding.

Advised **WELL Health Technologies Corp.** in the acquisition of Kela Atlantic Inc. for up to \$17.75 million. The acquisition of KAI Innovations significantly expanded WELL's digital health portfolio.

Advised **Lonza Group Ltd.** on the acquisition of a controlling stake in Octane Biotech, with the right to acquire full ownership. The increase in equity share will allow Lonza to further develop the technology to support the growing need for scalable autologous manufacturing.

## Other Recent Experience

Advised **Ergoresearch Ltd.** in a going private transaction. All of the outstanding shares have been acquired by a corporation controlled by Sylvain Boucher and Danielle Boucher, in partnership with Walter Capital Partners Inc., for a cash consideration of \$0.30 per share.

Advised **Symbility Solutions** with the completion of its sale of substantially all of the assets of its Symbility Health Division to TELUS Health for aggregate proceeds of approximately C\$16.5 million.

Advised **Knowlton Development Corporation (KDC)** in the acquisition of Aromair Fine Fragrance Company (Aromair). This acquisition adds a new product category to KDC's portfolio and offers new market development and growth opportunities.

Advised **Retirement Concepts** on the corporate reorganization of operational and real estate assets and refinancing of credit facilities with multiple lenders for 23 long-term assisted living and residential care facilities.

Advised **Walter Capital Partners** in the acquisition of the Epiderma group which operates 22 medical aesthetic clinics in Quebec and Ontario.

Advised **Mira IV Acquisition Corp.** in a qualifying transaction pursuant to Policy 2.4 - Capital Pool Companies of the TSX Venture Exchange. The Transaction was structured as a "three-cornered" amalgamation as a result of which Profound became a wholly-owned subsidiary of Mira IV.

Advised **Unipex Solutions Canada inc.**, in the acquisition of all the issued and outstanding shares of Baralex inc. from Manitex Capital inc., continuing to expand its product offering to pharmaceutical manufacturers in Canada and the United States.

Advised **Hincks-Dellcrest** with various aspects of the exploration process in connection with the proposed integration of The Hospital for Sick Children (SickKids) and The Hincks-Dellcrest Treatment Centre, Institute, and Foundation.

Advised **Alegro Health Corp.**, a leading provider of medical, surgical and disability management services, acquired the business and substantially all of the assets of Active Health Management Inc. and The Brenda Rusnak Clinics Inc.

## Did you know...

*What distinguishes Fasken is our large, cross-Canada team. Our lawyers have deep experience and trusted relationships with a wide range of health sector clients in each of our regional markets, as well as national-level expertise.*



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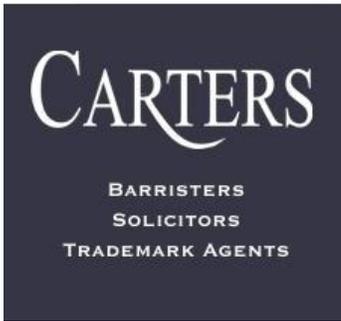
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## CARTERS CHARITY & NFP FIRM PROFILE

### A LAW FIRM WITH A FOCUS ON CHARITIES AND NOT-FOR-PROFIT ORGANIZATIONS

Carters Professional Corporation (Carters) is one of the leading firms in Canada in the area of charity and not-for-profit law and is able to provide a wide range of legal services to its charitable and not-for-profit clients, as well as to individuals, corporations and businesses. With offices in Toronto, Ottawa and Orangeville, Carters provides assistance to clients across Canada and internationally with regard to all aspects of charity and not-for-profit law. Six of the lawyers at Carters have been recognized by *Lexpert*, and three have been recognized by *Best Lawyers in Canada*, as leaders in their fields in Canada. Carters has also been ranked by *Chambers and Partners*, an international rating service for lawyers. The lawyers and staff at Carters are committed to excellence in providing clients with complete legal solutions for their unique needs.

### PROVIDING 'PROACTIVE ADVICE'<sup>®</sup> TO CLIENTS

Carters strives to provide clients with 'Proactive Advice'<sup>®</sup> in our integrated approach to legal services. Our lawyers are committed to assisting clients in developing short-term and long-term strategic plans in order to avoid legal problems before they occur in all areas of the law. As part of this commitment, Carters has made numerous resource materials available through its websites [www.carters.ca](http://www.carters.ca), [www.charitylaw.ca](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca) and [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca).

### WITH SOLICITORS TO HELP YOU AVOID LEGAL LIABILITY

The focus of the solicitors at Carters is in serving charities and not-for-profit organizations through an effective legal risk management approach to the practice of law, and providing legal services in the areas of charity and not-for-profit law, including incorporation, charitable registrations, fundraising, taxation, development of national and international structures, as well as related areas of corporate and commercial law, contracts, real estate and leasing, intellectual property and technology (i.e. trademarks and copyrights), technology, labour, employment, human rights, estates and trusts, charity tax audits, and the evolving area of privacy law and anti-spam.

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## **A LITIGATION DEPARTMENT TO ASSIST YOU WHEN PROBLEMS ARISE**

The litigation lawyers at Carters are experienced in representing clients before all levels of the federal and Ontario courts, before various administrative tribunals, as well as in mediation and other alternative dispute resolution proceedings. Carters' litigation practice encompasses all aspects of litigation and dispute resolution, including mediation, human rights litigation, civil litigation, construction liens, employment, corporate/commercial, shareholder disputes, personal injury, product liability, intellectual property, and charity and not-for-profits, real estate disputes. Carters also undertakes litigation audits, policy reviews and liability risk management in an effort to limit exposure to liability for its clients.

## **WITH INTERNATIONAL RELATIONSHIPS**

Carters has full access to specialized national and international legal services through its relationship with Fasken, an international business law firm, as well as relationships with firms that specialize in tax exempt organizations in other countries. Terrance S. Carter of Carters also acts as legal counsel to the Charities Practice Group at Fasken. Through these professional relationships, Carters is able to provide its charitable and not-for-profit clients, as well as other clients, with specialized legal services as necessary.

## **CONVENIENCE AND ACCESSIBILITY**

The lawyers and staff at Carters strive to be as accessible to our clients as much as possible. We can be reached by telephone, fax or e-mail, with a complete listing of our staff and lawyers' contact information available at [www.carters.ca](http://www.carters.ca), as well as through our office phone system. Client meetings can be held by telephone conferences, by appointment at our offices in Toronto, Ottawa, or Orangeville, or at the client's location as required. When necessary, evening and weekend appointments are possible.

## **PUBLICATIONS & RESOURCES**

In accordance with Carters' commitment to keep clients abreast of changes in the law, the firm regularly publishes articles, checklists, newsletters, webinars and seminar materials concerning a number of areas of the law. All of these materials are made available free of charge at our websites [www.carters.ca](http://www.carters.ca), [www.charitylaw.ca](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca) and [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca). To subscribe to our mailing list, please go to our websites and click on the button "Get on our Mailing List" to receive our monthly Charity Law Update – Updating Charities and Not-for-Profit Organizations on recent legal developments and risk management considerations.

## EXPERTISE IN CHARITY AND NOT-FOR-PROFIT LAW

Carters has developed extensive expertise in charity and not-for-profit law in support of its work with charities through participation in various forums for professional development, including:

- Development and maintenance of the websites [www.carters.ca](http://www.carters.ca), [www.charitylaw.ca](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca) and [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca);
- Authoring the *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Thomson Reuters), with annual updates;
- Co-editing *Charities Legislation & Commentary*, 2020 Edition (LexisNexis), published annually;
- Contributing to *The Management of Nonprofit and Charitable Organizations in Canada*, 4<sup>th</sup> Edition (LexisNexis, 2018);
- Co-authoring *Branding and Copyright for Charities and Non-profit Organizations*, 3<sup>rd</sup> Edition (LexisNexis, 2019);
- Co-authoring *Branding and Copyright for Charities and Non-profit Organizations*, (LexisNexis, 2014);
- Co-authoring *Branding & Trademarks Handbook for Charitable and Not-For-Profit Organizations* (LexisNexis Butterworths, 2006);
- Contributing to the *Primer for Directors of Not-for-Profit Corporations* (Industry Canada, 2002);
- Contributing articles on charity and not-for-profit legal issues for various periodicals, including *The Lawyers Daily*, *Law Times*, *The Philanthropist*, *Canadian Fundraiser*, *Canadian Association eZine*, *Canadian Journal of Law and Technology*, *U.S. Journal of Tax Exempt Organizations*, *The International Journal of Not-for-Profit Law*, *The International Journal of Civil Society Law*, *Estates and Trust Quarterly*, *The Bottom Line*, and *The Canadian Bar Association International Business Law Journal*;
- Publication of newsletters: *Charity & NFP Law Bulletin*, *Charity & NFP Law Update*, *Church Law Bulletin*, and the *Anti-Terrorism and Charity Law Alert*, distributed across Canada and internationally by email;
- Speaking nationally and internationally at seminars and conferences for the Law Society of Ontario, the Canadian Bar Association, the Ontario Bar Association, The National Society of Fund Raising Executives, The Canadian Association of Gift Planners, the Chartered Professional Accountants Canada, the Chartered Professional Accountants Ontario, the Society of Trust and Estate Practitioners Canada, the Canadian Society of Association Executives, the Canadian Cancer Society, Institute of Corporate Directors, Pro Bono Law Ontario, The American Bar Association, The Canadian Counsel of Christian Charities, The Christian Legal Fellowship, The Canadian Tax Foundation, Osgoode Hall Law School, Insight Information, the University of Ottawa Faculty of Common Law, Ryerson University's Voluntary Sector Management Program, the University of Waterloo, the University of Manitoba Law School, McMaster University, the University of Iowa, and the New York University School of Law;
- Participating recently as a member of CRA Advisory Committee on the Charitable Sector;
- Participating in consultations with Canada Revenue Agency (CRA) and the Public Guardian and Trustee on charitable matters; and as agent of the Attorney General of Canada and outside counsel to the Corporate Law Policy Directorate of Industry Canada to provide legal advice on the reform of the *Canada Corporations Act*;

- ♦ Hosting the annual “*Church & Charity Law Seminar*™” in Toronto for 1,000 charity and church leaders, members of religious charities, accountants and lawyers; the annual “*Charity & Not-for-Profit Law Seminar*” in Ottawa for more than 400 members of the sector, and co-hosting the annual “*Healthcare Philanthropy Seminar*” with Fasken;
- ♦ Serving as past members of Canada Revenue Agency’s Charities Advisory Committee, the Technical Issues Working Group of CRA’s Charities Directorate representing the Canadian Bar Association (CBA), the Uniform Law Conference of Canada’s Task Force on Uniform Fundraising Law, the Liability Working Group of the Insurance Bureau of Canada and Voluntary Sector Forum, the Government Relations Committee of the Canadian Association of Gift Planners; the Anti-terrorism Committee and the Air India Inquiry Committee of the CBA, and in consultations with Finance Canada and the Province of Ontario, and the Social Enterprise Panel Consultation for the Ministry of Consumer Services; and
- ♦ Participating as founding members and chairs of the Canadian Bar Association and Ontario Bar Association Charity and Not-for-Profit Law Sections, as well as co-founder of the Canadian Bar Association annual Charity Law Symposium.

## **SPECIFIC LEGAL SERVICES FOR CHARITIES AND NOT-FOR-PROFIT ORGANIZATIONS**

As a law firm experienced in serving charities and not-for-profit organizations, Carters is able to provide:

- |  |   |
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| <ul style="list-style-type: none"><li>♦ Anti-bribery Compliance</li><li>♦ CRA Charity Audits</li><li>♦ Charitable Organizations &amp; Foundations</li><li>♦ Charitable Incorporation &amp; Registration</li><li>♦ Charitable Trusts</li><li>♦ Charity Related Litigation</li><li>♦ Church Discipline Procedures</li><li>♦ Church Incorporation</li><li>♦ Corporate Record Maintenance</li><li>♦ Counter-terrorism Policy Statements</li><li>♦ Director and Officer Liability</li><li>♦ Dissolution and Wind-Up</li><li>♦ Employment Related Issues</li><li>♦ Endowment and Gift Agreements</li><li>♦ Foreign Charities Commencing Operations in Canada</li><li>♦ Fundraising and Gift Planning</li></ul> | <ul style="list-style-type: none"><li>♦ Gift Acceptance Policies</li><li>♦ Governance Advice</li><li>♦ Human Rights Litigation</li><li>♦ Insurance Issues</li><li>♦ International Trademark Licensing</li><li>♦ Investment Policies</li><li>♦ Legal Risk Management Audits</li><li>♦ Legal Audits</li><li>♦ National and International Structures</li><li>♦ Privacy Policies and Audits</li><li>♦ Religious Denominational Structures</li><li>♦ Sexual Abuse Policies</li><li>♦ Special Incorporating Legislation</li><li>♦ Charity Tax Opinions and Appeals</li><li>♦ Trademark and Copyright Protection</li><li>♦ Transition Under the ONCA</li></ul> |
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## EXPERIENCE WITH CHARITIES AND NOT-FOR-PROFIT ORGANIZATIONS

Some of the categories of charities and not-for-profit organizations that Carters has acted for in relation to charity and not-for-profit law include the following:

- ♦ Churches, Dioceses and Related Religious Organizations
- ♦ Ecological Charities
- ♦ Educational Institutions in Canada and Internationally
- ♦ Environmental Organizations
- ♦ Financially Troubled Charities & Their Directors
- ♦ Government Agencies
- ♦ Health Care Organizations
- ♦ Hospitals and Hospital Foundations
- ♦ International Missionary Organizations
- ♦ Lawyers Requiring Counsel on Charitable Matters
- ♦ Museum Foundations
- ♦ National and International Charitable Organizations
- ♦ National Arts Organizations
- ♦ National Medical Research Foundations
- ♦ National Religious Denominations
- ♦ Not-for-Profit Housing Corporations
- ♦ Not-for-Profit Organizations
- ♦ Parallel Foundations
- ♦ Religious and Secular Schools
- ♦ Religious Broadcasting Ministries
- ♦ Safety Regulatory Organizations
- ♦ Seminaries and Bible Colleges
- ♦ Temples, Synagogues and Other Religious Organizations
- ♦ Violence Prevention Organizations
- ♦ Universities and Colleges



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**Check-Up 2020:  
Healthcare Philanthropy in a COVID-19 World**

June 19, 2020

**PRESENTATIONS**

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**Check-Up 2020:  
Healthcare Philanthropy in a  
COVID-19 World**

**FASKEN** **CARTERS**

June 19, 2020

◀ **Welcome!**

We hope you are keeping well and safe.

Fasken and Carters are committed to providing legal insight into the new and changing issues which are arising.

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## Agenda

- **2020 Update - Charity Law in the Pandemic -**  
Jacqueline Demczur
- **The Impact of COVID-19 on Donor Agreements -**  
Corina Weigl
- **Due Diligence and Crisis Management During a Pandemic -**  
Terrance Carter
- **Advancing Your Health Mission During COVID-19 -**  
Laurie Turner

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3

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**Check-Up 2020:  
Healthcare Philanthropy in a COVID-19 World  
June 19, 2020**

## **2020 Update - Charity Law in the Pandemic**

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## OVERVIEW (Current to June 17, 2020)

- Introduction
- Federal Relief Programs
- Ontario Relief Programs
- Corporate Update
- Update from the Charities Directorate



### A. INTRODUCTION – THE COVID-19 PANDEMIC IN CANADA

- The Director-General of the World Health Organization (“WHO”) declared the COVID-19 outbreak as a worldwide pandemic on March 11, 2020
- Since then, the federal government has implemented various programs in response to the COVID-19 pandemic
- The Government of Ontario declared a province-wide state of emergency on March 17, 2020
- Ontario’s declaration of emergency has been subsequently extended and is currently in effect until June 30, 2020, with further extensions possible if required
- As of June 12, 2020, certain regions in Ontario have entered Stage 2 of reopening

## B. FEDERAL RELIEF PROGRAMS

### 1. Wage Programs

#### a) Canada Emergency Wage Subsidy (“CEWS”)

- CEWS’ goals include preventing further job losses and encouraging employers to retain employees and rehire employees laid off due to the COVID-19 pandemic
- CEWS was enacted into [law](#) on April 11, 2020 for a 12-week period, but on May 15 was extended to August 29, 2020
- Provides a 75% wage subsidy to eligible employers, including charities, that see drop of at least 15% in “qualifying revenues” in March 2020 and 30% in subsequent months
- Available on first \$58,700 earned per employee (*i.e.* equivalent of up to \$847 per week, per employee), with no overall limit on subsidy amount that may be claimed

- There have been issues with some charities being ineligible for CEWS where another entity administers their payroll
- [Bill C-17, An Act respecting additional COVID-19 measures](#), (first reading June 10, 2020) proposes to correct this by expanding who are “eligible entities” (as defined in s. 125.7 of the *Income Tax Act (Canada)* (“ITA”)) able to qualify for CEWS
- Will include those who, on March 15, 2020, had their payroll administered by another person or partnership (a “payroll service provider”) which uses its own business number to make ITA remittances to the Canada Revenue Agency (“CRA”) in relation to the eligible entity’s employees
- Once enacted, this change will be effective as of April 11, 2020, *i.e.* same date that CEWS came into effect

## b) Temporary Wage Subsidy (“10% TWS”)

- On March 25, 2020, the 10% TWS was enacted into [law](#)
- The 10% Subsidy equals 10% of remuneration paid from March 18, 2020 to June 19, 2020, up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer
- For employers eligible for both the 10% TWS and the CEWS, any benefit from the 10% TWS for remuneration paid in a qualifying period would reduce the amount available to be claimed under the CEWS in that same period
- Further, organizations not qualifying for the CEWS may still qualify for the 10% TWS

## 2. Business Programs

### a) Canada Emergency Business Account (“CEBA”)

- CEBA is a \$25 billion program providing interest-free loans of up to \$40,000 to small businesses, charities and not-for-profit organizations (“NFPs”), to help cover their operating costs during a period where their revenues have been temporarily reduced
- Announced on April 9, 2020, organizations needed to demonstrate that they paid between \$20,000 to \$1.5 million in total payroll in 2019 in order to qualify
  - However, as of May 19, 2020, this eligibility criteria was expanded to organizations with payrolls lower than \$20,000, as long as certain additional criteria are met

## b) Canada Emergency Commercial Rent Assistance Program (“CECRA”)

- Offered through the Canada Mortgage Housing Corporation (“CMHC”), CECRA is intended to lower rent by 75% for impacted small businesses and charities that rent property from qualifying commercial landlords (regardless of whether the property is subject to a mortgage)
- CECRA does not apply to any federal, provincial, or municipal-owned properties, or where the government is the landlord, *except* where the property owner is a post-secondary institution, hospital, or pension funds
- The application process opened on May 25, 2020 and at this time will accept applications until August 31, 2020

## 3. Support Funds for the Sector

### a) Emergency Community Support Fund

- PM Trudeau announced this \$350 million Fund on April 21, 2020 to provide funding to qualified donees (including charities) and NFPs serving vulnerable Canadians by delivering essential services
- Applications opened on May 19, 2020
- To gain funding, an organization must meet certain [selection criteria](#), including addressing a pressing social inclusion or well-being need during the COVID-19 crisis, such as:
  - Increasing volunteer-based home deliveries of groceries and medications;

- Scaling up help lines providing information and support
  - Helping the vulnerable access government benefits;
  - Providing training, supplies, and other required supports to volunteers in support of a COVID-19 response; and
  - Replacing in-person, one-on-one contact and social gatherings with virtual contact
- Applicants and their activities must also meet timing, budgetary and other funding requirements

**b) Other Targeted Measures**

- Other funding support includes:
- i. \$287 million in support for rural businesses and communities, including access to capital through the Community Futures Network

- ii. \$500 million to establish a COVID-19 [Emergency Support Fund for Cultural, Heritage and Sport Organizations](#) to help address the financial needs of affected organizations within these sectors so they can continue to support artists and athletes
- iii. \$100 million under the Food Policy for Canada's [Local Food Infrastructure Fund](#) to help improve access to food for people experiencing food insecurity due to the COVID-19 pandemic
- iv. \$962 million in support through the [Regional Relief and Recovery Fund](#) to small businesses, as well as some charities and NFPs in certain parts of the country, to help mitigate the financial pressure experienced due to the pandemic by covering their operational costs and also supporting projects for a successful recovery

## C. ONTARIO RELIEF PROGRAMS

### 1. Support Funding Programs

#### a) Ontario's Action Plan: Responding to COVID-19 (March 2020 Economic and Fiscal Update)

- \$935 million for the hospital sector (including \$594 million to expand capacity and \$341 million to prepare for COVID-19 and fund assessment centres)
- \$160 million to public health to support COVID-19 monitoring, surveillance, laboratory and home testing, virtual care and Telehealth Ontario
- \$243 million for surge capacity in long-term care sector, 24/7 screening, infection control, and supplies and equipment

- \$75 million to supply PPE and critical medical supplies to front-line staff to tackle COVID-19
- \$1 billion COVID-19 contingency fund (forming part of the additional health care investments)

#### b) Municipal Social Services Funding

- \$148 million for charitable and non-profit social services organizations (e.g. food banks, homeless shelters, churches, emergency services) to improve response to COVID-19, to be allocated based on local needs

#### c) Employment Measures

- Infectious disease emergency leave providing temporary relief from the *Employment Standards Act* (Ontario) provisions regarding termination, severance and constructive dismissal

## D. CORPORATE UPDATE

### 1. *Canada Not-for-Profit Corporations Act* (“CNCA”)

#### a) Corporate Filing Deadlines

- Annual returns of regular CNCA corporations are generally due within 60 days of anniversary date (*i.e.* date corporation incorporated, amalgamated or continued under CNCA)
- For CNCA corporations whose anniversary date is between February 1 and July 31, 2020, the filing deadline has been extended to September 30, 2020 by Corporations Canada
- For all federal special act corporations, the filing deadline is between April 1 and June 1, 2020 under normal circumstances but has now also been extended until September 30, 2020

#### b) Board Meetings

- Directors may participate in a meeting of directors or of a committee of directors “by means of a telephonic, an electronic or other communication facility” if all of the following conditions are met: [s. 136(7) of the CNCA]
  - If all the directors of the corporation consent
  - The facility permits all participants to communicate adequately with each other during the meeting
  - The by-law does not otherwise provide
- Common law does not permit proxy vote at board meetings or alternate directors
- Currently, no relief from Corporations Canada

## c) Members' Meetings/Annual General Meetings ("AGMs")

### i. Forms of AGMs

- Default rule: members entitled to participate at AGMs in person
- Hybrid meeting: an in-person meeting where members may also participate by electronic means if such means are provided
  - If a corporation does not want any electronic participation in meetings, it must opt out of providing this right in its by-laws [s. 159(4), CNCA]
- Virtual meeting: corporations wanting fully electronic meetings must specifically authorize them in by-laws [s. 159(5), CNCA]
- Need to review by-laws to determine permissible meeting types
- By-laws may be amended to permit hybrid or virtual meetings, with certain exceptions [s.152, CNCA]

### ii. Voting at AGMs

- For both hybrid and virtual meetings, members may vote by means of a "telephonic, electronic or other communication facility" if the following requirements are met [s. 159(4) & (5), 165(4), CNCA; s. 71(2) of *Canada Not-for-Profit Corporations Regulations* ("[CNCR](#)")]:
  - Votes can be gathered in a manner that permits their subsequent verification, and
  - The tallied vote can be presented to the corporation in a manner such that they remain anonymous
- The same requirements apply to electronic voting at in-person meetings [s.165(3), CNCA; s. 71(1), CNCR]

### **iii. Timing of AGMs**

- AGM must be held not later than 18 months after incorporation and subsequently not more than 15 months after the previous AGM, but no later than 6 months after the financial year end [s. 160(1), CNCA; s. 61, CNCR]
- Currently, no blanket relief from Corporations Canada
- However, may apply to Corporations Canada to extend the time for calling an AGM if Corporations Canada's [policies](#) are met (e.g. members will not be prejudiced, detrimental not to delay the AGM)
- Since May 12, 2020, Corporations Canada has made a streamlined [online process](#) available since May 12, 2020 if delay of AGM required due to COVID-19

### **iv. Federal Corporate Relief**

- Bill C-17 (First Reading – June 10, 2020)
  - Will enact the Time Limits and Other Periods Act (COVID-19) to provide relief for certain CNCA deadlines
  - The Minister will be allowed to make orders to extend or suspend time limits retroactive to March 13, 2020, for:
    - Calling and providing notice of meetings of members,
    - Placing annual financial statements before members at annual meetings, and
    - Providing copies of annual financial statements to members and directors
  - Until Bill C-17 is passed and orders are made by the Minister, corporations will need to comply with existing CNCA timing restrictions (discussed above)

## 2. Ontario Corporations Act (“OCA”)

### a) Corporate Filing Deadlines

- An OCA corporation’s annual return is required to be filed at the same time as when its tax (T2) or information return (T3010) is required to be with the CRA (regardless of whether or not the annual return is filed together with the return sent to the CRA or filed separately with the Ministry)
- Due to the pandemic, annual returns required to be filed by OCA corporations can be delayed until the time when they are now required to file their tax or information returns with the CRA

### b) Board Meetings

- Generally, directors and committee of directors may meet by telephonic or electronic means if certain conditions are met, and the by-laws do not provide otherwise
- Option to use written resolution in lieu of holding a board meeting if signed by all directors [s. 298(1) of the OCA]
- [Bill 190, COVID-19 Response and Reforms to Modernize Ontario Act, 2020](#) was introduced and passed on May 12, 2020
  - OCA amended to add Part VIII on “special rules during emergency” whereby certain provisions temporarily suspended and replacement provisions apply
  - OCA corporations may hold board and members’ meetings during the pandemic electronically, despite any provision in constating documents that provides otherwise

**c) Members' Meetings/Annual General Meetings ("AGMs")**

- Generally, AGMs must be held not later than 18 months after its incorporation and subsequently not more than 15 months after the previous AGM [s. 293 of the OCA]
- However, by Bill 190, the following temporary replacement provisions are in effect:
  - If AGM is required to be held during the emergency, then AGM can be delayed to be held no later than 90 days after the day the emergency is terminated
  - If AGM is required to be held within 30 days after emergency terminated, then AGM can be delayed and held no later than 120 days after emergency ends
- Ontario is in a state of emergency at least until June 30, 2020

- Bill 190 also enacts a new statute, *Alternative Filing Methods for Business Act, 2020*, to address public health and safety concerns in respect of an emergency declared under the *Emergency Management and Civil Protection Act* by:
  - Permitting documents required to be filed by in-person delivery or mail under certain business statutes, including the OCA, to be filed by alternative methods, and
  - Permitting electronic signatures and electronic copies in respect of certain documents
- Under the OCA, documents that may be filed by alternative filing methods include applications, notices, declarations and accompanying documents

## E. UPDATE ON CRA'S CHARITIES DIRECTORATE

### 1. Form T3010 Submission Deadlines Extended

- The deadline for charities to file Form T3010, *Registered Charity Information Return* due between March 18, 2020 and December 31, 2020 has been extended to December 31, 2020

### 2. Operations of the Charities Directorate

#### a) Call Centre

- On April 28, 2020, the Charities Directorate call centre resumed its operations after the interruption to CRA's operations caused by the COVID-19 pandemic

#### b) Audit Activities

- The Charities Directorate's audit activities remain suspended, but charities may continue to send in responses or contact them for any questions regarding audit activities

### c) Review of Applications for Charitable Status

- As [announced](#) on May 13, 2020, review of digital and paper-based applications for charitable registration has resumed
- Preliminary review of all applications under way to identify applicants providing pandemic-related charitable programs in effort to expedite their review
- Deadline for those applicants required to submit more information or documents to the CRA regarding their applications has also been extended to July 31, 2020, and no applications will be closed without prior contact
- Charities are encouraged to review the CRA Charities Directorate's [Charities and Giving](#) webpages, and access their digital services through [My Business Account](#)

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## ▶ The Impact of COVID-19 on Donor Agreements



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## ▾ The Impact of COVID-19 on Donor Agreements



- Economic downturn may impact donors
- Need for charitable gifts remains and will increase
- Concerns surrounding charitable gifts from both donors and charities

## ▾ COVID-19 Impacts on Donors

- Feeling a pinch in their pocketbooks
- Daunted by the thought of overextending their means
  - May be a desire to walk away from pledges
  - May be a desire to “police” restrictions more
- Form of future donations may change

## COVID-19 Impacts on Donors

- 2012 Stanford study on *Charitable Giving and the Great Recession*
  - Overall drop in charitable giving
  - Giving same percentage of means
  - More targeted, need-based donations
- Applicable in Canada as well

## COVID-19 Impacts on Charities

- Increase in high profile/celebrity donations
- Increase in COVID-19 related needs/purposes including hospitals, social support services, immigrant and indigenous needs

CORONAVIRUS | News  
**Ryan Reynolds, Blake Lively donate \$1M to Canadian, U.S. food non-profits**  
Sandra Gonzalez  
CNN  
Published Wednesday, March 18, 2020 10:21AM EDT

Walmart Canada raises more than \$6.6 million for children's hospitals during COVID-19 pandemic

Canadian Mental Health Association and Bell Let's Talk expand BounceBack® nationwide

NEWS PROVIDED BY  
Bell Canada  
Jun 10, 2020, 08:00 ET

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- \$1 million donation to the Canadian Mental Health Association addresses increased need for remote mental health supports during the COVID-19 crisis
- Funding expands BounceBack program from Ontario, BC and Manitoba into Atlantic Canada, Québec, Saskatchewan, Alberta and Yukon

## ▾ COVID-19 Impacts on Charities

- Needs of the charity will change
- May want to review if possible purpose restrictions on gifts to allow flexibility in leaner times
- May want to review if possible the ability to redirect capital to respond to greater needs
- COVID-19 related industries could thrive

## ▾ Donor Agreements

- Unrestricted gifts are preferred BUT not most significant financially
- All other gifts – clear written agreement is key
  - Identifies the parties and gifted property
  - Specify charitable purposes/activities
  - Restrictions on expenditures that have flexibility
  - Sets out donor recognition

## ▾ **Restricted Gift Agreements**

- Unrestricted v. Restricted
- Types of restrictions
  - Restricted purposes/activities
  - Restrictions on expenditures

## ▾ **Restricted Gift Agreements**

- Restricted Purposes
- Restrictions on Expenditures

## ▾ Consequences of Restrictions

- Enforceability of restrictions by donors
  - Precatory = non-legally binding BUT moral obligations AND donor-stewardship issues
  - Charitable purpose trust

## ▾ Takeaways for Restricted Gifts

- Too much donor control
- Acceptability of restrictions
- Compliance with restrictions – oversight?

## ▼ Takeaways for Restricted Gifts Cont.

- Amending restrictions subject to Court/PGT approval:
  - Change purposes
  - Remove perpetual limits
  - Access capital or income differently than stated
- New PGT Policy on Restricted Gifts

## ▼ Charitable Pledge Agreements

- A donor's promise to make certain gifts to a charity over a specified time
- Relevant indicia for arguing a charitable pledge is binding:
  - Donor receiving consideration
  - Made under seal
  - A statement affirming potential detrimental reliance

## ▾ Charitable Pledge Agreements

- Complicated enforceability issue
  - Nominal consideration for the donor
  - Split-receipting
  - Detrimental reliance
- Practical issues related to donor stewardship
- Caution is warranted

## ▾ Concluding Comments Reducing Risks for Charities

- Restrictions imposed on gifts may offer an avenue of enforceability by the donor
- Amendments to restrictions to address changing circumstances may be possible
- Enforceability of pledges is complex but not impossible
- Reputation is important to all decisions

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### Check-Up 2020: Healthcare Philanthropy in a COVID-19 World June 19, 2020

## Due Diligence and Crisis Management During a Pandemic

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## A. INTRODUCTION

- COVID-19 has created an unprecedented situation for directors and officers (“D&Os”) of healthcare charities in knowing how to respond both effectively and in compliance with the changing law
- D&Os are having to make decisions quickly, some of which could impact the ability of the charity to continue to operate
- D&Os are naturally concerned about exposure to personal liability in dealing with the consequences of COVID-19
- In order to make effective decisions, D&Os need to be familiar with the relevant legal issues that need to be considered
- This knowledge will help determine the appropriate due diligence steps needed to fulfill fiduciary obligations to protect the best interests of their charities

- Under Canadian law, D&Os of charities are required in general terms to:
  - act honestly and in good faith with a view to the best interests of the corporation (their **fiduciary duty**), and
  - exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances (their **duty of care**)
- The “business judgment rule” recognizes that D&Os are not expected to make perfect decisions, but they need to take all reasonable measures and perform appropriate due diligence required to fulfil their fiduciary obligations
- This presentation discusses legal principles generally applicable across Canada, but with a focus on Ontario
- Professional advice should be sought from lawyers as necessary

## B. DUE DILIGENCE CONSIDERATIONS

### 1. Keep Records of Decisions

- In order to discharge their duties during a crisis like the COVID-19 pandemic, D&Os of a charity need to become engaged in decision-making
- The steps being taken, along with the reasoning behind the decisions, and the dates on which the decisions and actions are being taken should be documented in writing, and in particular in board minutes
- This will provide evidence of the due diligence undertaken by the D&Os of a charity in the event of a complaint to a regulator or a legal challenge at a future time

### 2. Convene Meetings as Necessary

- Convene **board of directors' meetings** as necessary and plan to meet on a regular basis
- Confirm that board meetings and members' meetings can be held electronically – review requirements in applicable legislation and by-laws of the charity
- Determine whether **annual members' meetings** may need to be postponed or whether alternative methods for meetings may need to be considered
- Monitor changing filing dates for corporate returns
- Legal advice should be obtained in this regard
- See presentation by Jacqueline M. Demczur for an overview of key dates and corporate issues related to the pandemic

### 3. Develop a Communications Strategy

- It is essential to keep members, staff, volunteers, organizational beneficiaries, suppliers, as well as the broader constituent community of a healthcare charity informed about changes or measures being undertaken that might impact them
- Maintaining open communication and transparency during the COVID-19 crisis is key to maintaining reputational integrity
- It is important to have one person in the organization in charge of maintaining consistency in content and methodology of communication with that person reporting back to the board
- Keep written or electronic records of what communication was sent, on what date, and to whom

### 4. Keep Up-to-Date with Government Actions

- Monitor federal, provincial and local public policy and public health-related orders, directives and restrictions which may impact operations of the charity, both inside/outside Canada as necessary
- For example, on June 12, 2020, the Ontario government started permitting more businesses and services to reopen with proper health and safety measures in place by moving forward with a regional approach to Stage 2 of reopening the province (<https://news.ontario.ca/opo/en/2020/06/ontario-permits-more-businesses-and-services-to-reopen-in-the-coming-days.html>)
- It is also important to monitor government actions in other jurisdictions in which a healthcare charity may carry out programs affected by COVID-19

## 5. Review Crisis Management Policies

- Review any existing risk management, disaster recovery and remote access policies
  - If these are not in place, need to adopt and implement such policies, including a COVID-19 policy, as soon as possible
- Also consider adopting succession policies for necessary key persons, if not already in place, in order to mitigate against the impact on possible loss of management for the charity
- Review insurance policies, including directors' and officers' insurance and business interruption insurance, if applicable, in order to determine the extent of coverage for COVID-19 related claims
  - Consider asking the insurance broker to advise on the extent of insurance coverage and exclusions in writing

## 6. Review Contractual Obligations

- Review contractual obligations in light of government directives and public health recommendations regarding COVID-19 to determine their impact on planned events or conferences, as well as the delivery or receipt of goods and services
- Review pre-existing provisions in contracts in order for D&Os of charities to make informed decisions about next steps when contractual obligations cannot be fulfilled or need to be delayed
- See presentation by Laurie Turner for details on how certain contractual provisions may impact your healthcare charity
- Also see article by Sean S. Carter and Heidi LeBlanc on practical strategies for dealing with termination of contracts in a pandemic: [Charity & NFP Law Bulletin No. 472](#)

## 7. Address Financial Matters

- It is essential to review the financial health of the charity on a regular basis by determining the anticipated impact of COVID-19 on donations, grants, investment income and capital, sponsorship income, membership income, sales of goods and services, and any other sources of income
- Then determine what corresponding actions may need to be taken to offset the anticipated reduction in income
- Review all funding and other agreements with governments or other agencies to determine the charity's obligations to deliver services and how that might be impacted by COVID-19
- It is becoming important for all charities to develop a realistic reserve in order to cover operating costs in a crisis
- Evaluate and manage risks related to employee shortages, project cancellations, disruptions, and delays

## 8. Address Employee Issues

- Ensure that salaries of employees continue to be paid, otherwise directors can be left exposed to personal liability for unpaid wages and vacation pay (e.g. up to 6 months' wages for CNCA and OCA corporations, in addition to up to 12 months of accrued vacation pay for OCA corporations)
- Ensure that employee source deductions (e.g. income tax, CPP, EI) as well as GST/HST amounts pursuant to relevant legislation, are remitted when required to avoid personal liability
- Keep up-to-date with provincial and federal legislative changes to required government payments
- If considering layoffs and/or elimination of staff, seek legal advice
- See articles by Barry W. Kwasniewski and Luis R. Chacin for further details on employment issues during the pandemic: [COVID-19 Resource](#) and [Charity & NFP Law Bulletin No. 465](#)

## 9. Ensure Workplace Health and Safety

- Essential to keep abreast of all appropriate health and safety measures for staff, volunteers, and beneficiaries so that exposure to COVID-19 is appropriately managed, particularly with respect to vulnerable persons
- Monitor mandatory closures of non-essential workplaces, and Ontario's phased reopening plan
- Review the regulations under the *Emergency Management and Civil Protection Act* (Ontario) while Ontario is in a state of emergency
  - Regulations 82/20 and 263/20 specifically requires compliance with “**all applicable laws**, including the *Occupational Health and Safety Act* (“OHS”) and the regulations made under it” as well as “the advice, recommendations and instructions of **public health officials**, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting”

- Ensure compliance with the occupational health and safety legislation during the pandemic, such as the OHS, which impose certain legal obligations on employers including:
  - Duty to take all reasonable precautions to protect the health and safety of employees, and provide them with the information and training to protect against hazards
  - Duty to report “occupational illnesses” of employees to the Ministry of Labour and the union, if present, within 4 days
    - Definition of “occupational illness” broad enough to include COVID-19 if contracted by an employee while at work
  - Also a duty in Ontario to report occupational illnesses to the Workers' Compensation Board, if covered by it, within 3 days
  - Violations of the OHS can lead to an D&Os being penalized and opens them up to the possibility of being sued

- Employees under the OHS Act also have the right to refuse work if they have “reason to believe” that the workplace is unsafe to work in (exceptions for workplaces where risk is inherent as part of the job), and the employer may not discipline or retaliate
- Stay informed with the recommendations and guidance provided by the World Health Organization, Public Health Agency of Canada, Ontario Ministry of Health and Long-term Care, *etc.*
- Implement social distancing and proper disinfecting measures, including encouraging employees to work remotely, making use of telephones or videoconferencing, and if that is not possible, avoid close contact if physically present at the workplace
- If a complaint is made by an employee regarding an unsafe workplace to the Ministry of Labour, an inspector would investigate and consider whether or not any guidance or public orders were followed, making them the *de facto* legal standard

- D&Os should also be aware of the possibility of civil actions by an employee or their family member, such as under the *Occupier's Liability Act* or negligence, if they contract COVID-19
- D&Os need to give special consideration to the role of volunteers during a pandemic
  - Volunteers carry similar obligations and liability as employees
  - A charity can be exposed to vicarious liability for the actions of a volunteer on behalf of an organizations
  - Similarly, a charity can be held liable for injury or harm to a volunteer, including from COVID-19, where a volunteer has not been properly protected by the charity
  - Therefore, it is essential to screen volunteers and ensure that the same due diligence that is exercised with employees is also extended to volunteers

## 10. Consider Privacy Implications

- Determine the extent to which the charity's measures in response to the pandemic are in line with applicable privacy legislation
- Continue to abide by the following basic, overarching privacy law principles when collecting, using and disclosing personal information ("PI")
  - Only collect, use or disclose PI for purposes that are reasonable and appropriate
  - Identify the purpose for which PI is being collected, at or before the time of collection, and limit the collection, use and disclosure of PI to the minimum necessary for the purposes identified
  - Consider what steps need to be taken to obtain appropriate and meaningful consent
  - Have adequate safeguards in place appropriate to the sensitivity of the PI collected

- Public health and safety may supersede usual privacy obligations during this time
- Working from home can raise additional privacy concerns, such as increasing the risk of cyber attacks and privacy breaches, exposing D&Os to the risk of litigation for failure to protect PI and confidential business information
- Charities should take certain steps to protect PI, including:
  - Educating and training staff to be extra-vigilant against phishing scams, and comply with privacy policies
  - Setting up a virtual private network for accessing work data
  - Restricting data access on a need-to-know basis
  - Encrypting data on portable devices and removable media
  - Having robust contracts with third-party service providers, and ensuring adequate and trustworthy IT support is available

- Regularly backing up data and updating software, and requiring the same from the employees
- Requiring employees to fortify passwords and ensure their Wi-Fi connection is secure, along with storing work devices safely and securely, without access to anyone
- D&Os should ensure participants' privacy is safeguarded and proper precautions are taken when using videoconferencing services, which are widely being used to maintain social distancing during the pandemic
  - In this regard, the Office of the Privacy Commissioner of Canada ("OPC") published a blog post on May 1, 2020 providing privacy tips
  - See article by Esther Shainblum in Carters' [May 2020 Charity & NFP Update](#) discussing OPC's privacy tips

## 11. Use of Restricted Purpose Trust Funds

- As charities start to deplete their resources, they may be forced to consider encroaching on restricted purpose trust funds, such as endowment funds
- However, to do so generally requires court approval
- On March 30, 2020, assistance was [announced](#) by the Office of the Public Guardian and Trustee of Ontario ("PGT") allowing charities, which are in danger of closing, to access the income and capital of restricted purpose trust funds when necessary, without the need to first obtain a court order to enable them to continue their day-to-day operations, subject to certain conditions, which include:
  - Accessing the restricted purpose trust funds is the last resort, after access to reserve and non-restricted funds, as well as government funding has been used

- The charity is in danger of closing, including becoming insolvent or filing for bankruptcy or receivership
  - This does not mean that the charity must be on the verge of turning off the lights and locking its doors, but rather that they can foresee an inability to pay their bills due to a significant drop in income (*i.e.* can foresee closing in 30 to 60 days without other funding)
- To access funds, the PGT needs to be notified in writing, along with meeting other requirements, such as requiring the approval of all board members to access these funds
- While initial approval/consent of the PGT is not required, if the PGT subsequently disagrees, it will look to the reasonableness of the decision and the good faith of the directors at the time and decide what measures to take at that point

- If found to be an unreasonable decision, the PGT may require the funds to be replaced by the charity, find the directors in breach, and/or in cases of bad faith, request the removal of directors
- The PGT has advised that D&Os should seek legal advice if uncertain, including PGT's counsel being available to discuss
- D&Os should document the decision contemporaneously for purposes of a subsequent application under the *Charities Accounting Act*
- Charities are also required to keep an accounting of use of accessed funds
- For further details, see article by Ryan M. Prendergast on accessing restricted charitable funds during the pandemic: [\*Charity & NFP Law Bulletin No. 470\*](#)

## 12. Managing Investment of Funds

- Investments of charitable funds must be carefully monitored at all times, particularly in a volatile market
- It is important for a charity to have a robust investment policy that reflects prudent investment standards, *i.e.* “the care, skill, diligence and judgment that a prudent investor would exercise in making investments” in accordance with s. 27(1) of the *Trustee Act* (Ontario), or other applicable provincial legislation
- Important to document compliance with prudent investor standard
- S. 28 of the *Trustee Act* (Ontario) provides statutory protections to D&Os “if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property, comprising reasonable assessments of risk and return, that a prudent investor could adopt under comparable circumstances”

## 13. Using an Audit Committee

- In general terms, it is important for a charity to have an audit committee in order to review financial statements before they are approved by the board
- Audit committees are normally responsible for overseeing financial reporting, disclosure, corporate reporting and risk management
- The work of audit committees will be particularly important in reviewing financial outcomes from COVID-19
- Important to ensure that the audit committee complies with any requirements that may be imposed by the incorporating legislation, *e.g.* requirements on size, composition, and responsibilities of committee

## 14. Maintain Solicitor-Client Privilege

- If healthcare charities are facing legal challenges and/or potential litigation, discussions with legal counsel to seek legal advice should be protected from disclosure in future litigation as long as privilege (e.g. solicitor-client) is properly maintained
- In this regard, it is important not to waive solicitor-client privilege by disclosing the content of discussions with third parties, even with former board members
- When the board meets to discuss legal advice, that portion of the minutes should be identified as being privileged and confidential as a result of legal advice being discussed

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▼ Advancing Your Health  
Mission During  
COVID-19



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71

▼ Advancing your mission...



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72

## Employee Matters



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73

## Employee Matters

### *Occupational Health and Safety Act (OHSA)*

- General obligation of employers to take reasonable precautions to protect the health and safety of its workers
- Right of employees to refuse unsafe work
  - Exceptions for prescribed workers – e.g. hospital and long-term care home workers
  - Prescribed investigatory and reporting process outlined in OHSA where employee exercises right to refuse unsafe work

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74

## ▼ Employee Matters

### Infectious Disease Emergency Leave

- Job protection extended in prescribed circumstances (may be employer or employee-driven)

## ▼ Employee Matters

### Orders made under the *Emergency Management and Civil Protection Act (Ontario)* (“EMCPA”)

- Orders pertaining to:
  - Staffing options
  - Work deployment measures
  - Hospital credentialing process

## Employee Matters – Return to Work

### Considerations when reopening workplaces

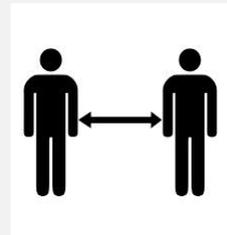
- Legal ability to reopen - <https://www.ontario.ca/page/reopening-ontario-whats-each-stage>
- Requisite notice of expected return
- Placing employees in same or comparable positions / roles
- Employees refusal to return to work



## Employee Matters – Return to Work

### How will employer meet its obligations under OHSA regarding the health and safety of employees (cont.)?

- Revised and new policies and procedures – e.g. social distancing policies
- Updated health and safety training



## ▼ Employee Matters – Return to Work

How will employer meet its obligations under OHSA regarding the health and safety of employees (cont.)?

- Guidance from government authorities on reopening measures – both general and sector-specific

<https://news.ontario.ca/opo/en/2020/04/health-and-safety-association-guidance-documents-for-workplaces-during-the-covid-19-outbreak.html>

## ▼ Employee Matters – Return to Work

How will employer meet its obligations under OHSA regarding the health and safety of employees (cont.)?

- Personal protective equipment (PPE)?
- Employee self-screening?
- Employer screening?
  - Questioning employees re past travel, health, etc.
  - Taking temperatures
  - COVID testing



## ▼ Employee Matters – Return to Work

### Considerations related to employee screening

- Rights of employees to refuse screening
- Rights/obligations of employers when an employee tests positive for COVID



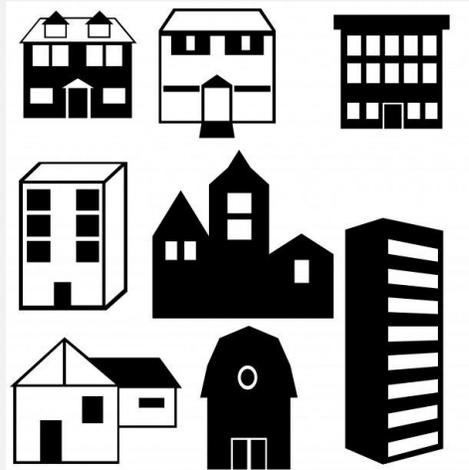
## ▼ Employee Matters – Return to Work

### Considerations related to employee screening (cont.)

- Privacy matters:
  - Rights of employee to privacy vis-à-vis disclosure obligations of employers
  - Retention of personal health information arising from employer-screening practices



## ▼ Premises Issues



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83

## ▼ Premises Issues

### Steps taken by government

- ✓ Rent relief / assistance programs – e.g. Canada Emergency Commercial Rent Assistance
- ✓ Orders under the EMCPA pertaining to:
  - Temporary health and residential facilities (in respect of hospitals and long-term care facilities)
  - Evictions while court and tribunal offices are closed

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84

## ▼ Premises Issues

### Steps that can be taken by tenants

- Landlord negotiations regarding:
  - ✓ Reduced / delayed rent
  - ✓ Breaking the lease
- Modifying workplaces to reduce spread of COVID
- Holding landlords to obligations affected by COVID – e.g. cleanliness standards

## ▼ Disclaimer

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▼ **Closing Remarks**

Thank you for attending!

Please keep well and safe!

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# **FASKEN**

## **Resource Materials**

# Canadian Health Sector: COVID-19 Update

READING TIME

17 MINUTE READ

JUNE 15, 2020

## Health Law Bulletin

Measures implemented over the past two weeks by governments across Canada to respond to the COVID-19 outbreak focus on safely re-opening various businesses and services, including in the health care sector, while continuing work to reduce and recover from the outbreak and support frontline workers. Government efforts continue to be directed to supporting vulnerable populations, particularly in the long-term care sector. While governments of several provinces and territories have gradually begun easing certain restrictions on visits to long-term care homes, retirement homes and other residential care settings, restrictions remain in place. A few provinces that had imposed supply limits on prescription medications have begun to lift those limits.

This bulletin summarizes key recent legislative changes, government orders and other significant developments affecting health care providers and organizations across Canada during the past two weeks.<sup>[1]</sup>

For additional information and insights visit the [Fasken Coronavirus \(COVID-19\) Knowledge Centre](#). In addition, see our previous bulletins summarizing key health sector updates across Canada [in March 2020](#), [up to April 5, 2020](#), [up to April 12, 2020](#), [up to April 19, 2020](#), [up to April 26, 2020](#), [up to May 3, 2020](#), [up to May 17, 2020](#) and [up to May 31, 2020](#).

## ▾ Alberta

On **June 4, 2020**, the Government of Alberta **announced** that temporary amendments to Alberta's nursing homes regulations (the Nursing Homes General Regulation and the Nursing Homes Operation Regulation), which were introduced in response to COVID-19, will become permanent effective August 15, 2020. The amended regulations allow nurse practitioners to act as primary care providers in nursing homes.

On **June 5, 2020**, the government **announced** that two biorepositories in the province have begun storing COVID-19 samples for future long-term research. Also on **June 5, 2020**, the government **announced** that it had received a donation of 200 Alberta-designed ventilators.

Effective **June 6, 2020**, Alberta Health Services introduced updated [COVID-19 Essential Visitor and Designated Family/Support Guidance](#) for patients in both acute outpatient and inpatient settings. The previous guidelines for continuing care environments were not updated. Alberta Health Services also updated its [information page](#).

Stage 2 of [Alberta's Re-Launch Strategy](#) began on **June 12, 2020**. Phase 2 includes more surgeries.

The Alberta government **announced** that as of **June 15, 2020** pharmacists can dispense larger quantities of prescription drugs, up to a 100-day supply. However, pharmacists are advised to dispense a 30-day supply when necessary for specific drugs that still have shortages or supply chain issues.

**Testing** is now available, and being encouraged, for everyone in Alberta.

## ▼ British Columbia

On **June 3, 2020**, British Columbia's Minister of Citizens' Services extended a **temporary ministerial order** under the *Freedom of Information and Protection of Privacy Act*, which permits health-care workers and other public sector staff to use communication tools during the COVID-19 state of emergency. The order, among other things, enables:

- patient-care teams to follow up with patients using virtual platforms; and
- people in self-isolation to communicate with public health officials using third-party tools or applications.

The order will remain in effect until December 31, 2020. The order was first made on March 26, 2020, and was described in our **earlier bulletin**.

On **June 8, 2020**, the government issued an **order** amending B.C. Reg. 182/97 (the Information Sharing Agreement Prescribed Enactments Regulation) under the *Medicare Protection Act*. The *Medicare Protection Act* allows the Medical Services Commission to enter into an information-sharing agreement with Canada or a jurisdiction inside or outside Canada, or a public body under the *Freedom of Information and Protection of Privacy Act*. "Information-sharing agreement" means a data-matching or other agreement to exchange personal or other information for the purpose of administering medical or health care benefits provided under prescribed enactments. The order makes the *Emergency Health Services Act* a prescribed enactment.

On **June 9, 2020**, the government **ordered** that the declaration of a state of emergency be extended until June 23, 2020.

## ▼ Manitoba

On **June 1, 2020**, Manitoba entered Phase 2 of the **Restoring Safe Services** plan, including lifting occupancy limits for businesses of regulated health professions. Phase 3 is tentatively planned for June 21, 2020.

On **June 3, 2020**, the Government of Manitoba **announced** that hospitals and health centres will be restoring visitor access for inpatients as part of Phase 2.

Phase 2 is supported by a **public health order**, issued on May 29, 2020 (which took effect on June 1, 2020), described in our **last bulletin**.

On **June 11, 2020**, the government **announced** that the Public Health Agency of Canada and the Manitoba First Nation Pandemic Response Co-ordination Team, in partnership with the First Nations Inuit Health Branch, have deployed rapid testing machines to be used by health care providers in northern Manitoba.

Shared Health Manitoba has a number of **updated resources** for health care providers.

## ▼ New Brunswick

On **June 4, 2020**, the Government of New Brunswick **announced** that its COVID-19 recovery plan was moving to the third level for all areas of the province (except the Campbellton region). During this phase, more restrictions are being eased. Effective **June 5, 2020**, elective surgeries and other non-emergency health-care services will increase, and outdoor visits for residents in long-term care

facilities will be permitted with physical distancing with up to two visitors. Effective **June 19, 2020**, indoor visits with one visitor at a time for residents of long-term care facilities will be permitted (unless the visitor requires support, in which case, two visitors at a time will be allowed). The Campbellton region remains at the second level of the recovery plan.

On **June 11, 2020**, the [State of Emergency mandatory order](#) was again renewed under the authority of the *Emergency Measures Act*.

## ▼ Newfoundland and Labrador

The Government of Newfoundland and Labrador issued an [order](#), effective **June 1, 2020**, extending the province's public health emergency for a further period of 14 days.

On **June 8, 2020**, the province issued a [Special Measures Order](#) and entered Alert Level 3 of its COVID-19 "[Alert Level System](#)". According to the [government's announcement](#) dated June 7, 2020, the focus of Alert Level 3 is to control the transmission of COVID-19, while further relaxing public health measures. Among other services, private health care clinics can reopen in accordance with public health guidelines. Virtual care options also continue to be available, and it is encouraged that virtual care be provided as much as possible. All visitor restrictions for health care facilities throughout the province remain in place. Public health orders related to long-term care homes, personal care homes, and assisted living facilities remain in effect, but are expected to change during Alert Level 3.

On **June 11, 2020**, the provincial government [announced](#) an enhancement to the existing 811 HealthLine that will help improve access to primary care. People can now schedule a virtual appointment with a nurse practitioner for urgent, non-emergency health issues via telephone, text or video. The government stated that improving access to primary health care is a priority, as is expanding virtual care.

## ▼ Northwest Territories

On **June 12, 2020**, the Government of the Northwest Territories [announced](#) that the territory moved to [Phase Two](#) of the [Emerging Wisely](#) plan for relaxing the COVID-19 public health restrictions.

## ▼ Nova Scotia

On **June 3, 2020**, the Government of Nova Scotia issued a [renewal](#) of the provincial State of Emergency until June 28, 2020.

Also on **June 3, 2020**, an update to the [order](#) under the province's *Health Protection Act* was issued by the Medical Officer of Health. Effective **June 5, 2020**, all unregulated health care providers engaged in private practice may provide in-person or virtual care services within their scope of practice. All self-regulated health professions may provide in-person or virtual care services if they:

1. are authorized to provide this care within their scope of practice; and
2. have adopted a compliance plan in accordance with the directions established by their governing college and approved by the Chief Medical Officer of Health.

These regulated and unregulated health professionals must develop and comply with a Workplace COVID-19 Prevention Plan as a requirement of their ongoing operations.

Further, all for-profit or not-for-profit Department of Health and Wellness funded long-term care facilities licensed under the *Homes for Special Care Act* and all Adult Residential Centers and Regional Rehabilitation Centers funded and licensed by the Department of Community Services under the *Homes for Special Care Act* must comply with the "[COVID-19 Management Long term Care Facilities Directive Under the Authority of the Chief Medical Officer of Health](#)"; attached to the order as Schedule A.

On **June 10, 2020**, the government [announced](#) the easing of some visitor restrictions in long-term care homes and homes for persons with disabilities. Effective **June 15, 2020**, visits can resume at long-term care facilities, provided they happen outdoors and visitors stay two metres or six feet away from residents and staff. This change also applies to homes funded by the Department of Community Services under the *Homes for Special Care Act*.

## ▼ Nunavut

As of 5:00 pm (EST) on June 14, 2020, there have been no recent legislative changes or orders affecting the health sector in Nunavut.

## ▼ Ontario

As discussed in our [previous bulletin](#), on April 25, 2020, the Government of Ontario announced that the government would be providing frontline staff with temporary pandemic pay. On **May 29, 2020**, the government issued an [Order \(O. Reg. 241/20\)](#) pursuant to the *Emergency Management and Civil Protection Act* ("EMCPA"), retroactive to April 24, 2020, which states that:

- "eligible employee" means an employee who is entitled to receive temporary pandemic pay in accordance with the document entitled [Eligible workplaces and workers for pandemic pay](#) dated May 29, 2020; and
- "temporary pandemic pay" means the hourly wages and lump sum payments that eligible employees are entitled to receive in accordance with the document [Eligible workplaces and workers for pandemic pay](#) dated May 29, 2020.

The Order applies to eligible employees, employers of eligible employees and employers of persons redeployed to perform work as eligible employees, and trade unions and bargaining agents that represent eligible employees. Pursuant to the Order, no complaint alleging a contravention of the *Labour Relations Act, 1995* or the *Crown Employees Collective Bargaining Act, 1993* may be made in respect of the payment of temporary pandemic pay.

On **May 29, 2020**, the government issued an [Order \(O. Reg. 240/20\)](#) under the EMCPA, pursuant to which the Registrar is authorized to make a mandatory management order under subsection 91(1) of the *Retirement Homes Act* with respect to a retirement home where there is a risk of harm to its residents related to COVID-19, if at least one resident or staff member in the retirement home has tested positive.

On **June 1, 2020**, the government [announced](#) a [new regulatory amendment \(O. Reg. 228/20\)](#) to the *Employment Standards Act* ("ESA"), published May 29, 2020, that deems non-unionized employees to be on [Infectious Disease Emergency Leave](#) any time their hours of work are temporarily reduced or eliminated by their employer due to COVID-19 beyond the permitted length of time in the ESA. This amendment is intended ensure businesses are not forced to terminate employees after their ESA temporary layoff periods have expired, and to allow workers to remain employed with legal protections and be eligible for federal emergency income support programs. The amendments apply retroactively to March 1, 2020 and will expire six weeks after the declared emergency ends. The amendments do not include employees represented by a trade union.

On **June 1, 2020**, the government [announced](#) that its Chief Medical Officer of Health and Associate Chief Medical Officer of Health will hold bi-weekly media briefings to provide an update on the province's ongoing response to COVID-19. Regularly scheduled media briefings will now be held every Monday and Thursday at 3 p.m.

On **June 2, 2020**, the government [announced](#) new businesses that are receiving financial support through the Ontario Together Fund to re-tool their processes and increase their capacity to make personal protective equipment.

On **June 2, 2020**, the government [announced](#) that it is extending the provincial Declaration of Emergency to June 30, 2020, which will support the continued enforcement of emergency orders that give hospitals and long-term care homes the necessary flexibility to respond to COVID-19 and protect vulnerable populations and the public as the province reopens. The Declaration of Emergency may be further extended with the approval of the legislature.

Also on **June 2, 2020**, the government [announced](#) that the Ministry of Long-Term Care issued a new Mandatory Management Order for a long-term care home. On **June 4, 2020**, the government [announced](#) an additional order. The Ministry will continue to make decisions on a case-by-case basis.

On **June 4, 2020**, the government **announced** that it appointed a special advisor to support the design and implementation of the new Ontario Health Data Platform (formerly known as PANTHR) to provide recognized researchers and health system partners with access to anonymized health data that will allow them to better detect, plan, and respond to COVID-19. As well, this platform will support projects from the Ontario COVID-19 Rapid Research Fund. The Ontario Health Data Platform is being developed in consultation with the Information and Privacy Commissioner of Ontario. The information gathered will allow researchers to help with:

- increasing detection of COVID-19;
- discovering risk factors for vulnerable populations;
- predicting when and where outbreaks may happen;
- evaluating how preventative and treatment measures are working; and
- identifying where to allocate equipment and other resources.

Researchers can begin to access the platform in July 2020.

On **June 6, 2020**, the government **extended** all emergency orders in force under the EMCPA until June 19, 2020.

On **June 8, 2020**, the government **announced** that it is will be adopting a regional approach to Stage 2 of reopening the province and indicated the public health unit regions that are permitted to move to Stage 2. Ontario government has also released **over 100 health and safety guidance documents** to help employers keep spaces safe.

On **June 11, 2020**, the government **announced** that it is lifting the recommended 30-day supply limit for dispensing Ontario Drug benefit program medications. In March 2020, pharmacists and physicians were asked to dispense 30-days or less of medication at a time for program recipients, subject to exceptions. This restriction was intended to prevent drug shortages during the COVID-19 outbreak. As of **June 15, 2020**, program recipients will be permitted to fill up to 100-days' worth of supply at a time from their pharmacy or dispensing physician. Program recipients' co-payments will return to their previous amounts.

On **June 11, 2020**, the government **announced** the appointment of Ontario's new Patient Ombudsman, responsible for supporting individuals in Ontario who have voiced concerns about their health care experience and improving the quality of care for people in hospitals, long-term care homes and through home and community care. The Ombudsman will be overseeing an investigation into the care and health care experiences of long-term care home residents during COVID-19, which will complement the government's independent commission beginning in July 2020.

Also on **June 11, 2020**, the government **announced** the gradual resumption of visits to long-term care homes, retirement homes, and other residential care settings. As of **June 18, 2020**, family and friends will be permitted access to these facilities. Visitors will be subject to strict health and safety protocols, including requiring visitors to pass active screenings, confirming they have tested negatively for COVID-19 in the past two weeks, requiring visitors to wear a face covering during visits, and complying with infection prevention and control protocols. Long-term care homes will allow, at a minimum, one person to visit each resident every week for an outdoor visit.

Retirement homes visiting permissions will vary between homes and are dependent upon individual circumstances. If visitors are permitted, retirement homes will be resuming indoor and outdoor visits in designated areas or, where physical distancing can be maintained, in resident suites. Other residential care settings will be permitted to allow outdoor visits of two people at a time and include homes serving persons with developmental disabilities, shelters for survivors of gender-based violence, and children's residential settings. Before accepting any visitors, all long-term care and retirement homes and residential care settings will be required to ensure that they are not experiencing an outbreak; they have an established process for communicating visitor protocol and the associated safety procedures in place; and they have the highest infection prevention and control standards. There will be a physical distancing requirement for all visits. Should an outbreak occur, further visiting restrictions will return.

## ▼ Prince Edward Island

On **May 31, 2020**, Prince Edward Island's Chief Public Health Officer issued a **Public Health Order** revoking and replacing its previous order issued on May 21, 2020.

Effective **June 1, 2020**, visitation to long-term care facilities and nursing homes is permitted, provided the facility complies with the Chief Public Health Officer's *Directive on Visitation to Long-Term Care Facilities and Nursing Homes*.

## ▼ Quebec

On **June 3, 2020**, the Government of Quebec issued an **order** renewing the public health emergency until June 10, 2020, and on **June 10, 2020**, the government signed an **order** renewing the public health emergency until June 17, 2020.

Also on **June 3, 2020**, the government introduced *Bill 61, An Act to restart Québec's economy and to mitigate the consequences of the public health emergency declared on 13 March 2020 because of the COVID-19 pandemic*. The goal of the bill (*explanatory notes*) is to promote growth and acceleration measures for public infrastructure projects or projects developed by a municipality or citizen. The bill also aims to improve Quebec's health and food sectors. The government, or the Minister of Health and Social Services may, with regard to the measures taken under the *Public Health Act*, take any transitional measure to allow for a return to normality in an orderly manner once the public health emergency is terminated.

On **June 4, 2020**, the Minister of Health and Social Services issued an **order** including that, among other things, the provisions of collective agreements in force in the health and social services network and the employment conditions that apply to non-unionized salaried personnel be amended to extend the period in which annual vacation may be taken.

On **June 6, 2020**, the Minister of Health and Social Services issued an additional **order** that lifted certain restrictions on recreational activities and, among other things, lifted restrictions on access to the Côte-Nord health region.

In our **earlier bulletin**, we described an **order** that allowed personnel of public services to be redeployed to another function or location, including into the health and social services network. On **June 12, 2020**, the Minister of Health and Social Services issued an **order** that, among other things, built on this earlier order to amend collective agreements in order to accommodate teaching courses as part of the Health Care Facility Patient Service Support program.

## ▼ Saskatchewan

On **June 1, 2020**, the Government of Saskatchewan **announced** expanded testing criteria. Beginning on **June 5, 2020**, testing was made available to those being admitted to acute care for more than 24 hours, including expectant mothers and immunocompromised individuals and their health care providers. Testing for COVID-19 was already available to anyone working outside the home, or anyone returning to work as part of the **Re-Open Saskatchewan plan**.

On **June 3, 2020**, the government **announced** that the Saskatchewan Health Authority (SHA) expanded its criteria for compassionate visitations for intensive and long-term care patients. Various other updated **guidelines** have also been created, including to safely support outdoor visits in long-term care homes and for family visits in hospitals and long-term care homes.

On **June 4, 2020**, the government **announced** that the **Saskatchewan Temporary Wage Supplement Program** is being expanded to include anyone, regardless of income level, who is working at licensed public or private long-term care facilities under public health orders restricting visitations. Workers in assisted living facilities, which also are under public health orders, who earn less than the prescribed amounts will also be eligible.

On **June 9, 2020**, an **order** was issued that **extended** the provincial state of emergency in Saskatchewan until June 24, 2020.

On **June 13, 2020**, the Chief Medical Officer of Health issued a new **order** to support the staged lifting of restrictions under the **Re-Open Saskatchewan Plan**. Among the restrictions that continue to be in place are restrictions on visitors to long-term care homes, hospitals, personal care homes and group homes (restricted to family or designates visiting for compassionate reasons); restrictions requiring staff members in a special-care and personal care home to work in only one facility; and requirements for health screenings and other protective measures in special-care, personal care and affiliate care homes, SHA facilities and certain agencies operated by the Saskatchewan Cancer Agency.

The **next phase of SHA service resumption** is scheduled for **June 16, 2020**, including increases in surgical and medical imaging volumes and the addition of services at SHA-operated specialty clinics. **Re-opening of regional emergency rooms** is targeted from June 12-25, 2020.

Saskatchewan has issued a series of re-opening **guidelines**, including the **Medical Professionals Guidelines**.

## ▼ Yukon

On **June 4, 2020**, the Government of Yukon published a **guidance document** for clinical staff in family physician offices.

On **June 11, 2020**, the government published an **updated guidance document** on recommended practices and personal protective equipment for pharmacists and pharmacies.

On **June 12, 2020**, the government published an **updated guidance document** on recommended practices and personal protective equipment for dentists and dental clinics.

Also on **June 12, 2020**, the government **extended** the territory's state of emergency under the *Civil Emergency Measures Act* for another 90 days. The government also **announced** that outdoor visits for long-term care residents are now permitted with the release of a staged plan for the reopening of long-term care facilities in Yukon to visitors. Currently, residents can identify one visitor with whom they can visit in a pre-set outdoor location. The reintroduction of visitors is staged over four phases. Phase 2 will permit two outdoor visitors at the same time.

## ▼ Federal

Effective **June 1, 2020**, the Federal government registered **regulations** that will delay the coming into force of the Regulations Amending the Patented Medicines Regulations until January 1, 2021, an extension from the previous July 1, 2020 coming into force date. The objective is to minimize the administrative burden as patented drug manufacturers face increased demands related to supply chains and shortages of existing products, and potentially new treatments and vaccines in response to COVID-19.

**June 14, 2020** was World Blood Donor Day. Canada's Chief Public Health Officer's **statement** indicated that as planned medical procedures are resumed, there is additional demand for donations and a need to restore critical inventory levels, and explained that Canadian Blood Services and Héma-Québec have enhanced measures in place to protect donors, staff and volunteers.<sup>[2]</sup>

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[1] This bulletin addresses updates published up to 5:00 pm (EST) on June 14, 2020.

[2] Thank you to articling students Marissa Di Lorenzo and Rob Legge, and to summer law students Rachel Hung, Gordon Lee, Katerina Ignatova and Montana Licari for their research assistance.

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FASKEN

BULLETIN

# A Good Deed Now Goes Unpunished: British Columbia Changes Course on Donations of Life Insurance Policies to Charity

READING TIME

3 MINUTE READ

MAY 7, 2020

## Charities Bulletin

British Columbians can donate life insurance policies to charities and charities can solicit such donations without penalty, says the BC Financial Services Authority (BCFSA).

In November 2019, it had become publicly known that the BCFSA (the provincial agency that administers the [Insurance Act](#)) took the position that such activities breached [section 152](#) of the Act.

Section 152 makes it an offence for persons other than insurers or insurance agents to advertise or hold out as purchasers of life insurance policies, or to traffick or trade in such policies.

In a [May 1<sup>st</sup>, 2020 bulletin](#) (PDF), the BCFSA has now clarified that section 152 generally does not prohibit:

1) *bona fide* charities from soliciting donations of life insurance policies or benefits; and

2) insureds from:

- a) taking out a new policy in the name of a *bona fide* charity;
- b) naming a *bona fide* charity as the beneficiary of an existing policy; and
- c) transferring ownership of an existing policy to the *bona fide* charity.

This recent announcement restores the *status quo ante* that existed in BC before November 2019. Charitable organizations and donors can now once again generally use life insurance policies as a tool in their fundraising or charitable giving activities without compliance concerns under the *Insurance Act*.

Charities and donors should be aware of a few additional items in the BCFSA's recent bulletin:

The BCFSA's position is not a blanket position. It is subject to an assessment of the facts in specific cases. As the BCFSA notes, the intent behind section 152 is to protect vulnerable British Columbians. While it supports legitimate charitable giving, the agency will review and investigate any practices that may involve vulnerable British Columbians or that otherwise appear to harm the public.

The BCFSA encourages the charitable giving community to adopt best practices that both support charitable giving and protect donors' interests. It is expected that industry groups such as the Canadian Association of Gift Planners will provide further directions on such best practices and charities operating in BC would be prudent to consider their advice.

We also note that the charities soliciting or receiving donations of life insurance policies must be *bona fide* charities. The bulletin does not define "*bona fide* charities". While legitimate charitable organizations that are registered with the Canada Revenue Agency and able to issue tax receipts should almost certainly qualify, it is somewhat less clear whether "*bona fide* charities" would include private or public foundations or other "qualified donees" as defined in the *Income Tax Act* (such as registered housing corporations, municipalities, or the Crown). The reason for this is that the BCFSA bulletin uses the phrase "charitable organization", which is a recognized term used in the *Income Tax Act*, but, in that Act, the phrase "charitable organization" does not include "private foundations", "public foundations" or "qualified donees". This seems likely to be the result of the BCFSA's casual use of the phrase "charitable organization" rather than a deliberate policy, but Fasken is seeking further clarification from the BCFSA.

Donating or accepting a life insurance policy is a complex topic, with issues and risks relating to gift receipting, valuation, ownership, and taxation. The BCFSA encourages donors and charities to seek independent legal advice to ensure that their activities comply with the *Insurance Act*. If you have any questions or need assistance with respect to charitable giving, compliance, or communications to donors, please feel free to contact [Dierk Ullrich](#), [Stephen Hsia](#), or another member of our Trusts, Wills, Estates and Charities Group.

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# Charities Directorate Closure and Relief for Not for Profits and Charities in Response to the COVID-19 Pandemic

READING TIME  
2 MINUTE READ

MARCH 27, 2020

On March 20, 2020, the Canada Revenue Agency (CRA) announced that its Charities Directorate had been closed down with all **operations suspended** until further notice in response to the COVID-19 pandemic. This news follows an earlier announcement on March 18, 2020, where the Canadian government announced certain **economic measures** to help stabilize the Canadian economy.

## ▼ What do these announcements mean to Canadian charities?

The CRA's Charities Directorate call centre is now closed so it may be impossible to get responses from CRA on issues a Canadian charity may be facing during this challenging period. All applications that were sent to CRA for registration of a new charity will be delayed until further notice.

All ongoing audit activities of the Charities Directorate are suspended. This means that any ongoing dialogue with the CRA regarding any issues raised by the Charities Directorate including questions about a charity's status have been put on hold for the time being.

The CRA has extended the filing deadline to December 31, 2020, for all charities required to file a Form T3010, Registered Charity Information Return between March 18, 2020 and December 31, 2020.

## ▼ Other Tax Proposals

The broader relief measures announced on March 18 contain a proposal to provide "eligible small employers", including not-for-profit organizations and charities, a wage subsidy for a period of three months. The proposed subsidy is to be equal to 10% of remuneration paid between March 18, 2020, and June 20, 2020, up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer. To receive this subsidy a not-for-profit or charity can start reducing remittances of federal, provincial (other than Quebec), or territorial income tax in the first remittance period that includes employee remuneration paid. This reduction does not apply to Employment Insurance or Canada Pension Plan remittances.

The legislation enacting these proposals were approved by Parliament and received Royal Assent on March 25, 2020.

Today, the Prime Minister announced that the amount of the subsidy would be increased from 10% to 75% and would be effective from March 15.

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**Resource Materials**

## PRACTICAL STRATEGIES FOR DEALING WITH TERMINATION OF CONTRACTS IN A PANDEMIC

By Sean S. Carter and Heidi LeBlanc\*

### A. INTRODUCTION

The ongoing COVID-19 pandemic in Canada has caused an unprecedented situation with a unique set of challenges for organizations, including charities and not-for-profits (“NFPs”). Due to the governmental restrictions and the continually evolving advisories and guidelines, organizations have been forced to face difficult decisions regarding operations, not just in the immediate future, but also to make decisions regarding future operations that are weeks and months down the road. As a result, many charities and NFPs are having to consider cancellation or postponement of events and programs through either cancelling those events outright or rescheduling a wide variety of contractual obligations in the face of the COVID-19 pandemic. The results are far-reaching, including the loss of donations and/or program-related income, which could mean potentially significant monetary losses. As such, it is critical to consider what practical strategies may be available to help minimize or possibly eliminate contractual losses or damages. This Bulletin outlines some practical strategies for charities and NFPs to consider in this regard.

### B. *FORCE MAJEURE* CLAUSES

#### 1. What Are *Force Majeure* Clauses?

*Force majeure* clauses are often included in contractual agreements to permit parties to avoid or limit liability for non-performance of contractual obligations as a result of circumstances beyond their control. *Force majeure* cannot be implied by the parties, and only exists as a contractual

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remedy. In looking to the enforceability of these clauses, the courts will look closely to the facts of the case, conduct of the parties, and the terms of the *force majeure* clause itself. No one *force majeure* clause is usually the same, and the particular language, manner in which it was negotiated, and facts become very important in determining enforceability.

In considering the use and reliance upon *force majeure* clauses during and after the COVID-19 pandemic, it is important that parties carefully consider the specific language of the clause, any particular notice requirements, and strategies in negotiating solutions to potential long-term barriers to contractual performance. Charities and NFPs need to be aware that the mere existence of a *force majeure* clause does not necessarily relieve the parties from their obligations, nor ensure rescheduling or other adjustment. The manner in which the clause is invoked, the circumstances, and the timing are all part of what may make a *force majeure* clause effective in assisting negotiations or formal reliance.

## 2. The Language of the Clause

Although *force majeure* clauses can be found in different types of contracts, each clause is unique and must be carefully reviewed, as the specific language therein and the present facts may drastically affect a court's interpretation of the clause.

In particular, many of these clauses include specific language with respect to the types of events which can trigger the effect of the clause, often referencing events such as riots, strikes, floods, war, and other events beyond human foresight. Depending on the specific language and the types of events listed, the courts will then have to decide whether the individual clause being examined was meant to cover an event like the COVID-19 pandemic. Due to similar health-related incidents in the recent past, such as SARS and H1N1, many contracts have contemplated the disruption caused by other health-related concerns, and make specific reference to "epidemics" or "pandemics" in general. In the event that there is no specific language including "pandemics" or "epidemics" in general, which would clearly encompass the ongoing situation with COVID-19, most standard *force majeure* clauses include "acts of God" in the list of triggering events. Subject to other limiting language included in the clause, it is likely that the COVID-19 pandemic could fall within the scope of a standard *force majeure* clause as an "act of God", though its application will ultimately depend on the court's interpretation of the provision. In order to determine whether the COVID-19 pandemic

falls within the scope of the triggering events under the clause, parties will have to undertake a careful review of the specific language of the clause and the types of events that were contemplated to trigger the operation of the clause at the time the contract was agreed to.

In addition to determining whether the COVID-19 pandemic triggers the operation of a *force majeure* clause, parties should also carefully review the language of the clause with respect to the type of relief provided if the clause is triggered. In some instances, the clause may operate to eliminate all liability for a party who is unable to meet its contractual obligations as a result of the *force majeure* event. This is not always the case, however, and it is important to look to the specific wording of the clause to determine whether it provides for complete relief from contractual responsibilities, or only provides some partial relief. As such, when considering whether to invoke a *force majeure* clause, a party should carefully review the type of relief provided before moving forward in providing notice of reliance upon the clause. For example, if the clause only provides partial relief to an invoking party, the party may choose to engage in “without prejudice” negotiations (to be discussed below) to reach an alternate resolution with the opposing party with respect to a future breach of contractual responsibilities, rather than relying upon the partial relief provided under the *force majeure* clause.

### 3. Minimum Notice Requirements

*Force majeure* clauses typically include a minimum notice period to notify the other parties that the notifying party intends to rely upon the clause. Parties should take note of any deadlines set out in the clause and ensure that all notice requirements are strictly adhered to, in order to be able to successfully rely upon the clause. In the event that these minimum notice requirements are not met, it will likely cause significant difficulty for an invoking party to overcome these arguments from the opposing party before the court.

Due to the evolving government restrictions and current social climate due to the COVID-19 pandemic, contracting parties may already foresee potential difficulties in performing some or all of their obligations. In the event that a party is unable to perform obligations in the short term, it will need to consider whether the minimum notice requirements can still be met. In some cases, the party’s ability to satisfy the notice requirements will depend upon when the afflicting government restrictions came into effect and when the party first became aware that it would be unable to fulfill

its contractual responsibilities. As a result, parties should carefully consider the language of a notice provision in the clause, with particular attention to whether there is any guidance as to when the minimum notice period begins to run.

#### 4. Considerations for Negotiations

The constantly evolving nature of the restrictions and public safety guidelines caused by the COVID-19 pandemic have created significant uncertainty for the months to come. As such, many parties are being forced to consider how to approach their potential inability to meet contractual obligations, not just in the short term, but also on a long-term basis into the future. As a result, charities and NFPs may wish to consider engaging in negotiations with their contractual partners in order to reach a resolution in an effort to reduce potential damages, losses, and liability on a go-forward basis.

It is important, however, to remember that well-meaning attempts to rely upon a *force majeure* clause, even as a part of early stage negotiations, may inadvertently lead to arguments from contractual partners regarding anticipatory or preemptory breach of contract. These difficulties should be avoided, if possible, by framing these discussions as “without prejudice” negotiations, wherein the *force majeure* clause is utilized as a tool to assist in negotiations, and is only openly invoked as a matter of last resort. This is particularly important when parties begin to engage in these negotiations long before the expiry of any notice requirements under the applicable clause.

Due to the COVID-19 pandemic, the courts have suspended their regular operations and are not currently allowing any in-person appearances due to current social distancing guidelines. Although the courts continue to expand the scope of the matters that they will begin to hear by video and teleconference, the COVID-19 pandemic will inevitably continue to cause a delay with respect to the courts’ ability to hear non-urgent civil matters. Although *force majeure* clauses are helpful tools for contracting parties, significant delays will inevitably result to parties who intend to enforce clauses before the civil courts over the next year or two. This provides a further incentive for parties to consider pursuing an early negotiated settlement, or even private arbitration, in managing issues with respect to suspected non-performance of contractual obligations due to the COVID-19 pandemic, which may otherwise typically be enforced via a *force majeure* clause.

## C. FRUSTRATION OF CONTRACT

In the event that a contract does not include a *force majeure* clause, or the *force majeure* clause is unenforceable under the current circumstances, the parties may be able to resort to the common law remedy of “frustration of contract.” The doctrine of frustration can be relied upon if an unforeseen event results in the contract being impossible to perform, or has become radically different than what was initially intended by the parties at the time the contract was entered into. Further, organizations such as charities and NFPs may also be able to rely upon frustration if the purpose of the contract itself has been frustrated. This can occur when the contract may be physically performed, but the purpose of doing so has been entirely subverted by an unforeseen supervening event.

Frustration may be particularly applicable under the current circumstances in defending against a breach of contract claim for a failure to perform obligations under the contract due to the COVID-19 pandemic. In determining whether frustration applies, the court will consider the purpose of the contract and, particularly, whether it has been undermined by the COVID-19 pandemic, as well as the timing of the COVID-19 pandemic’s effect upon the parties’ ability to perform their obligations under the contract. Similar to the analysis regarding the applicability of *force majeure* clauses, the specific facts of the case will need to be assessed in determining whether the doctrine of frustration applies to a given circumstance.

## D. LIQUIDATED DAMAGES CLAUSES

Liquidated damages clauses exist in many contracts in order to discourage last minute contract cancellation and operate to impose pre-specified monetary damages upon a party if it wants to terminate the contract. It is important to note that an anticipatory or peremptory breach may trigger the operation of these clauses, resulting in monetary penalties to the offending party. These clauses will be of particular concern to parties who may be unable to meet contractual obligations in the coming months due to the COVID-19 pandemic, as they will want to avoid or limit any potential penalties under the contract for early termination thereof.

Even if a termination of the contract is likely to occur due to the COVID-19 pandemic, and the applicable contract includes a liquidated damages clause, it is not a foregone conclusion that the clause would be upheld by a court. If the clause is akin to a penalty, and the monetary damages set out therein does not represent a genuine attempt to pre-estimate the loss to the other party resulting from the termination, the

clause will not be enforceable against the terminating party and they will not be subject to pay the monetary damages set out in the clause.

In addition, it could be argued that a liquidated damages clause should not be enforceable in circumstances where parties need to terminate a contract due to the challenges posed by the COVID-19 pandemic on the basis of public policy. While there is little case law at this time on this point, the COVID-19 pandemic may well constitute a sufficient public policy concern causing the courts to either strike down a clause or dramatically lessen the damages imposed under the clause in question.

It is important to note, however, that these considerations regarding enforceability of liquidated damages clauses do not relate to deposits. Deposits and clauses relating to them are to be assessed separately and, by their very nature, are intended to be forfeited. As such, the recovery, or even partial recovery, of a deposit following a subsequent termination of the contract, is highly unlikely regardless of any public policy concerns.

## E. CONCLUSION

Given the relatively unprecedented nature of the COVID-19 pandemic, charities and NFPs are encouraged to carefully review active contracts, assess any ongoing contractual obligations (with legal advice if possible) and consider how they may be affected in the coming months. The strategies discussed above may assist both those organizations which are seeking relief from some contractual responsibility, as well as those that wish to ensure that the maximum funds or damages are retained in light of a terminated or unperformed contract. It will be important to consider these strategies throughout any negotiations pertaining to potential contract cancellations, but to also do so on a proactive basis in order to set the best possible narrative in the event that litigation becomes necessary.

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## **COVID-19 FEDERAL GOVERNMENT SUPPORT FOR CHARITIES AND NFPs**

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*By Terrance S. Carter and Luis R. Chacin\**

### **A. INTRODUCTION**

Since the COVID-19 outbreak was declared a pandemic by the World Health Organization, the federal and provincial governments have continued to introduce different measures to assist businesses and organizations, including charities and not-for-profits (“NFPs”), that are impacted by the economic fallout of the COVID-19 pandemic. This *Charity & NFP Law Bulletin* provides what is intended to be a helpful overview of the key federal government measures that have become or are expected to soon become available for charities and NFPs.<sup>1</sup>

### **B. DESCRIPTION OF PROGRAMS**

#### **1. Canada Emergency Commercial Rent Assistance (“CECRA”)**

On April 24, 2020, Prime Minister Trudeau announced an agreement in principle between the federal government and the provinces and territories (which are responsible for property and landlord-tenant relationships), to implement the Canada Emergency Commercial Rent Assistance (“CECRA”) program for small businesses, as well as charities and NFPs.<sup>2</sup> Previously announced on April 16,

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<sup>1</sup> See Government of Canada, “Canada’s COVID-19 Economic Response Plan” (updated to 24 April 2020), online: <<https://www.canada.ca/en/departement-finance/economic-response-plan.html>>.

<sup>2</sup> Prime Minister of Canada, News Release “Prime Minister announces partnerships with provinces and territories to deliver the Canada Emergency Commercial Rent Assistance for small businesses” (24 April 2020), online: <<https://pm.gc.ca/en/news/news-releases/2020/04/24/prime-minister-announces-partnerships-provinces-and-territories>>.

2020,<sup>3</sup> and expected to be operational by mid-May 2020, the CECRA will lower rent payments by 75% for small businesses, as well as charities and NFPs, that rent property from qualifying commercial landlords that have been affected by the COVID-19 pandemic.

Under the CECRA, the federal and provincial governments will provide forgivable loans to qualifying commercial property owners to cover 50% of three monthly rent payments (*i.e.* April, May and June, 2020). Qualifying commercial property owners and tenants will enter into rent forgiveness agreements which would include a moratorium on eviction. These rent forgiveness agreements would also provide a rent reduction of at least 75%, by asking the tenant to be responsible for covering 25% of the rent, the property owner another 25%, and the federal government and provinces sharing the remaining 50%. The federal government has indicated that the forgivable loans of 50% of the rent would be disbursed directly to the landlord's mortgage lender.

As administered by the Canada Mortgage and Housing Corporation ("CMHC"),<sup>4</sup> the Ontario government has committed \$241 million through the Ontario-Canada Emergency Commercial Rent Assistance Program ("OCECRA"),<sup>5</sup> with support available until September 30, 2020, and retroactive to April 1. Details released by the CMHC on April 29, 2020, state that property owners must have a mortgage loan secured by the commercial real property occupied by one or more small business tenants in order to apply, but that property owners who do not have a mortgage will be provided with "an alternative mechanism."<sup>6</sup>

To be eligible under the CECRA, tenants who are small businesses, charities and NFPs must be paying less than \$50,000 per month in rent, and must have temporarily ceased operations or have experienced at least a 70% drop in pre-COVID-19 revenues. The CMHC has stated that the monthly \$50,000 in rent refers to "gross rent per location (as defined by a valid and enforceable lease

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<sup>3</sup> Prime Minister of Canada, News Release "Prime Minister announces additional support for small businesses" (16 April 2020), online: <<https://pm.gc.ca/en/news/news-releases/2020/04/16/prime-minister-announces-additional-support-small-businesses>>.

<sup>4</sup> Canada Mortgage and Housing Corporation, "COVID-19: CECRA for Small Businesses" (29 April 2020), online: <<https://www.cmhc-schl.gc.ca/en/finance-and-investing/covid19-cecra-small-business>>.

<sup>5</sup> For further information on the OCECRA and qualifying commercial property owners, see Office of the Premier, "Ontario-Canada Emergency Commercial Rent Assistance Program" (24 April 2020), online: <<https://www.news.ontario.ca/opo/en/2020/04/ontario-canada-emergency-commercial-rent-assistance-program.html>>.

<sup>6</sup> *Supra* note 4.

agreement)” and that eligible tenants must “generate no more than \$20 million in gross annual revenues, calculated on a consolidated basis at the ultimate parent level”).<sup>7</sup> The drop in revenues would be determined by either comparing revenues in April, May and June 2020 to the same month in 2019 or, alternatively, to average revenues for January and February 2020.

In accordance with the Ontario Government’s Backgrounder dated April 24, 2020,<sup>8</sup> OCECRA will not be available to “entities that promote violence, incite hatred or discriminate on the basis of race, national or ethnic origin, color, religion, sex, age or mental or physical disability”.<sup>9</sup> Also, property owners applying to OCECRA must agree to “forego profit for a three-month period.”<sup>10</sup>

However, given the lack of details available to date, many landlords and tenants will have to wait for the release of further information regarding CECRA (and the relevant provincial program) in order to determine whether or not they qualify for this program.

## 2. \$350 Million Emergency Community Support Fund

On April 21, 2020, the Prime Minister announced an investment of \$350 million to “support vulnerable Canadians through charities and non-profit organizations that deliver essential services to those in need.”<sup>11</sup> The support to charities and non-profit organizations will be through the Emergency Community Support Fund and flow through national organizations, such as United Way Canada, the Canadian Red Cross, and the Community Foundations of Canada, which have the ability to quickly disburse funds to local community-based organizations working with vulnerable populations by way of activities such as:

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Supra* note 5.

<sup>9</sup> *Ibid.* Other government programs, such as the federal government’s Canada Emergency Business Account, discussed below, have included similar restrictions; however, it is unclear how this will be implemented and whether it will leave out religious charities which are permitted to discriminate on the basis of religion under provincial human rights legislation.

<sup>10</sup> *Ibid.*

<sup>11</sup> Prime Minister of Canada, News Release “Prime Minister announces further support to help Canadians in need” (21 April 2020), online: <<https://pm.gc.ca/en/news/news-releases/2020/04/21/prime-minister-announces-further-support-help-canadians-need>>; see also Prime Minister of Canada, News Release “Prime Minister announces support for vulnerable Canadians affected by COVID-19” (29 March 2020), online: <<https://pm.gc.ca/en/news/news-releases/2020/03/29/prime-minister-announces-support-vulnerable-canadians-affected-covid>>.

- Increasing volunteer-based home deliveries of groceries and medications;
- Providing transportation services, like accompanying or driving seniors or persons with disabilities to appointments;
- Scaling up help lines that provide information and support;
- Helping vulnerable Canadians access government benefits;
- Providing training, supplies, and other required supports to volunteers so they can continue to make their invaluable contributions to the COVID-19 response; and
- Replacing in-person, one-on-one contact and social gatherings with virtual contact through phone calls, texts, teleconferences, or the Internet.

### 3. Canada Emergency Wage Subsidy (“CEWS”)

On April 11, 2020, Bill C-14, *COVID-19 Emergency Response Act, No. 2*,<sup>12</sup> which received Royal Assent the same day, introduced the previously announced the Canada Emergency Wage Subsidy (“CEWS”). The CEWS is a 75% wage subsidy provided to eligible employers, including charities and NFPs (with certain exceptions), that experience a drop in “qualifying revenues” of at least 15% in March 2020 and 30% in the months of April and May 2020. The CEWS is available for up to 12 weeks from March 15, 2020 to June 6, 2020. However, the legislation allows for additional periods to be added by regulation, ending no later than September 30, 2020.

For a detailed summary of the terms and requirements of the CEWS, reference should be made to our April 17, 2020 [COVID-19 Resource](#).<sup>13</sup>

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<sup>12</sup> Bill C-14, *A second Act respecting certain measures in response to COVID-19*, 1st Sess, 43rd Parl, 2019-2020, ch 6 (assented to 11 April 2020) [“Bill C-14”].

<sup>13</sup> Terrance S. Carter & Barry W. Kwasniewski, “Canada Emergency Wage Subsidy (‘CEWS’): An Overview for Charities and NFPs” (17 April 2020), Carters Professional Corporation, online: <<http://www.carters.ca/pub/bulletin/charity/2020/covid/CEWS-Bulletin-COVID19.pdf>>.

#### 4. Canada Emergency Business Account (“CEBA”)

On April 9, 2020, the federal government announced the Canada Emergency Business Account (“CEBA”),<sup>14</sup> which will provide interest-free loans of up to \$40,000 to small businesses and certain charities and NFPs, to help cover their operating costs during a period where their revenues have been temporarily reduced. Organizations applying for this benefit need to have a federal tax registration and have to demonstrate they paid between \$20,000 to \$1.5 million in total payroll in 2019. Applications are submitted through the bank or credit union with which the organization had an existing business account opened before March 1, 2020 and remaining in good standing with regard to any existing borrowing facilities by at least 90 days prior to March 1, 2020.

The loans are fully funded by the federal government. If a loan is repaid by December 31, 2022, CEBA provides that 25% of the loan (*i.e.* up to \$10,000) will be forgiven. For example, an outstanding balance of \$40,000 at December 31, 2020 would require a payment of \$30,000 between January 1, 2021 and December 31, 2022. Any balance not paid by December 31, 2022 would be converted to a 3-year term loan at 5% annual interest, paid monthly, effective January 1, 2023 and the full balance would need to be repaid by December 31, 2025.

To be eligible, an organization must acknowledge its intention to continue to operate its business or to resume operations, agree to participate in post-funding surveys conducted by the Government of Canada or its agents, and not fall under any of the following excluded borrower categories:

- government organizations or bodies, or entities owned by a government organization or body;
- unions, charitable, religious or fraternal organizations or entities owned by such an organization, except if,
  - o it has filed either a T3010 (registered charity) or a T2, *and*
  - o it generates a portion of its revenue from the sale of goods or services;

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<sup>14</sup> See Department of Finance Canada, “Minister Morneau and Minister Ng mark the launch of the Canada Emergency Business Account” (9 April 2020), Government of Canada, online: <<https://www.canada.ca/en/department-finance/news/2020/04/minister-morneau-and-minister-ng-mark-the-launch-of-the-canada-emergency-business-account.html>>; see also Government of Canada, “What is the Canada Emergency Business Account”, online: <<https://ceba-cuec.ca>>.

- entities owned by individual(s) holding political office; and
- entities which promote violence, incite hatred or discriminate on the basis of sex, gender, sexual orientation, race, ethnicity, religion, culture, region, education, age or mental or physical disability.

It is unclear whether certain charities, such as religious organizations which are permitted to discriminate on the basis of religion under provincial human rights legislation, would be deemed ineligible under the CEBA or other government support programs with similar restrictions.

Further, funds from CEBA may only be used to pay non-deferrable operating expenses, including, without limitation, payroll, rent, utilities, insurance, property tax and regularly scheduled debt service. Funds may not be used to fund any payments or expenses, such as prepayment/refinancing of existing indebtedness, payments of dividends, distributions and increases in management compensation.<sup>15</sup>

## 5. Temporary Wage Subsidy

On March 18, 2020, the federal government announced a temporary wage subsidy for eligible small businesses, including charities and NFPs, which was enacted into law on March 25, 2020 and is a three-month measure allowing “eligible employers to reduce the amount of payroll deductions required to be remitted to the Canada Revenue Agency.”<sup>16</sup> The temporary wage subsidy equals 10% of remuneration paid from March 18, 2020 to June 19, 2020, up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer.

## 6. Other Targeted Measures

### a) Rural Businesses and Communities

On April 17, 2020, the Prime Minister announced an investment of \$287 million to support rural businesses and communities, including through the Community Futures Network,<sup>17</sup> a network

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<sup>15</sup> *Ibid.*

<sup>16</sup> Canada Revenue Agency, “FAQ – Temporary wage subsidy for employers: CRA and COVID-19” (last modified 14 April 2020), online: Government of Canada <<https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/frequently-asked-questions-wage-subsidy-small-businesses.html>>.

<sup>17</sup> Prime Minister of Canada, News Release “Prime Minister announces new support to protect Canadian jobs” (17 April 2020), online: <<https://pm.gc.ca/en/news/news-releases/2020/04/17/prime-minister-announces-new-support-protect-canadian-jobs>>.

of non-profit organizations that provide loans and resources to small businesses in rural communities across Canada.

b) Emergency Support Fund for Cultural, Heritage and Sport Organizations

Also on April 17, 2020, the Prime Minister announced an investment of \$500 million to establish a COVID-19 Emergency Support Fund for Cultural, Heritage and Sport Organizations to help address the financial needs of affected organizations within these sectors so they can continue to support artists and athletes. This Fund will be administered by Canadian Heritage with the support of its partners and in a manner consistent with other COVID-19 support, such as CEBA.

c) Local Food Infrastructure Fund

On April 3, 2020, the Prime Minister announced a \$100 million investment for Canadian food banks and other national food rescue organizations to help improve access to food for people impacted by the COVID-19 pandemic.<sup>18</sup> The funding will be delivered through the Government of Canada's Local Food Infrastructure Fund, which was launched in the summer of 2019 to strengthen food systems and facilitate access to safe and nutritious food for at-risk populations. The federal government is also working with key national and regional agencies that have an established network and distribution system for food aid and providing food to those in need.

The \$100 million investment will be divided as follows: \$50 million to Food Banks Canada, \$20 million divided evenly between the Salvation Army, Second Harvest, Community Food Centres Canada, and Breakfast Club of Canada, and \$30 million for local-level food organizations. Local organizations seeking funding can contact one of these organizations directly to participate.<sup>19</sup>

Funds under this program may be used to purchase food and other basic necessities, buy or rent equipment and materials, transport and distribute food, access new distribution centres, hire temporary help to fill volunteer shortages, implement biosecurity measures, such as purchasing

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<sup>18</sup> Prime Minister of Canada, News Release "Prime Minister announces support for food banks and local food organizations" (3 April 2020), online: <<https://pm.gc.ca/en/news/news-releases/2020/04/03/prime-minister-announces-support-food-banks-and-local-food>>.

<sup>19</sup> For further information, see Agriculture and Agri-Food Canada, "Supporting people experiencing food insecurity in Canada because of COVID-19" (last modified 16 April 2020), online: Government of Canada <<http://www.agr.gc.ca/eng/agricultural-programs-and-services/local-food-infrastructure-fund-infrastructure-and-equipment-improvement-projects/supporting-people-experiencing-food-insecurity-in-canada-because-of-covid-19/?id=1585855025072>>.

personal protective equipment to reduce the spread of COVID-19 among volunteers and clients.<sup>20</sup>

## C. CONCLUSION

It is important to note that the above overview of federal government support programs is not exhaustive and that further details on these and other programs that may be available to charities and NFPs under particular circumstances have yet to be made available by the federal government. It is expected that additional information, and possibly additional programs and funding will be announced as various sectors of the economy, including the charitable and not-for-profit sector, adapt to the current reality of COVID-19.

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<sup>20</sup> *Ibid.*

## ONTARIO PGT ALLOWS ACCESS TO RESTRICTED CHARITABLE PURPOSE FUNDS

*By Ryan M. Prendergast\**

### A. INTRODUCTION

Many charities in Ontario are experiencing economic hardships as a result of the COVID-19 pandemic. In light of the difficulties faced by charities, the Office of the Public Guardian and Trustee for Ontario (“PGT”) released a temporary guidance, entitled *Accessing Restricted Purpose Trust Funds Prior to Obtaining a Court Order During the COVID19 Pandemic* (the “Temporary Guidance”),<sup>1</sup> on March 30, 2020, to provide certain relief to charities in danger of closing. Under the Temporary Guidance, the PGT will permit such charities to access the income and capital of their restricted purpose trust funds and to use these funds where necessary to continue their day-to-day operations without the need to first obtain a court order. Subsequently, the PGT provided additional clarity to its Temporary Guidance by releasing a question and answer document entitled *Q&A’s re: PGT Temporary Guidance on Accessing Restricted Purpose Funds* (the “Q&As”)<sup>2</sup> on April 20, 2020. This *Bulletin* provides a brief summary of the PGT’s Temporary Guidance and Q&As. These measures are only applicable to charities in Ontario.

\* Ryan M. Prendergast, B.A., LL.B., is a partner practicing in the area of charity and not-for-profit law. The author would like to thank Adriel N. Clayton, B.A. (Hons.), J.D., associate, for his assistance in preparing this Bulletin.

<sup>1</sup> Office of the Public Guardian and Trustee, *Accessing Restricted Purpose Trust Funds Prior to Obtaining a Court Order During the COVID19 Pandemic*, (30 March 2020) online: <<http://www.carters.ca/pub/bulletin/charity/2020/covid/PGT-Statement-re-Accessing-Restricted-Funds.pdf>> [“Temporary Guidance”].

<sup>2</sup> Office of the Public Guardian and Trustee, *Q&A’s re: PGT Temporary Guidance on Accessing Restricted Purpose Funds*, (20 April 2020) online: <<http://www.carters.ca/pub/bulletin/charity/2020/covid/Q&A-for-PGT-Guidance-on-Accessing-Restricted-Purpose-Funds.pdf>>.

## **B. WHAT ARE RESTRICTED PURPOSE TRUST FUNDS**

Restricted purpose trust funds are often also referred to as “donor-restricted trust funds”, “charitable purpose trusts”, “restricted charitable purpose trusts”, “restricted funds”, “special purpose funds”, as well as “endowment funds.” Generally speaking, restricted purpose trust funds are established when a donor expresses the intention for property that is donated to a charity to be held by the recipient charity for a specific charitable purpose. In this regard, the Temporary Guidance indicates that restricted purpose trust funds include “the income and capital of perpetual endowment funds, and the income and capital of trust funds held for a restricted charitable purpose.”

## **C. OVERVIEW OF TEMPORARY GUIDANCE**

As mentioned above, the Temporary Guidance provides relief for charities that are in danger of closing by allowing them to access and use the income and capital of restricted purpose trust funds to continue their day-to-day operations without first obtaining a court order permitting them to do so. This is significant, insofar as it permits charities to access funds that they would otherwise be precluded from accessing. However, the Temporary Guidance places a number of conditions on charities that wish to access restricted purpose trust funds.

In this regard, charities must first be “in danger of closing” unless they can access the funds, and accessing such funds must be a last resort. The Temporary Guidance indicates that this includes being in danger of “becoming insolvent or filing for bankruptcy or receivership.” The Q&As further indicate that charities need not “be on the verge of turning off the lights and locking its doors”, but rather that they can foresee an inability to pay their bills due to a significant drop in income. In this regard, the Q&As state that charities should first examine their financial situation, which includes access to reserve and non-restricted funds, as well as government funding. Where charities still foresee closing in 30 to 60 days without other funding, they would be considered to be in danger of closing. However, the Q&As explicitly state that the PGT “[does] not expect staff lay-offs or selling assets prior to accessing the funds, however, temporarily halting programs and any other cost cutting measures (short of laying off staff) that are not pandemic response related is expected.”

To access funds, charities are first required to notify the PGT in writing. Charities should provide their name and address; the name of the perpetual endowment fund or other restricted purpose trust fund; and the name, address and telephone number of a contact person for the organization. Notification should be

provided via email to [cynthia.spencer@ontario.ca](mailto:cynthia.spencer@ontario.ca). While the PGT's approval or consent is not required prior to a charity accessing its restricted purpose trust funds, if the PGT subsequently disagrees with a charity's decision to do so, the Q&As state that the PGT "will look at the reasonableness of the decision and the good faith of the directors at the time and decide what measures to take at that point." The PGT's response may vary, and the Q&A says that it could include "requiring the charity to replace the funds, finding the directors in breach, [and/or] requesting removal of directors (in cases of bad faith)". The PGT has indicated that its counsel is available to discuss matters with directors or the charity's counsel if the charity is unsure.

Further, all board members of the charity must approve the decision to access and use the restricted purpose trust funds. The decision should be documented contemporaneously for purposes of a subsequent application under the *Charities Accounting Act*. In this regard, it is particularly important to note that the Temporary Guidance requires all charities that are permitted to access their restricted purpose trust funds to subsequently apply for an order approving the encroachment under section 13 of the *Charities Accounting Act* within a "reasonable time" after the COVID-19 pandemic has subsided. As such, while a court order or section 13 application is not required prior to accessing the funds on a temporary basis during the pandemic, a section 13 application will be required in a reasonable period of time after the pandemic "has subsided" for charities that access such funds.

The Temporary Guidance indicates that the amounts charities can access should be reasonable given the charity's circumstances. Once restricted charitable purpose trust funds are accessed, those funds may only be used to cover operating expenses, such as salaries, building expenses, and utilities, as well as the charity's other contractual obligations, and only to the extent as is necessary for the charity to remain solvent. Additionally, charities whose purposes allow them to provide services in response to the COVID-19 pandemic may use the funds for those services as well. However, such charities must still meet the requirement of being in danger of closing before they can access those funds. Further, funds may not be used to assist programs that are not pandemic-responsive programs. Additionally, the funds cannot be transferred to other organizations, except where doing so is in compliance with previously existing contractual obligations as noted in the Temporary Guidance.

Charities are also required to keep an accounting of the use of their accessed funds. While accessing funds can be structured as a loan if the charity wishes to repay the funds in the future, the Q&As indicate that

there is no requirement for charities to repay or replenish the restricted charitable purpose funds. The Temporary Guidance also indicates that where a charity finds that it is necessary to sell stocks, bonds or other securities, that sale will be considered reasonable if the sale was to an arm's-length third party on the open market, even if such sale results in a loss of capital.

Finally, the Q&As indicate that in order for charities administering restricted charitable purpose funds for the benefit of another charity to use the Temporary Guidance, the trustee charity would be required to contact the PGT. Further, the onus would be on the trustee charity to review the beneficiary charity's circumstances and to satisfy itself that the above-noted criteria have been met. In such circumstances, all directors of both the trustee and beneficiary charity would be required to provide consent.

## D. CONCLUSION

The Temporary Guidance provides very helpful relief to charities in Ontario with restricted charitable trust funds that are struggling to survive in the wake of the COVID-19 pandemic. Charities that are in danger of closing may wish to review the Temporary Guidance to determine whether they are eligible for relief. However, charities that want to take advantage of the relief under the Temporary Guidance should bear in mind that although a court order or application under section 13 of the *Charities Accounting Act* is not necessary prior to accessing the funds, this requirement must be fulfilled within a reasonable period of time after the COVID-19 pandemic has subsided and the charity will be expected to show compliance with the requirements of the Temporary Guidance in accessing restricted funds. As such, the charity should consider consulting with their legal counsel before deciding to seek the relief afforded by the Temporary Guidance and accompanying Q&As.

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## **DUE DILIGENCE BY DIRECTORS AND OFFICERS OF CHARITIES AND NFPs IN RESPONSE TO COVID-19**

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*By Terrance S. Carter and Ryan M. Prendergast \**

### **A. INTRODUCTION**

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.

In this regard, under the *Canada Not-for-Profit Corporations Act* (“CNCA”), the Ontario *Not-for-Profit Corporations Act* (“ONCA”) (expected to be proclaimed later in 2020), and the Ontario *Corporations Act* (“OCA”), directors and officers of charities and NFPs are required to act honestly and in good faith with a view to the best interests of the corporation, and to exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable 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

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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.

## **B. BASIC ISSUES FOR DIRECTORS AND OFFICERS TO CONSIDER**

The following is a list of some due diligence issues that directors and officers of a charity or NFP may want to consider in response to COVID-19:

- First and foremost, always document in writing the steps that are being taken and the dates on which those action items are being undertaken. This will be helpful in evidencing the due diligence that the board and the officers of the charity or NFP are deciding to take if a legal challenge was to come up at a later time.
- The board of directors should be convened as soon as possible and continue to meet thereafter as frequently as may be necessary, possibly creating a special committee to oversee initiatives of the board. The bylaws of the charity or NFP should be consulted to determine that meetings of the board can be held by phone. If not, then consideration may need to be made to amending the bylaws, with the assistance of legal counsel, in order to authorise the board to meet by telephonic or other electronic means (see *Charity & NFP Law Bulletin* No. 466, *NFP Board and Members’ Meetings Amidst COVID-19 Pandemic* for additional information about member and director meetings).
- Monitor federal, provincial and local public policy and public health-related orders, directives and restrictions which may impact the operations of the organisation both inside and outside Canada.
- Monitor government actions in all jurisdictions in which the organisation is carrying out any programs that may be affected.
- Review any existing risk management, disaster recovery and remote access policies of the organisation and, if these are not in place, consider adopting and implementing such policies as soon as possible.
- Be aware of any appropriate health and safety measures for staff, volunteers, clients and beneficiaries so any potential exposure to COVID-19 is either reasonably minimized or eliminated, particularly with

respect to vulnerable beneficiaries that may be adversely impacted by COVID-19, and evaluate and manage risks related to employee shortages, project cancellations, disruptions, and delays.

- Review insurance policies, including directors' and officers' insurance and business interruption insurance, if applicable, as well as any travel insurance policies covering staff or volunteers unable to return to Canada as a result of international travel restrictions.
  
- Review all contracts with regard to the effect of COVID-19, as well as any government directive or public health recommendation as a result of COVID-19, on planned events or conferences, real estate transactions or the delivery or receipt of goods and services generally (see *Charity & NFP Law Bulletin* No. 467, *COVID-19 and the Performance of Contracts* for more on how COVID-19 may provide an excuse for the non-performance of contracts).
  
- Review all funding or other agreements with governments or other agencies to determine the charity's or NFP's obligations to deliver services or other goods and how that may be impacted by COVID-19.
  
- Review the financial health of the charity or NFP by determining the anticipated impact of COVID-19 upon donations, grants, investment returns, sponsorship income, membership income, sale of materials, and any other sources of income and then determine what the corresponding actions should be to offset the anticipated reduction in income.
  
- Ensure that salaries of employees continue to be paid on a timely basis, otherwise directors can be left exposed to personal liability for unpaid salary and vacation pay.
  
- To the extent that an organisation is having to consider layoffs and/or elimination of staff, legal advice from employment counsel needs to be sought (see *Charity & NFP Law Bulletin* No. 465, *Employer Obligations and Considerations in Response to the COVID-19 Pandemic* for additional information about employment law issues).
  
- Ensure that all employee statutory deductions and HST/GST remittances are paid on a timely basis, otherwise directors can be exposed to personal liability.

- Work with legal counsel to review bylaw provisions concerning members' meetings and determine if annual members' meetings may need to be postponed or whether alternative methods for holding member meetings may need to be considered, such as by telephonic or other electronic means if permitted in the bylaws or governing statute for the charity or NFP (see *Charity & NFP Law Bulletin* No. 466, *NFP Board and Members' Meetings Amidst COVID-19 Pandemic* for additional information about members' meetings).
- Determine the extent to which the organisation's measures in response to COVID-19 are in line with privacy legislation and consider what steps may be necessary in order to obtain appropriate consent (see *Charity & NFP Law Bulletin* No. 468, *Privacy and Data Security in Response to COVID-19* for additional information regarding the impact of COVID-19 on privacy).
- Manage external and internal communications with staff, volunteers, clients, beneficiaries and counterparties with a view to mitigate or reduce the impact of the crisis to the organisation as a whole.

## C. CONCLUSION

The COVID-19 pandemic has triggered unprecedented action by governments and businesses at a global scale, causing significant impact to the Canadian economy, which is expected to last for months. In this climate of uncertainty, directors and officers of charities and NFPs have a duty to act with skill and diligence with a view to the best interests of their respective organisations. Hopefully, this brief listing of due diligence issues for directors and to consider will be of help in that regard.

**Check-Up 2020:  
Healthcare Philanthropy in a COVID-19 World**

June 19, 2020

**BIOGRAPHIES**

# FASKEN



## Areas of Expertise

Private M&A | Corporate Governance |  
Corporate/Commercial | Life Sciences | Health | Cannabis

## Education

1987, LLB, Queen's University  
1984, BA, University of Toronto

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Ontario, 1989

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English

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Lynne Golding is the Leader of the firm's Health group. She has an active corporate/commercial practice based principally in the health industry.

Dealing with both for-profit and not-for-profit entities, Lynne advises clients on transactions in regulated and unregulated industries. A highly regarded name in the health regulatory space, Lynne's practice is principally comprised of clients in the health sector for whom she provides governance advice and structuring and transactional services.

Lynne is a frequent speaker on issues affecting the health sector and has been recognized for her expertise in healthcare law by Chambers Global and the Canadian Legal Lexpert Directory.



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Corporate/Commercial | Health | Cannabis | Agribusiness,  
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## Education

2009, JD, Queen's University  
2005, BA (Honours), University of Toronto

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Ontario, 2010

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English

Laurie Turner has an active corporate/commercial practice and advises clients in the for-profit and not-for profit (specifically hospital sector) on a diverse range of matters including corporate restructurings, (e.g. mergers and amalgamations) corporate governance, procurement and privacy, with a particular focus on the health sector.

Laurie is a graduate of Queen's University, Faculty of Law. Prior to attending law school, Laurie earned her undergraduate degree from the University of Toronto (Distinction) and was an Executive Research Assistant to the Canadian Research Chair in Breast Cancer at Sunnybrook & Women's College Health Sciences Centre. Laurie also worked as a Research Assistant for Professor Jurgen Rehm at the Centre for Addiction and Mental Health. Laurie has gained valuable experience through recent secondments at two large teaching hospitals in Toronto and a shared service organization where she advised on a wide range of matters.



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Tax Law | Personal Tax Planning & Wealth Management |  
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1993, LLB, Osgoode Hall Law School at York University

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English

Corina Weigl is Co-Leader of the Private Client Service group. Her practice is focused on estate and family business succession planning. She develops customized strategies for wills, trusts, and tools designed to protect a client's property, such as domestic contracts, Corina leverages legal and tax regimes to protect multi-jurisdictional property and family interests. She is also active in the Firm, currently holding the position of Chair of the Firm's Professional Development Committee, having been Vice-Chair of the Business Law Section for many years.

Corina relies on a variety of tools to implement structures designed to facilitate a successful estate and business succession plan for clients. She also provides strategic advice to executors, trustees and beneficiaries in respect of ongoing administration issues or when faced with estate litigation regarding fiduciary accounts.

Corina also advises on charities and not-for-profit considerations, advising clients on legislative, tax and regulatory implications of their philanthropic goals.

Named the 2017 "Lawyer of the Year" for Trusts and Estates in Toronto by *Best Lawyers in Canada*, Corina has also been recognized with Lexpert's "Zenith Award" for her pro bono work for SEDI.



### TERRANCE S. CARTER, B.A., LL.B, TEP, TRADEMARK AGENT



Terrance Carter, as the Managing Partner of Carters, practices in the area of charity and not-for-profit law, and has been recognized as a leading expert by *Lexpert*, *The Best Lawyers in Canada*, and *Chambers and Partners*. Mr. Carter is also a registered Trademark Agent and acts as legal counsel to the Toronto office of the national law firm Fasken on charitable matters.

Mr. Carter is a co-author of *Corporate and Practic Manual for Charitable and Not-for-Profit Corporations* (Thomson Reuters), a co-editor of *Charities Legislation & Commentary*, 2020 Edition (LexisNexis Butterworths), a contributing author to *The Management of Nonprofit and Charitable Organizations in Canada*, 4<sup>th</sup> Edition (2018 LexisNexis Butterworths), co-author of *Branding and Copyright for Charities and Non-Profit Organizations*, 3<sup>rd</sup> Edition (2019 LexisNexis Butterworths) and the *Primer for Directors of Not-for-Profit Corporations* (Industry Canada).

Mr. Carter is a member of CRA Advisory Committee on the Charitable Sector, a member of the Government Relations Committee of the Canadian Association of Gift Planners (CAGP), the Association of Fundraising Professionals, a past member of the Technical Issues Working Group of Canada Revenue Agency's (CRA) Charities Directorate, a past member of CRA's Charity Advisory Committee and the Uniform Law Conference of Canada Task Force on Uniform Fundraising Legislation, a Past Chair of the Charities and Not-for-Profit Law Section of the Canadian Bar Association (CBA) and a Past Chair of the Charity and Not-for-Profit Law Section of the Ontario Bar Association (OBA). Mr. Carter was awarded the Friends of CAGP Award in 2020, and was the 2019 recipient of the Jane Burke Robertson Award of the Canadian Bar Association, as well the 2002 recipient of the AMS - John Hodgson Award of the OBA for charity and not-for-profit law. He is also a member of the Intellectual Property Institute of Canada, the Association of Fundraising Professionals, and the American Bar Association Tax Exempt Section, and has participated in consultations with the Public Guardian and Trustee of Ontario, the Charities Directorate of CRA, Finance Canada, and was a member of the Anti-terrorism Committee and the Air India Inquiry Committee for the CBA.

Mr. Carter has written numerous articles and been a frequent speaker on legal issues involving charity and not-for-profit law for the Law Society of Ontario, the Canadian Bar Association (CBA), the Ontario Bar Association (OBA), the Association of Fundraising Professionals, the American Bar Association, the CAGP, the Canadian Tax Foundation, CPA Canada, CPA Ontario, STEP, CSAE, the New York University School of Law, the University of Ottawa Faculty of Common Law, Ryerson University, McMaster University, the University of Waterloo Master of Tax program, Queensland University of Technology (Brisbane, Australia), University of Manitoba Law School, as well as the C.D. Howe Institute.

Mr. Carter is also the editor of, and a contributor to [www.charitylaw.ca](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca), [www.carters.ca](http://www.carters.ca), and [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca), as well as Chair of the annual *Church & Charity Law Seminar*<sup>TM</sup>, and a founder and a past co-chair of the CBA National Charity Law Symposium.

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**JACQUELINE M. DEMCZUR, B.A., LL.B.**

Mrs. Demczur was called to the Ontario Bar in 1999, joined Carters in 2001 and became a partner in 2007. Her practice is exclusively focused in the areas of charity and not-for-profit law, including incorporation, charitable status applications, corporate restructuring, establishment of churches and religious denominations, international operations, gift planning, legal risk management reviews, charity pre-audit reviews and post-audit submissions to CRA, and advising directors of charities and other not-for-profit corporations. Mrs. Demczur has been recognized as a leading expert in charity and not-for-profit law in Canada by *The Best Lawyers in Canada*.

Mrs. Demczur is a member of the Charity & Not-for-Profit Section of the Ontario Bar Association, a contributing author to the *Primer for Directors of Not-for-Profit Corporations* published by Industry Canada, and has written numerous articles on charity and not-for-profit legal issues, including directors' and officers' liability, incorporation and risk management, for *The Lawyers Weekly*, *The Philanthropist*, *Charitable Thoughts*, and [www.charitylaw.ca](http://www.charitylaw.ca). Mrs. Demczur is also a regular speaker at the annual *Church & Charity Law Seminar*<sup>™</sup> and has been an invited speaker to the Canadian Bar Association, Imagine Canada Sector Source, and numerous other organizations. Her volunteer activities have, in the past, included serving as a Board member of Theatre Orangeville, Vice-President and a Board member of the Orangeville Tennis Club, and a Business Advisory Committee Member for Family Transition Place.

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