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**SPRING 2021 CHARITY &
NFP WEBINAR SERIES**
VIRTUAL – APRIL 27, 2021

**SPRING CHARITY & NFP LAW
UPDATE, INCLUDING FEDERAL
BUDGET 2021**

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 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p>CARTERS SPRING 2021 CHARITY & NFP WEBINAR SERIES Tuesday, April 27th, 2021</p>
<p>Spring Charity & NFP Law Update, Including Federal Budget 2021</p> <p>By Terrance S. Carter, B.A., LL.B., TEP, Trademark Agent tcarter@carters.ca 1-877-942-0001</p> <p>© 2021 Carters Professional Corporation</p>	
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OVERVIEW OF SELECT TOPICS COVERED

- Federal Budget 2021: Impact on Charities & NFPs
- Advisory Committee on the Charitable Sector
- Bill S-222, *Effective and Accountable Charities Act*
- Government Response to Senate Report
- New Canada Revenue Agency (CRA) Guidances:
 - CG-002 & CG-004: Charities Working with Intermediaries
 - CG-029: Relief of Poverty
 - CG-030: Advancement of Education
- Corporate Law Update
- Select Case Law Update

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A. FEDERAL BUDGET 2021: IMPACT ON CHARITIES & NFPs

- For details, see *Charity & NFP Law Bulletin No. 492*
<https://www.carters.ca/pub/bulletin/charity/2021/chylb492.pdf>

1. Consultation on Possible Disbursement Quota Amendments

- Budget 2021 proposes launching public consultations with charities to potentially increase disbursement quota (“DQ”) and “update tools” at the CRA’s disposal, beginning in 2022
- Currently, the 3.5% DQ is the minimum amount of the average value of charity’s assets not used in its charitable activities or administration that must be spent on charitable programs or gifts to qualified donees each year
- Budget 2021 states that while most charities meet or exceed their disbursement quotas, a gap of at least \$1B in charitable expenditures exists

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- Growth in the investment of assets of charitable foundations has increased significantly in recent years (\$85 Billion in 2019)
- Potential increase in the DQ could increase support for the charitable sector and those who rely on its services between \$1 Billion and \$2 Billion annually
- Previously, DQ only applied to charitable foundations (not charitable organizations) and was set at 4.5% before it was reduced to 3.5% for taxation years after March 22, 2004
- 3.5% figure was intended to be “more representative of historical long-term real rates of return earned on the typical investment portfolio held by a registered charity”
- Flexibility to review the DQ was not built into the *Income Tax Act* (“ITA”) at the time

2. Revocation of Charitable Status of Listed Entities

- Budget 2021 proposes to amend ITA to “streamline the revocation process of charitable status” for terrorist financing
 - Intended to prevent abuse of charitable status for terrorist financing purposes by allowing for the immediate revocation of charitable status of an organization that is listed as a terrorist entity
- Introduces definition of “listed terrorist entity” into ITA as “a person, partnership, group, fund, unincorporated association or organization that is at that time a listed entity, as defined in subsection 83.01(1) of the *Criminal Code*”
- The list was last updated on February 3, 2021 and includes 73 organizations, including the neo-fascist organization, the “Proud Boys”

3. Expanded Definition of Ineligible Individuals

- “Ineligible Individual” regime gives the CRA the authority to refuse or revoke the registration of a registered charity when an ineligible individual is a board member, officer or controls or manages a charity
- Currently, an ineligible individual under the ITA:
 - i. Has been convicted anywhere of a criminal offence (without a pardon) involving theft, financial dishonesty or otherwise relevant to the operations of the charity;
 - ii. Convicted of a non-criminal offence anywhere involving the above within the last five years;
 - iii. Has been a director, officer, or manager of a charity in Canada while it was engaged in serious non-compliance that lead to its revocation within the last five years;
 - iv. Has been a promoter of a tax shelter in which a charity in Canada participated and the registration of that charity was revoked within the last five years;

- Budget 2021 would add three more categories for individuals involved with “a listed terrorist entity”:
 - i. a listed terrorist entity or a member of a listed terrorist entity;*
 - ii. a director, trustee, officer or like official of a listed terrorist entity during a period in which that entity supported or engaged in terrorist activities, including a period prior to the date on which the entity became a listed terrorist entity, or*
 - iii. an individual who controlled or managed, directly or indirectly, in any manner whatever, a listed terrorist entity during a period in which that entity supported or engaged in terrorist activities, including a period prior to the date on which the entity became a listed terrorist entity;”*

4. Suspension of Receipting for False Statements

- CRA could also suspend receipting privileges of a registered charity for one year where a false statement amounting to culpable conduct was made for the purpose of obtaining or maintaining its registration

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5. Financial Support for the Charitable & NFP Sector

a) New and proposed programs

- Canada Recovery Hiring Program: \$595M in 2021–22
- Community Services Recovery Fund: \$400M
- Black-led Philanthropic Endowment Fund: \$300M total
- Canadian Social Bond: consultations in Fall 2021

b) Enhanced/amended programs

- Extension of CEWS & CERS until September 25, 2021
- Canada Small Business Financing Program: increase by \$560M, include charities & NFPs
- Social Finance Fund: \$220M over first two years
- Investment Readiness Program: \$50M over two years
- Improved Food Security: \$140M top-up of funds

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Advisory Committee on the Charitable Sector Update

B. ADVISORY COMMITTEE ON THE CHARITABLE SECTOR (“ACCS”)

- ACCS was established in 2019 as a consultative forum for the Government of Canada to engage in meaningful dialogue with the charitable sector, to advance emerging issues relating to charities, and to ensure the regulatory environment supports the important work that charities do
- The ACCS decided to provide advice in three areas:
 - Evolving the institutional framework to effectively advance public purposes and maximize sector input
 - Ensuring financial sustainability within the sector
 - Establishing modern governance for charitable sector
- ACCS will host a webinar about its work on May 17, 2021
https://us02web.zoom.us/meeting/register/tZUqduqgqDsvHtfq6w6Gm1RysTW_-iRu0t38

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- ACCS released “Report #1 of the Advisory Committee on the Charitable Sector” on March 12, 2021 (dated January 2021), but not referenced in Budget 2021
 - First of a series of reports to be released by ACCS
 - ACCS made three important recommendations:
 - 1) Amend the ITA to remove the “own activities” test and allow for “resource accountability”;
 - 2) Amend the ITA to allow all appeals to go to the Tax Court of Canada;
 - 3) Create a permanent “home in government” for the charitable and non-profit sector
- See *Charity and NFP Law Bulletin No. 489* for details <https://www.carters.ca/pub/bulletin/charity/2021/chylb489.pdf>

1. Remove the “Own Activities” Test from the ITA and Allow for “Resource Accountability”

- Current “own activities” test regime requires registered charities to devote all of their resources to charitable activities carried on by themselves
- “Own activities” test should be replaced with a regime that permits registered charities to operate in furtherance of their charitable purposes
- ACCS recommends replacing administrative “Direction & Control” requirement with reasonable and practical parameters for ensuring “resource accountability” when working through a third party that is not a qualified donee

- ACCS Report #1 coincides with Bill S-222 proposal (discussed below) to remove “own activities” test and allow charities to make their resources available to non-qualified donees while taking “reasonable steps” to ensure funds used exclusively for charitable purpose
- The focus of legislation and regulation should be on whether a charity uses, in a responsible manner, its resources to further its charitable purposes, not how the charity carries on its charitable “activities”
- ACCS does not suggest that accountability for the use of charitable resources should in any way be weakened, but rather made more appropriate and practical

2. Amend the ITA to Allow All Appeals to Go to the Tax Court of Canada

ACCS recommends implementing Recommendation 23 from the Senate Special Committee Report in two respects:

- | | |
|--|---|
| a) Allow all appeals from decisions of the Charities Directorate of the CRA to the Tax Court of Canada for a hearing de novo, following consideration by the Appeals Branch of the CRA | b) Allow a right to appeal to the Tax Court of Canada for cases where the Appeals Branch of the CRA has not rendered a decision on an appeal by an organization that has had its application for registered charity status refused or an existing charity that has had its registration revoked, within six months of it having been referred to the Appeals Branch |
|--|---|

- Under the current regime, any appeal by a charity of decisions made by the CRA on registration or revocations is required to be heard at the first instance by the Federal Court of Appeal
 - Such appeal mechanisms are time-consuming, costly, and, in almost all cases, do not allow for a reconsideration of the question of what constitutes a charitable purpose, and the legal definition of what is charitable
 - As a result, case law involving charities and charitable registration under the ITA has not evolved much in Canada

3. Create a Permanent Home in Government for the Charitable and Non-profit Sector

- A permanent “home in government” (outside the CRA) for Canada’s charities and non-profits would:
 - Provide a place within government for comprehensive policy development which will strengthen the relationship to ensure a more productive and effective partnership
 - Advocate on behalf of the sector when broader government policies and programs are being considered, thereby acting as a connector and communicator with other government departments

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Bill S-222, Effective and Accountable Charities Act

C. BILL S-222, *EFFECTIVE AND ACCOUNTABLE CHARITIES ACT*

- Hon. Ratna Omidvar, Senator for Ontario, tabled Bill S-222, the *Effective and Accountable Charities Act* for first reading on February 8, 2021
 - Will hopefully provide registered charities in Canada with needed reform of the ITA concerning how they can work with organizations that are not “qualified donees”
 - Expected to receive broad support from the charitable sector
 - Thirty-seven charity lawyers in Canada signed an open letter explaining the need for reform and to eliminate “own activities” requirement
 - See *Charity and NFP Law Bulletin No. 486*
<https://www.carters.ca/pub/bulletin/charity/2021/chylb486.pdf>

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1. Background: Requirements under the ITA

- Current ITA provisions have been generally interpreted by the CRA to mean that a registered charity can only use its resources in two ways, whether inside or outside Canada:
 - On their “**own activities**”; and
 - On gifts to “qualified donees”
- Charitable organizations are required to primarily carry on their own charitable activities and may, if they wish, disburse not more than 50% of their income annually to qualified donees
- Public foundations are required to give more than 50% of their income annually to qualified donees but beyond that, they may also carry on their own charitable activities

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- CRA requires that a charity cannot merely be a conduit to funnel money to an organization that is not a qualified donee, but instead must direct and control the use of its resources when carrying out activities through an intermediary
 - This is known as the CRA’s administrative requirement of “**direction and control**” policy
- Many in the sector have consistently expressed concerns with the CRA’s interpretation of the “own activities” test and the direction and control mechanism for years
- CRA updated their Guidances on November 27, 2020, relaxing some of the more onerous CRA requirements in the previous Guidances
 - But no substantive changes (see below)

2. Historical Justification for “Own Activities”

- The requirement that “all the resources” of a charitable organization be “devoted to charitable activities carried on by the organization itself” has remained since 1950
- Intended to prevent charitable organizations from “circulating funds endlessly or sheltering them without actually using them for charitable relief”
- It is highly doubtful whether the historical basis or rationale for the requirement that charitable organizations must devote all their resources to charitable activities carried on by the organizations themselves continues to be valid in 2021
- See Terrance S. Carter & Theresa L.M. Man, “Direction and Control: Current Regime and Alternatives”
<https://www.carters.ca/pub/article/charity/2020/Direction-and-Control-Current-Regime-and-Alternatives.pdf>

3. Practical Problems with Own Activities/Direction and Control

- Direction and control mechanism requiring programs be the “own activities” of the funding Canadian charity in essence creates a legal fiction in order to satisfy the requirements of the ITA as interpreted by CRA
 - Sen. Omidvar said in her speech that “own activities is outmoded, impractical, inefficient, inordinately expensive and unpopular”
 - Built upon the fiction that everything that a charity does through a third party intermediary must be structured as the activity of the charity itself, which also creates unnecessary exposure to liability

- Top-down approach to exercise “direction and control” is fundamentally at odds with international development philosophy that recognizes the importance of developing empowering partnerships with local communities and non-governmental organizations
- Ignores the benefit of relying on the expertise of the local partner in an international context doing the work on the ground
- Monitoring, management and reporting rules of CRA are onerous and disproportionate
- Compliance requires high administrative costs and draws resources away from actual charity work
- Imposes a paternalistic and patronizing obstacle to working with Indigenous communities

4. Proposed changes of Bill S-222

- Bill proposes to:
 - Remove the fictitious “own activities test”
 - Expand the definition of “charitable activities”
 - Allow resources to be available to non-qualified donees as part of charitable activities
 - Provided that “reasonable steps” are taken
- Aligns with ACCS Report #1 recommendations to eliminate “own activities” test and replace “direction and control” with “resource accountability”

- Removal of “own activities” test by changing ss. 149.1, 188, 188.1 and 189 of the *ITA*
 - Requiring charities to carry on “charitable activities” instead of “charitable activities ~~carried on by it~~”
- Would amend the definition of “charitable activities” to provide for a “resource accountability” type of test in s.149.1(1) by adding a paragraph:
 - *“(b) making resources — including grants, gifts or transfers — available by transactions, arrangements or collaborations of any kind whatsoever in furtherance of a charitable purpose to a person that is not a qualified donee if those resources are made available by a charity that takes reasonable steps to ensure that those resources are used exclusively for a charitable purpose in accordance with subsection (27)”*

- A new subsection (27) would provide that a charity take reasonable steps to ensure the use of its resources are exclusively for a charitable purpose
 - *“(27) A charity is considered to have taken reasonable steps to ensure its resources are used exclusively for a charitable purpose if*
 - (a) before providing resources to a person who is not a qualified donee it collects the information necessary to satisfy reasonable person that the resources will be used for a charitable purpose by the person who is not a qualified donee, including information on the identity, experience and activities of the person who is not a qualified donee; and*
 - (b) when providing resources to a person who is not a qualified donee, it establishes measures, imposes restrictions or conditions, or otherwise takes actions necessary to satisfy a reasonable person that the resources are being used exclusively for a charitable purpose by the person who is not a qualified donee”*

- Bill S-222 as tabled would come into force two years after Royal Assent
- Sen. Omidvar moved second reading of Bill S-222 on March 16, 2021
- In her speech, Sen. Omidvar noted that Canadian charities cannot realistically participate in pooled efforts with non-Canadian charities to address international development issues
- See *Charity and NFP Law Bulletin No. 488*
<https://www.carters.ca/pub/bulletin/charity/2021/chylb488.pdf>
- It is important to support and monitor this Bill
 - There may be possible amendments as it makes its way through Parliament
 - Stay tuned!

D. GOVERNMENT RESPONSE LETTER TO SENATE REPORT

- On March 30, 2021, the Minister of National Revenue published a 20-page letter responding to the Special Senate Committee on the Charitable Sector’s final report, *Catalyst for Change: A Roadmap to a Stronger Charitable Sector*
 - The Special Senate Committee’s Report was published in June 2019 and officially adopted by the Senate in November 2020 (“Report”)
- The Government’s Response Letter briefly summarizes each of the Report’s 42 recommendations for the charitable sector, indicating whether it does or does not support each recommendation

- The recommendations from the Report cover a broad range of issues, from volunteering, staffing and governance, to tax treatment of charities and non-profits, as well as funding, data collection, legislative reform and regulation, among others
 - See the full Senate Report online: <https://sencanada.ca/en/info-page/parl-42-1/cssb-catalyst-for-change/>
 - See the full Government Response Letter online: https://sencanada.ca/content/sen/committee/421/CSSB/report/CSSB_GovResponse_Charitable_e.pdf
- Many of the recommendations that the Government supports will involve working with the ACCS to review issues with the CRA

- **Recommendation 22** calls for “the creation of a single window into government for the charitable sector”
 - Response Letter indicates the Government supports a “centralized secretariat” with the help of Employment and Social Development Canada
- **Recommendations 23 and 24** call for an improved appeals system for charitable status, and the government responds that it will review the framework to determine whether improvements can be made
 - No firm commitment to make any changes
- **Recommendation 30** calls for a review of the CRA’s “direction and control” policy and to implement an “expenditure responsibility test”
 - Response Letter says that the “direction and control” rules will be reviewed but implementing a different legal test is beyond the CRA’s authority

E. NEW CANADA REVENUE AGENCY (CRA) GUIDANCES:

1. CG-002 & CG-004: Charities Using Intermediaries

- Updated Guidance CG-002 *Canadian Registered Charities Carrying On Activities Outside Canada*
<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html>
- Updated Guidance CG-004 *Using An Intermediary to Carry On a Charity’s Activities Within Canada*
<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/using-intermediary-carry-a-charitys-activities-within-canada.html>
- Welcomed minor updates, but overall requirements remain the same
- See *Charity and NFP Law Bulletin No. 484* for details
<https://www.carters.ca/pub/bulletin/charity/2021/chylb484.pdf>

a) Own Activities Test & Direction and Control

- **ITA Allows Charities to Use Their Resources in 2 Ways**
 - 1) Make gifts to qualified donees (“QDs”)
 - 2) Conduct their own activities (“own activities test”) by 2 ways:
 - Charities’ own staff and volunteers
 - Through third party intermediaries (“non-QDs”)
- **ITA “Own Activities” Test**
 - Activities must be directly under the charity’s direction, control and supervision and for which it can account for any funds expended
- **CRA “Direction and Control” Policy**
 - When working through an intermediary, a charity must “direct and control” the use of its resources

b) What’s New? Some Examples of Differences

- **Previous Guidances**
 - “Resources” = physical, financial, material, IP, staff
 - Rules on how to transfer “capital property” to non-QDs
 - 4 common types of intermediaries - agency, contractor, joint venture participant, and co-operative participant
 - One-time activity involving \$1000 or less does not need a written agreement, when other forms of communication might be used to show direction and control

- **Revised Guidances**
 - “Resources” = physical, financial, staff, volunteers
 - Rules on how to transfer “real property (land and immovable property on land, such as buildings)” to non-QDs (no longer “capital property”)
 - 3 common types of intermediaries: consultant or contractor, joint venture participant, co-operative participants (“agency” no longer included)
 - One-time activity involving \$5000 or less does not need a written agreement, when other documents might be enough to show ongoing direction and control, e.g., written instructions, email records, meeting minutes, and regular reporting (up from \$1000)

- **Previous Guidance:** Charities can be Canadian representatives or offshoots of larger organizations outside Canada, *i.e.*, head bodies
- **Revised Guidance:** Charities can be Canadian representatives or affiliates of other (usually larger) organizations that are non-QD outside Canada
- **Previous Guidance:** Charities must keep adequate books and records
- **Revised Guidance:** Whether a charity’s books and records are adequate, CRA looks at the risk of non-compliance for the particular activities – depending on the location, the activity, or the type of resources

- **Previous Guidance:** Getting original source documents are recommended — but if it is not possible or practical, then the charity needs to explain why it cannot get them, and make all reasonable efforts to get copies and/or reports and records to support the expenditures, and show that it has made such efforts
- **Revised Guidance:** Getting original source documents are recommended — but if it is not possible or practical, then CRA will accept photocopied or electronic (scanned) documents, as long as proper imaging practices are followed, and charity should still make all reasonable efforts to get source documents and/or reports and records to support its expenditures

2. CG-029: Relief of Poverty and Charitable Registration

- New Guidance CG-029 *Relief of Poverty and Charitable Registration* released on Nov. 27, 2020
<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/charitable-registration-relief-poverty.html>
- See *Charity and NFP Law Bulletin No. 482* for details
<https://www.carters.ca/pub/bulletin/charity/2021/chylb482.pdf>
- Relief of poverty is one of 4 heads of charity
- Charities under the relief of poverty category must show both the following:
 - their beneficiaries are experiencing poverty
 - their activities provide a charitable benefit that relieves the poverty of their beneficiaries

a) What is Poverty?

- **Relative** – Poverty is a relative term
- **Definition** - Poverty = people who do not have the ability to acquire the basic necessities of life or simple amenities that are seen as necessary for a modest but adequate standard of living
- **Prevention of Poverty is Not Charitable**
 - See *Credit Counselling Services of Atlantic Canada Inc. v Minister of National Revenue*, 2016 FCA 193, [2017] 1 FCR 480

b) How to Relieve Poverty?

- **Provide Benefits** – Provide beneficiaries with a charitable benefit and that the beneficiaries are experiencing poverty – examples:
 - Provide basic necessities of life
 - Provide simple amenities, necessary for a modest but adequate standard of living, and activities that promote social inclusion
- **Extent of Benefits** – Benefits limited to the extent that they are shown to relieve poverty
- **No Undue Private Benefit** – Cannot provide benefit that is more than what is needed to relieve their poverty because the charity may be delivering an unacceptable private benefit

c) Who Can be Helped?

- **Criteria and Process** – Establish “well-reasoned” criteria and process to evaluate beneficiaries to make sure that they need poverty relief
- **Indicators** – May use recognized poverty indicators or may establish other criteria
- **Purpose** – Charitable purposes should include a term that clearly describes its beneficiaries as those in need of poverty relief
- **Public** – Eligible beneficiaries must represent the public or a sufficient section of the public and not be unreasonably restricted

d) Additional Issues

- **T5007** – May need to provide T5007 slips to beneficiaries if financial assistance is provided
- **Records** – Keep records of selection criteria and how relief is provided
- **Benevolent funds** – Donors give general direction that the funds be used in a particular program, but up to the charity to decide how funds are used and who may receive benefit
 - Control must be with the board of the charity, not with the donor

3. CG-030: Advancement of Education

- New Guidance CG-030 *Advancement of Education and Charitable Registration* released on Nov. 27, 2020
<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/whats-new.html>
- See *Charity and NFP Law Bulletin No. 483* for details
<https://www.carters.ca/pub/bulletin/charity/2021/chylb483.pdf>
- Advancement of education is one of 4 heads of charity
- Not all education is charitable
 - Although the concept of education is broad, and all experience may be said to educate, what qualifies as education under charity law is limited
 - For education to be charitable, it must provide knowledge or develop abilities by deliberate teaching or training

- Advancement of education accepted by CRA
 - a) Training that provides knowledge or develops abilities
 - i. Educate through structured and targeted teaching or learning
 - ii. Other purposes the courts have recognized to advance education
 - b) Improving a useful branch of human knowledge through research (See CRA policy CPS-029 on research)
 - c) Certain other special topics of education may or may not be charitable (see below)

a) i) Purposes that Educate Through Structured and Targeted Teaching or Learning

- Includes education by formal or traditional classroom instruction, as well as less formal instruction (e.g., workshops, seminars, self-study)
- **Examples:**
 - Operate a private secondary school in X city
 - Provide adult continuing education courses in business and accounting in Y community
 - Provide seminars and workshops on finance and accounting, Indigenous art history, or car maintenance to the public

- **Content Criteria (education):**
 - Subject matter is useful and has educational value
 - Subject matter is not focused on promoting a point of view
- **Process Criteria (structured and targeted teaching or learning):**
 - Structured format
 - Legitimate, targeted attempt to educate
 - Teaching or learning component

b) LL Other Purposes the Courts Have Recognized to Advance Education

- Most of these purposes are connected with and support formal or traditional classroom education
- **Examples:**
 - Scholarships, bursaries, prizes, and financial assistance for students
 - Schools and tuition fees
 - Providing educational facilities, teachers, equipment, and supplies
 - Sports & sports equipment for a school program
 - Community groups and clubs
 - Alumni associations / School councils
 - Student unions
 - Museums and libraries

c) Special Topics

- Certain special topics may or may not meet the CRA's requirements to be acceptable as a charitable purpose of advancing education, depending on whether they meet the mandatory content and process criteria
- **Examples:**
 - Production and broadcasting / publishing books, magazines or other materials
 - Conferences
 - Vocational or professional education
 - Providing information and education
 - Experiential education
 - Preschool and daycare programs
 - Summer camps

F. CORPORATE LAW UPDATE

Corporate Update

1. Federal Corporations (CNCA)

- On December 30, 2020, Corporations Canada published a reminder that the Order (which extended the deadline to call AGMs and present financial statements) ended on December 31, 2020
- As of January 1, 2021, the “normal rules” apply for federal corporations calling AGMs and presenting financial statements

– For CNCA corporations, AGM must be held no later than 15 months after the previous AGM, and no more than six months after the last financial year-end

2. Ontario Corporations

a) Ontario *Corporations Act* (OCA)

- On October 1, 2020, Ontario government enacted amendments to permit directors’ and members’ meetings to be held electronically
 - Regardless of contrary provisions in a corporation’s constating documents
 - Deadline originally extended to May 31, 2021, but now extended to December 31, 2021
- No further extensions though to timelines to hold annual general meetings of members
 - Essential component of the democratic functions and self-governance of corporations

b) Ontario *Not-For-Profit Corporations Act (ONCA)*

- No update about expected proclamation date of ONCA
- Bill 276 introduced on April 15, 2021 also proposes extending the deadline for electronic meetings under the ONCA:
 - Not-for-profit corporations that would be governed under ONCA would continue to be able to hold virtual meetings, notwithstanding certain restrictions or requirements, until December 31, 2021 (as they can now under the OCA)
- Bill 276, *Supporting Recovery and Competitiveness Act, 2021* also proposes several housekeeping amendments to the ONCA as a consequence of certain provisions being repealed

G. SELECT CASE LAW UPDATE

1. *Ampratwum-Duah v The Queen, 2020 TCC 18*

- A religious minister (“Taxpayer”) claimed charitable deductions for donations to a charity that he was the religious leader of, and he signed the donation receipts in his capacity as the charity’s religious leader
 - No corroborating evidence, *i.e.* bank account or church records, testimony of other charity officials, was introduced
 - Taxpayer alleged no records were available because the donations were made more than six years earlier

- The Tax Court of Canada upheld the CRA's reassessment, indicating that supporting books and records were necessary and that
 - The donation receipts were insufficient evidence of donations, particularly as the Taxpayer had signed his own donation receipts
- The CRA reassessed and denied his deductions on grounds that he had access to the charity's records, signed his own donation receipts, and failed to keep sufficient books and records for his donations
- Lessons learned:
 - Keep proper books and records for receipts of donations
 - Taxpayer should not sign their own donation tax receipts

3. John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's, 2020 NLCA 27 (July 28, 2020)

- Case involved claims of sexual abuse against the Christian Brothers going back to the 1950s
- Archdiocese of St. John's in this case was found not to have done anything negligent on its own
 - Court found Archdiocese responded appropriately and satisfied any duty that existed in civil law
 - However, Archdiocese was still found vicariously liable because of the specific facts surrounding its involvement with another distinct entity, and the actions of that other entity's staff and members

- Organizations may be found vicariously liable for the actions of separate third-party organizations where:
 - A sufficiently close relationship exists; and
 - A connection exists to the incident causing the harm
- Where such risk may exist, due diligence measures may need to be extended to the third-party organization
- However, very much depends on the facts and the relationship between organizations
- Not a binding case outside of Newfoundland and Labrador, but may become persuasive authority in other provinces of Canada
- Leave to appeal to Supreme Court of Canada was denied

4. *Galloway Estate v British Columbia Society for the Prevention of Cruelty to Animals*, 2021 BCSC 413 (March 10, 2021)

- Judgment of the Supreme Court of British Columbia regarding an interesting application of the *cy-près* doctrine in the case of testamentary gifts
- Wills of twin sisters provided a gift to the Pacific Coast Public Television Association (“PCPTA”), at the time of the wills a Canadian registered charity, if it continued to be “in existence” at the time of each testatrix’s death
- The PCPTA ceased to exist during the lifetime of one of the testator’s but the court issued a *cy-près* order in favour of the US entity that received all “flow through gifts” from the PCPTA
- US entity was a US charity for tax purposes as 501(c)(3), although not mentioned in the judgment

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