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CHARITY & NFP LAW UPDATE

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

NOVEMBER 2024

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PUBLICATIONS & NEWS RELEASES

1. Legislation Update

By Terrance S. Carter and Adriel N. Clayton

Requirements for Reproductive Service Charities Would Impact Related Organizations

As mentioned in the October 2024 *Charity & NFP Law Update*, the Department of Finance released a backgrounder titled *Protecting reproductive freedom by preventing abuse of charitable status* on October 29, 2024. As well, a News Release and Notice of Ways and Means Motion to introduce a bill to amend the Income Tax Act and the Income Tax Regulations ("Draft Legislation") were also released on the same day. These items articulate concerns by the Federal government that reproductive health charities with pro-life views may be spreading misinformation about pregnancy care and therefore are required to state that they are not providing abortion services if they do not. This raises a more significant issue about the potential politicization of charitable status and the risks it poses to maintaining an effective charitable sector and civil society in Canada without fear of political interference as pointed out in our October 2024 *Charity & NFP Law Update*, our May 2024 *Charity & NFP Update* dealing with the May 2024 *Senate Report on Sealing*, as well as our January 2022 *Charity & NFP Update* dealing with the Prime Minister's 2021 Mandate Letter about purported "dishonest counselling to pregnant women about their rights and options ineligible for charitable status […]".

The harmful impact from politicizing charitable status was experienced by the charitable sector during the extensive audits of environmental charities that occurred approximately 12 years ago under the previous government. The lesson to be learned from that experience is that no matter what the social or political issue of the day might be (and it can change over time), the charitable sector as a whole is victimized when obtaining and maintaining charitable status is allowed to become politicized by the government of the day.

Besides the broader concern with politicization of the charitable sector, an important issue to point out is the inclusion of proposed subsection 149.1(29) to the *Income Tax Act*. This proposed subsection builds on proposed subsection 149.1(27) that requires charities offering reproductive health services to explicitly disclose any limitations in services, including if they do not provide abortion or birth control. Subsection 149.1(29) takes this a step further, and would require:

> An other registered charity that expressly or implicitly advertises the services, advice or information in respect of the prevention, preservation or termination of pregnancy on behalf of the registered charity referred to subsection (27) that is providing them must disclose in a clear and prominent manner each of the circumstances referred to in that subsection that applies to that registered charity

> in all public communications from that other registered charity advertising those services or that advice or information, including on that other registered charity's website and any social media platform it uses.

In effect, subsection 149.1(29) would mean that any registered charity which "expressly or implicitly advertises the services, advice or information in respect of the prevention, preservation or termination of pregnancy" (whatever "implicitly" means) of a charity caught under subsection 149.1(27) is subject to the same requirements, including the possibility of revocation. This would serve to ostracize and alienate charities caught under subsection 149.1(27), as other registered charities may wish to avoid becoming subject to the same provisions that might otherwise lead to their possible revocation.

Proposed Amendments Would Create Long-Term Care Homes Cultural Pilot Project

Ontario's Ministry of Long-Term Care (the "Ministry") has proposed amendments (the "Amendments") to Regulation 246/22 under the *Fixing Long-Term Care Act, 2021* (the "Act"). The initiative aims to implement a pilot program (the "Pilot") to evaluate how changes to the long-term care ("LTC") waitlist prioritization process can improve access to "cultural, ethnic, religious, and linguistically appropriate care."

Stakeholders had expressed concerns about a growing lack of access to LTC homes that align with the cultural preferences of applicants, including a decline in residents who "match" the specific culture served by such homes. This has reportedly impacted the ability of these homes to maintain and deliver culturally specific services.

The proposed Pilot would allow placement coordinators to prioritize crisis waitlist applicants who identify with the cultural focus of certain LTC homes. These homes, selected for the Pilot, would be designated as primarily serving specific cultural, ethnic, religious, or linguistic groups.

The Ministry proposes changes to Part IV of Ontario Regulation 246/22 to enable the Director (a specific administrator at the Ministry, designated as such under the Act) to designate specific LTC homes or units/areas within specific homes for participation in the Pilot. In these designated homes, modified waitlist rules would allow applicants from the designated cultural group to rank higher on the crisis waitlist if their urgency of need is equal to that of other applicants.

Applicants will continue to be ranked by urgency of need for admission. Only among applicants with equal urgency, those who align with the cultural, ethnic, religious, or linguistic focus of a designated home will receive priority.

The Pilot's overarching goal is to assess the impact of prioritizing cultural needs on improving access within the broader LTC placement framework, while maintaining urgency-based admission criteria.

As part of its commitment to regulatory modernization and burden reduction, the Ministry is conducting a preliminary assessment of the anticipated impacts of the Pilot. This includes evaluating potential compliance costs and benefits while continuing to engage with stakeholders. While this is not yet complete, the Ministry has stated that early analysis of the program suggests that any direct compliance costs associated with the Pilot are expected to be minimal and neutral in impact. Furthermore, the Ministry anticipates that the overall benefits of the Pilot, including improved access to culturally appropriate care, would outweigh any associated costs.

The Ministry sought commentary from the public on the proposed Amendments. This feedback period ended on November 26, 2024.

2. Corporate Update

By Theresa L.M. Man

Updates from the Ministry of Public and Business Service Delivery and Procurement

The Ministry of Public and Business Service Delivery and Procurement (the "Ministry") announced updates to the Ontario Business Registry (OBR) service delivery framework, in an email sent to OBR users on November 22, 2024. The notice is in relation to expanding service delivery options and the requirements of a company key to access the OBR system.

The notice indicates that as of July 2024, there are over 2,000 intermediary organizations who utilize the OBR Partner Portal to submit registry filings on behalf of entities. These are organizations that have authority to act, as agent or otherwise, on behalf of their service clients in conducting transactions through the OBR, such as law firms, lawyers, paralegals, accountants, small business consultants, financial institutions, search houses. In addition, the Ministry has licensed two service providers to have authorized access to the OBR and conduct business registry services on behalf of their service clients.

In this regard, there are two changes coming as of February 1, 2025.

First, the Ministry will increase the number of service providers in order to increase customer choice for business registry services.

Second, all entities registered in the OBR must use a company key to conduct transactions, regardless of whether filing directly through the OBR self-serve portal, an intermediary organization, or a service provider.

A company key consists of a unique series of characters/digits. It is provided to the official email, registered office or other business address for sole proprietorships and corporations, including non-for-profit corporations. The notice indicates that entities that wish to use the services of intermediaries or service providers must be responsible for delegated authority by providing their company key directly to them. In this regard, if the intermediary or service provider has received any entity's company key, they do not need to request a new one. As well, if a service provider has been used after October 19, 2021 to register/incorporate a new entity, then the delegated authority will remain in place until it is revoked by the entity.

The Ministry encourages entities to obtain their company key. The Ministry automatically distributes company keys to the official email address when a new business is registered or incorporated in the OBR. They can also be requested online. The notice provides a link to the Ministry's *Company Key Guide* on how to obtain a company key, as well as the company key notice on the Ontario government's website.

3. Public Safety Canada Provides More Clarity on Supply Chains Act Requirements

By Terrance S. Carter and Cameron A. Axford

As reported in earlier Updates (most recently in the October 2024 *Charity and NFP Law Update*), Canada introduced the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the "*Supply Chains Act*") in May 2023 and brought it into force on January 1, 2024. The *Supply Chains Act* requires large Canadian organizations and government institutions to submit annual public reports detailing their supply chains, policies, risk management, employee training, and remediation efforts, with the aim of increasing transparency regarding the use of forced/child labour by these entities. The *Supply Chains Act* does not exempt charities or not-for-profit organizations. However, as reported previously, the high threshold for what constitutes an "entity" under the Act means that only large organizations with significant assets, revenues, or employees are likely to be subject to its reporting obligations.

As reported in our January 2024 *Charity and NFP Law Update*, Public Safety Canada introduced a guidance that month to assist organizations in complying with the new regulations. On November 15, 2024, Public Safety Canada released an update to the guidance (the "Updated Guidance"), which further clarifies requirements and the scope of the *Supply Chains Act*.

The Updated Guidance on the *Supply Chains Act* clarifies that "assets in Canada" now refer exclusively to tangible property, excluding intangibles like intellectual property or securities. This shift reverses the prior guidance, which stated that securities were considered assets under the *Supply Chains Act*. Businesses may also exclude intangible assets when calculating global asset thresholds to determine if they fall under the Act's requirements. Additionally, the evaluation of whether an entity does business in Canada can align with Canadian tax considerations, using factors such as the location of operations, employees, and transactions. The definition of "employee" now includes full-time, part-time, and temporary workers globally but explicitly excludes independent contractors.

The Updated Guidance clarifies that entities involved solely in selling or distributing goods, without producing or importing them (or controlling those that do), are not expected to report under the *Supply Chains Act*, and enforcement will not be pursued against such entities. "Goods" are now defined as tangible physical property, excluding intangibles like real property and software services. Importing is defined as the actual act of causing goods to enter Canada, typically by paying duties, and excludes third parties like customs brokers or couriers. The Updated Guidance also refers entities to existing financial institution guidelines to assess control of subsidiaries and elaborates on the "*de minimis threshold*," suggesting that minor dealings in goods may not trigger reporting obligations, depending on their significance to the entity's overall business.

The Updated Guidance clarifies that entities are not required to report specific instances or allegations of forced or child labour, avoiding sensitive information that could create legal or privacy risks. Instead, reporting can include anonymized descriptions, such as generalized case studies, if specific instances are disclosed. Entities may provide a general overview of how they assess and manage risks, emphasizing steps taken rather than certifying a "risk-free" status. Reports can acknowledge ongoing development of processes, even if measures are not fully implemented, and if no remediation has occurred in response to evidence of forced or child labour, stating this is sufficient, as the *Supply Chains Act* aims to promote transparency rather than penalize entities.

The Updated Guidance allows entities to use modern slavery reports from other jurisdictions, provided they meet the requirements of the *Supply Chains Act*. While governing body approval of the questionnaire is not required, approval of the report by the entity's governing body remains mandatory. Entities have discretion over who completes the questionnaire, though the individual may be contacted by Public Safety Canada for clarification. Attestations can include electronic and wet signatures, but typing "signed" does

not qualify as a signature. The Updated Guidance also encourages entities to maintain a repository of annual reports, even though only the current report must be published online.

The Updated Guidance is a positive step forward in helping to clarify the obligations on reporting entities. Though very few charitable or not-for-profit organizations will be caught under the "entities" definition, those whom the *Supply Chains Act* applies to must ensure that they are compliant with this evolving regime.

4. Bare Trusts Not Required to File the T3 Return and Schedule 15 for the 2024 Tax Year

By Jacqueline M. Demczur

The Canada Revenue Agency ("CRA") announced on October 29, 2024 that bare trusts are exempt from filing a T3, *Income Tax and Information Return* ("T3 Return"), including Schedule 15, *Beneficial Ownership Information of a Trust*, for the 2024 taxation year, unless the CRA makes a direct request for these filings. This continues the exemption from trust reporting requirements that was issued for bare trusts for the 2023 taxation year.

For details on the Department of Finance's August 12, 2024 proposed extension of the T3 Return filing exemption for bare trusts for the 2024 taxation year and its impact upon charities and not-for-profits, reference can be made to our *Charity & NFP Law Bulletin 528*. For details on Document 2024-1005851C6, where the CRA addresses questions concerning trust reporting involving bare trusts, reference can be made to our August 2024 *Charity & NFP Law Update*.

According to the CRA, "[t]he new trust reporting requirements still apply to other affected trusts with taxation years ending after December 30, 2023", which will still be required to file T3 Returns, including Schedule 15, barring specific conditions being met. More information can be found on the CRA's page for frequently asked questions on reporting requirements for trusts.

Applicable T3 Returns must be filed no later than 90 days after the trust's tax year-end, which for most trusts, is the end of the calendar year. As such, trusts with a December 31, 2024 tax year-end will need to file their T3 Return by March 31, 2025.

5. Ontario Superior Court Decision Highlights Importance of Properly Drafting By-laws

By Esther S.J. Oh and Urshita Grover

In *Mississauga Majors v. Provincial Women's Softball Association*, the Applicant, the Mississauga Majors Baseball Association, a not-for-profit corporation that offers baseball and softball leagues exclusively for youth and young adult females (the "Majors"), sought a declaration from the court directing the Respondent, the Provincial Women's Softball Association ("PWSA"), which is the governing body for women's softball in Ontario, to comply with its by-laws. The Majors also sought an order compelling the PWSA to grant membership to the Majors. The case was heard before the Ontario Superior Court of Justice, which released its decision on September 20, 2024.

The PWSA is a not-for-profit corporation that operates a softball association in Ontario, and in 2024, had 58 association members which field 220 rep teams in Ontario. Since the PWSA is the organization that sanctions Ontario provincial qualifiers and championships and selects the Women's Ontario Softball Team, the Majors took the view that its membership in the PWSA was essential to attract and retain players who hope to have a future in softball. The Majors alleged that it loses players each year to other softball associations that offer rep programs (which provide advanced training and competition to players who wish to develop their skills at a higher level) because the Majors is not a member of the PWSA, even though the Majors is a member of a number of other associations including Baseball Ontario, the Central Ontario Baseball Association, and other regional baseball associations and leagues.

The Majors applied for association membership with the PWSA twice. However, both applications were denied, leading the Majors to seek a court order compelling the PWSA to grant membership.

The key issues in the case were as follows: (1) whether the Majors met the criteria for association membership as set out in the PWSA by-laws, and if so, whether the PWSA had discretion to refuse it, and (2) whether the Majors (as a non-member of the PWSA) had legal standing to bring the application under section 191 of the Ontario *Not-for-Profit Corporations Act, 2010* ("ONCA"), which allows a "complainant" to seek a compliance order against a not-for-profit corporation to comply with the Act, its regulations, or the corporation's articles or by-laws, or restraining the corporation from acting in breach of them.

On this point, after reviewing applicable case law to confirm that the Majors has standing to bring an application for a remedy under section 191 of the ONCA, the court stated as follows:

> Under the ONCA, the purpose of s.182(3) is to allow "a proper person" who is not a member, director or officer of a corporation but who, like the Majors, is closely

> related and dependant on that not-for-profit corporation, to apply for remedial protection to the court under the ONCA. The Majors have a strong interest in how the PWSA is managed, but no recourse except under the ONCA to ensure that the PWSA complies with its by-laws. This is especially so when their appeals of the decisions refusing membership were not heard by the PWSA. I have no evidence before me of any other appeal route to any other organization or body.

Subsection 48(1) of the ONCA requires that "the by-laws of a corporation must set out the conditions required for being a member of the corporation, including whether a corporation or other entity may be a member." In reviewing the wording of section 2.1 of the PWSA by-laws, the court noted that the language of the by-laws states that an association or team that meets the criteria must have its membership recognized "and does not confer any discretion on the PWSA to reject members. It explicitly states that an association or a team ***will be*** a member if the preconditions are satisfied." In this regard, the court found that the Majors met the criteria for association membership at the time of the applications.

While it is beyond the scope of this article to provide detailed comments on the background facts that arose in this case, the court noted that there were other omissions and areas of uncertainty in the PWSA by-laws and procedures, including the fact that the PWSA by-laws did not set out a membership application process. There were also areas of confusion in the communications between the Majors and the PWSA in the steps leading up to the denials of Majors' membership applications. In addition, while the PWSA purported to reject the Majors' application for membership on the authority of rule 1.02, the court found nothing in the PWSA by-laws expressly incorporating the operating rules as being part of the membership requirements. Therefore, in applying rule 1.02 to assess the Majors' application, the PWSA did not comply with its own by-laws. On this point, the court stated as follows:

> More specifically, while r.1.02 allows the PWSA to form a committee and conduct a hearing in order to assess and grant membership, it does not confer the power to disregard the membership criteria listed within its by-laws. The PWSA must utilize its operating rules within the confines of its by-laws.

In conclusion, the court found that based on the clear wording of Article 2.1 of the PWSA by-laws and subsection 48(1) of the ONCA, the PWSA did not have discretion to deny membership to the Majors. The court then issued an order to compel the PWSA to comply with its by-laws and grant association membership to the Majors forthwith.

The case is of particular interest as the court has confirmed that a non-member can be a complainant who can request a compliance order under section 191 of the ONCA. In this regard, as reflected in the case, the court was not aware of any prior court decisions concerning section 191 of the ONCA or the scope of

the exercise of the court's discretion under subsection 182(3) to grant status as a complainant under the ONCA.

This case also underscores the importance of carefully drafting by-law provisions that are of particular importance within the governance of a not-for-profit corporation, such as membership qualifications and admissions procedures. In most cases, not-for-profits will likely want to ensure their by-laws make it clear that admission of members will remain at the discretion of the board, while at the same time ensuring the approach being taken reflects fairness and transparency to the parties involved. In this regard, this case also highlights the importance of properly drafting provisions in by-laws and policies in a coordinated and integrated manner, and ensuring that the provisions are properly followed.

6. Employment Update

By Barry W. Kwasniewski and Martin U. Wissmath

Long Service Employee Awarded 24 Months' Notice in Key Decision on Termination

In *Maximenko v. Zim Integrated Shipping Services (Canada) Co. Ltd.*, a decision released on October 10, 2024, the Ontario Superior Court ordered the defendant (the "Employer") to pay the plaintiff , a long-service employee (the "Employee"), 24 months' pay in lieu of reasonable notice, which amounted to more than $320K. The Employer argued that the reasonable notice period should have been 18–20 months. The case demonstrates the approach to determining reasonable notice periods according to the common law in the absence of an employment contract, particularly for older employees with long periods of service, and outlines the scope of an employer's obligations when calculating compensation during the notice period.

The judgment also addresses contentious issues, such as mitigation of damages, pension entitlements, and bonus calculations. Employers in the charities and not-for-profit sector, especially with long-serving employees, should take note of the court's reasoning and be proactive about their obligations to minimize potential liabilities. This decision serves as a timely reminder of the importance of having valid and enforceable employment contracts with carefully drafted termination clauses, considering appropriate termination packages, and ensuring clear documentation of all components of employee compensation.

The Employee worked for 20 years and 10 months, from May 2002 until her employment was terminated in March 2023. From November 2006 until February 2022 she worked as the General Manager in Toronto and was responsible for 20 employees. The court emphasized that the absence of a written employment agreement, combined with the Employee's 20 years and 10 months of service and her senior managerial role, justified the significant 24-month notice period. The court noted that the Employee's age, just shy of

59, and the niche nature of the ocean freight industry posed significant challenges to securing comparable employment, supporting a lengthy notice period under the principles outlined in *Bardal v. Globe & Mail Ltd.*

The court also rejected the Employer's argument that the Employee failed to mitigate her damages. Despite inconsistencies in her evidence, the court found her efforts — applying to over 70 positions — were reasonable. It was particularly noted that many of the Employer's suggested opportunities were unsuitable or unavailable, and the Employer could not establish that further efforts would have yielded employment. The court also considered the personal challenges the Employee faced during the mitigation period, including her mother's illness and passing, which temporarily impacted her job search. Ultimately, the court affirmed that the Employer failed to meet its burden of proving inadequate mitigation efforts, entitling the Employee to the full 24 months' notice. The total sum was $320,746.60, including base salary, plus bonuses, car allowance, and pension benefit. This case reaffirms the importance of considering all the legal circumstances of the employee, including age, length of service, role seniority, and the realistic availability of similar employment, when assessing reasonable notice and mitigation obligations.

More Amendments to Ontario Employment Laws to Improve Worker Protections

Further legislative changes in Ontario to employment standards aim to improve worker protections, fairness, and workplace conditions. Bill 190, the *Working for Workers Five Act, 2024* — the 5th in a series of statutes with the "Working for Workers" title — received Royal Assent on October 28, 2024 (the "Act"). An announcement by the provincial government noted significant measures, including a reduction of the required service duration for firefighters, fire investigators, and volunteers to qualify for presumptive Workplace Safety Insurance Board (WSIB) coverage for primary-site skin cancer from 20 to 10 years, while extending occupational cancer, heart injury, and post-traumatic stress disorder (PTSD) coverage to wildland firefighters and investigators, aligning their benefits with municipal firefighters. Definitions of "workplace harassment" and "workplace sexual harassment" in the *Occupational Health and Safety Act* (*OHSA*) have been amended to include online behaviour and electronic communications.

The Act amends the *OHSA* requiring all workplaces to maintain clean washrooms with documented cleaning records. It also amends the *Employment Standards Act, 2000 (ESA)* to enhance job transparency and fairness by obliging employers to disclose publicly advertised job vacancies and respond to interviewees within a set timeframe.

Maximum fines for breaches of the *ESA* have been increased to crack down on non-compliant employers. Additionally, the Act eliminates the requirement for sick notes to access the three job-protected annual

unpaid sick-leave days. The following lists some of the legislative changes of particular interest for charities and not-for-profits and whether they are in force:

- *ESA* amendments not yet proclaimed into force:
    - New section 8.5 of the *ESA* requires employers to state whether an advertised job posting is for an existing vacancy or not;
    - Records of information prescribed by regulation under new section 8.6 for publicly advertised jobs must be retained for 3 years;
        - Definitions of what constitutes an "interview" and "compensation" for a publicly advertised job can be prescribed by regulation-making authorities under subsection 141 (1).
- *ESA* amendments now in force:
    - Section 50 of the *ESA* is amended so that employers retain the right to require evidence of entitlement to sick leave but are not permitted to require a certificate from a qualified health practitioner;
    - Section 132 of the *ESA*, which sets out the fines applicable for convictions under the *ESA*, is amended to increase the maximum fine for an individual to $100,000.
- *OHSA* amendments now in force:
    - The definition of "workplace harassment" in subsection 1 (1) of the *OHSA* is amended by adding "including virtually through the use of information and communications technology" after "workplace";
    - The definition of "workplace sexual harassment" is amended by adding "including virtually through the use of information and communications technology" after "workplace".
- *OHSA* amendments not yet proclaimed into force:
    - New section 25.3 requires employers to "ensure that the washroom facilities, if any, that are provided by the employer for the use of workers are maintained in a clean and sanitary condition."

- Employers are required to "keep, maintain and make available records of the cleaning of washroom facilities as prescribed."

Keeping up to date with these legislative changes is important for charities and not-for-profits to maintain compliance with workplace standards.

7. AI Update

By Martin U. Wissmath and Cameron A. Axford

Federal Government Establishes Artificial Intelligence Safety Institute with $50M Budget

The Government of Canada is launching the Canadian Artificial Intelligence Safety Institute (CAISI) to address risks associated with artificial intelligence (AI). Announced in a News Release on November 12, 2024, CAISI will focus on researching and mitigating safety concerns posed by AI systems, including those related to cybersecurity, disinformation, and election interference. CAISI is part of a $2.4 billion federal initiative to support the responsible development and adoption of AI technologies in Canada, as outlined in Budget 2024.

CAISI will operate under the Minister of Innovation, Science and Industry with a five-year budget of $50 million. Its mandate includes two research streams: investigator-led projects funded through the Canadian Institute for Advanced Research (CIFAR) and government-directed research managed by the National Research Council. The institute will collaborate with Canada's national AI institutes and will engage with the broader research and business communities to cooperatively address emerging risks in the AI field.

The institute is also part of Canada's international collaboration efforts on AI safety. CAISI will work with similar organizations abroad as a member of the International Network of AI Safety Institutes, which will hold its inaugural meeting in November 2024. The institute complements existing measures such as the proposed *Artificial Intelligence and Data Act* and the Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems.

According to the News Release, Canada's AI sector has experienced significant growth, with over 140,000 professionals actively engaged in the field as of 2022–23. The number of AI-related patents filed by Canadian inventors increased by 57 percent during the same period. The country is home to over 670 AI startups and has attracted more than $8.6 billion in venture capital funding in 2022 alone.

Through CAISI and related initiatives, the federal government aims to address the potential risks of AI while fostering its adoption across applicable sectors. The institute's work will focus on safety, security, and guiding the development of responsible AI systems.

8. AML/ATF Update

By Terrance S. Carter, Nancy E. Claridge and Sean S. Carter

Public Safety Canada Holds Stakeholder Meeting on Exception to Criminal Code on Terrorism Financing

On November 19, 2024, the Department of Public Safety Canada ("Public Safety") held a stakeholder's engagement session (the "Engagement Session"), titled *Criminal Code* Authorization Regime Update, to inform the charitable/not-for-profit sector on developments relating to the authorization regime brought by Bill C-41, *An Act to amend the Criminal Code and to make consequential amendments to other Acts* ("Bill C-41").

As discussed earlier, most recently in our June 2024 *AML/ATF and Charity Law Alert No. 54*, Bill C-41 was passed on June 20, 2023, amending the anti-terrorist financing provisions in section 83.03 of the *Criminal Code* to allow humanitarian assistance exceptions and the establishment of an authorization regime for specific activities in terrorist-controlled areas, largely as a response to the Taliban's takeover of Afghanistan in 2021. The stated purpose of Bill C-41 is to allow Canadian organizations and individuals to provide aid to regions of the world controlled by terrorist groups without being caught under anti-terrorism financing provisions in the *Criminal Code*.

In the Engagement Session, Public Safety reminded the attendees that it has set up a public website to support and provide guidance to those interested in the authorization regime. An online application interface and authorization requirement inquiry mechanism are also available to those interested in the authorization regime. Public Safety, along with Immigration, Refugees and Citizenship Canada ("IRCC") and Global Affairs Canada ("GAC") now have teams supporting the administration of the program.

The Engagement Session reported that there have been 12 applications for authorizations since the regime was launched. Of these 12 applications, 8 originated from government sponsored organizations while 4 were external. The specified purposes of these applications include 9 that are to provide health services, 7 for education services, 4 for livelihood support, and 2 for human rights support. Of these, one of the 4 external applications was withdrawn.

Public Safety reminded attendees that the authorization regime under Canada's anti-terrorism laws applies to activities in any geographic area controlled by a terrorist group, not just Afghanistan. Prospective applicants may request written guidance from the Minister of Public Safety (the "Minister") regarding whether specific activities in a particular region require authorization. The Minister's response will be based on the circumstances at the time, including the nature of the activity and the region involved. This inquiry process is optional and does not replace the requirement to formally apply for authorization through the online application portal. For inquiries, applicants may contact authorization83.03autorisation@ps-sp.gc.ca.

Canadian individuals, including citizens, permanent residents, and organizations, are eligible to apply for an authorization under Canada's anti-terrorism laws. Organizations receiving government program funding are not required to apply directly, as the relevant government department serves as the primary applicant. External stakeholders, such as those not funded by the Government of Canada, can submit applications via the online interface. An authorization covers not only the applicant but also anyone directly or indirectly involved in carrying out the specified activity under the authorization. While applying for authorization is optional, it provides protection against criminal charges under section 83.03(2) of the *Criminal Code* for activities that might otherwise violate terrorist financing provisions.

Public Safety then provided an overview of the assessment process for authorization, which involves multiple stages. Initially, the Minister of Foreign Affairs and/or the Minister of Immigration, Refugees, and Citizenship Canada (IRCC) evaluates whether the application meets the criteria outlined in the *Criminal Code*. Applications that meet the criteria are referred to the Minister of Public Safety by GAC or IRCC. The Minister of Public Safety conducts a final assessment, which includes a national security review, and decides based on whether the benefits of the proposed activities outweigh the associated risks.

The Minister is scheduled to table the first comprehensive review report on the authorization regime in December 2024, followed by the 2024 annual report on its operations in March 2025. In the fiscal year 2025/26, Public Safety will begin developing regulations to define the rules and scope of the authorization regime under the *Criminal Code*. Efforts are also underway to establish service standards to enhance transparency for applicants and the public.

While the implementation of the authorization regime is a step in the right direction and a positive development, the low number of applicants, and an almost negligible number of non-governmental applicants to date suggest that there may be apprehension by organizations that either currently work in, or plan to work in, areas controlled by terrorist entities. It remains to be seen whether this small number

will increase as the authorization regime becomes known, notwithstanding the complexity of the application process and the significant government scrutiny that it involves.

Financial Action Task Force Seeks Public Consultation on its Standards

The Financial Action Task Force ("FATF"), which is the global money laundering and terrorist financing watchdog, has opened a public consultation on proposed revisions to its Recommendations, aiming to align anti-money laundering and counter-terrorism financing ("AML/CTF") measures with financial inclusion objectives. This initiative is part of FATF's efforts to address unintended consequences of its AML/CFT framework, such as overcompliance and barriers to financial inclusion. The revisions focus on Recommendation 1 and its Interpretive Note, along with corresponding changes to Recommendations 10 and 15 and related Glossary definitions. The proposed updates aim to emphasize proportionality in applying the risk-based approach and simplified measures, promoting greater confidence among countries, supervisors, and financial institutions when implementing these measures. The FATF recommendations were last reported on in the November 2023 *Charity and NFP Law Update*.

Stakeholders are invited to submit feedback and drafting suggestions by December 6, 2024 to FATF.Publicconsultation@fatf-gafi.org with the subject line: "Comments of [author] on the proposed revisions to R.1/INR.1/INR.10/INR.15". Submissions should include the respondent's organization, activity type, and contact details. FATF will review the feedback before finalizing the revisions, with all submissions shared with FATF delegations and used solely for consultation and related engagement purposes.

Financial Action Task Force Holds Plenary Meeting in Paris

The Financial Action Task Force ("FATF") concluded its October 2024 Plenary meeting in Paris, led by President Elisa de Anda Madrazo, with several notable developments for compliance professionals. Key updates included the completion of FATF's fourth evaluation cycle, adjustments to the grey list (*i.e.* jurisdictions under increased monitoring), and updates to guidance on financial inclusion and risk-based assessments. The Plenary emphasized strengthening global network cooperation, advancing initiatives for gender diversity and inclusiveness, and addressing emerging standards and revised approaches to compliance. Russia's suspension from FATF activities also remains in effect. These updates highlight important shifts and priorities within the FATF framework, offering critical insights for compliance professionals navigating evolving requirements.

To support financial inclusion, the FATF is revising its standards to encourage simplified measures in lower-risk scenarios, aiming for greater flexibility without compromising AML/CFT requirements. These

updates, expected to be finalized in 2025, include revised guidance on national risk assessments to help countries, particularly those with limited resources, and better understand and address financial crime risks. Changes to grey-listing criteria are also expected to reduce the number of low-capacity jurisdictions listed, with stricter prioritization for review.

Compliance teams from Canadian charities and not-for-profits may want to review outcomes from this Plenary, adjust risk scores for affected countries, and ensure due diligence processes align with updated FATF standards. The next Plenary meeting is scheduled for February 2025.

9. The 2024 Annual Charity & Not-for-Profit Law Webinar — Held on November 14, 2024

The 2024 Carters Annual Charity & Not-for-Profit Law Webinar, hosted by Carters Professional Corporation on November 14, 2024, was attended by over 1,200 registered attendees from the charitable and not-for-profit sector from across Canada.

The special guest speakers this year were The Honourable Ratna Omidvar, C.M., O.Ont., Retired Senator for Ontario and Former Deputy Chair of the Special Senate Committee on the Charitable Sector who spoke on the topic of *Looking Back, Looking Forward: A Conversation with The Retired Senator about the Charitable Sector*, as well as Bruce MacDonald, President, Imagine Canada, on the topic of *Challenges and Opportunities for the Charitable & NFP Sector: What to Get Ready for*.

The handouts and presentation materials from this year's webinar are now available below or at the following link. Links to individual presentation materials are available under Recent Events & Presentations, below:

Gift Acceptance Policies and Donor Agreements: An Integrated Approach – presented by *Jacqueline M. Demczur, Partner, Carters, Orangeville, Ontario & Ryan M. Prendergast, Partner, Carters, Orangeville, Ontario.*

IT and Data Management: Board Governance Issues to Consider – presented by *Esther Shainblum, Partner, Carters, Ottawa, Ontario & Cameron A. Axford, Associate, Carters, Orangeville, Ontario.*

Protecting Communication in Anticipation of Lawsuits and CRA Audits – presented by *Sean S. Carter, Litigation Partner, Carters, Toronto, Ontario & Heidi N. LeBlanc, Litigation Associate, Carters, Toronto, Ontario.*

Essential Employment Law Update for Charities and NFPs – presented by *Barry W. Kwasniewski, Partner, Carters, Ottawa, Ontario & Martin U. Wissmath, Associate, Carters, Orangeville, Ontario.*

Challenges and Opportunities for the Charitable & NFP Sector: What to Get Ready for – presented by *Bruce MacDonald, President & CEO Imagine Canada, Toronto, Ontario.* (No PowerPoint Available)

Understanding New Changes to the T3010 Charity Return – presented by *Theresa L.M. Man, Partner, Carters, Orangeville, Ontario.*

Remuneration of Directors: What Is Allowed & What's Not – presented by *Esther S.J. Oh, Partner, Carters, Orangeville, Ontario & Urshita Grover, Associate, Carters, Orangeville, Ontario.*

Charities Working with Non-Charities: What are the Options? – presented by *Terrance S. Carter, Managing Partner, Carters, Orangeville, Ontario*

Looking Back, Looking Forward: A Conversation about the Charitable Sector with The Retired Senator from Ontario – presented by *The Honourable Ratna Omidvar, C.M., O.Ont.*(No PowerPoint Available)

IN THE PRESS

Charity & NFP Law Update – October 2024 (Carters Professional Corporation) was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.

No Explicit Oppression Remedy Provision in Not-for-Profit Corporations Act, an article written by Urshita Grover and Adriel N. Clayton was originally published by Law360 Canada, part of LexisNexis Canada Inc.

RECENT EVENTS & PRESENTATIONS

Canadian Society of Association Executives hosted the CSAE 2024: Connections National Conference in Ottawa, Ontario from October 29th – November 1st at the Westin Hotel. Terrance S. Carter presented on Wednesday October 30th on the topic of "Top Ten Risk Management Tips for Associations and NFPs". Esther Shainblum and Barry Kwasniewski co-presented on Friday November 1st on the topic of "Contract Essentials for Associations and NFPs".

LEGAL TEAM

Editor: Terrance S. Carter
Assistant Editors: Nancy E. Claridge, Ryan M. Prendergast, and Adriel N. Clayton

Cameron A. Axford, B.A. (Hons), J.D. - Cameron is an associate whose practice focuses on Carter's knowledge management, research, and publications division. He articled with Carters from 2022 to 2023 and joined the firm as an associate following his call to the Ontario Bar in June 2023. Cameron graduated from the University of Western Ontario in 2022 with a Juris Doctor, where he was involved with Pro Bono Students Canada and participated in the BLG/Cavalluzzo Labour Law Moot. Prior to law school, Cameron studied journalism at the University of Toronto, receiving an Honours BA with High Distinction. He has worked for a major Canadian daily newspaper as a writer.

Sepal Bonni, B.Sc., M.Sc., J.D., Trademark Agent - Sepal Bonni is a partner at Carters Professional Corporation, a registered trademark agent and practices in all aspects of brand protection. Her trademark practice includes domestic and foreign trademark prosecution, providing registrability opinions, assisting clients with the acquisition, management, protection, and enforcement of their domestic and international trademark portfolios, and representing clients in infringement, opposition, expungement, and domain name dispute proceedings. She also assists clients with trademark licensing, sponsorship, and co-branding agreements. Sepal also advises clients on copyright and technology law related issues.

Terrance S. Carter, B.A., LL.B, TEP, Trademark Agent – Managing Partner of Carters, Mr. Carter practices in the area of charity and not-for-profit law, and is counsel to Fasken on charitable matters. Mr. Carter is a co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* (Thomson Reuters), a co-editor of *Charities Legislation and Commentary*, 2024 Edition (LexisNexis Butterworths), a contributing author to *The Management of Nonprofit and Charitable Organizations in Canada*, 5th Edition (2023 LexisNexis Butterworths), and co-author of *Branding and Copyright for Charities and Non-Profit Organizations* 3rd Edition (2019 LexisNexis Butterworths) and a Primer for Directors of Not-for-Profit Corporations (Industry Canada). He is recognized as a leading expert by *Lexpert*, *The Best Lawyers in Canada* and *Chambers and Partners*. Mr. Carter is a former member of CRA Advisory Committee on the Charitable Sector, and is a Past Chair of the Canadian Bar Association and Ontario Bar Association Charities and Not-for-Profit Law Sections.

Sean S. Carter, B.A., LL.B. – Sean Carter is a partner with Carters and the head of the litigation practice group at Carters. Sean has broad experience in civil litigation and joined Carters in 2012 after having articled with and been an associate with Fasken (Toronto office) for three years. He is ranked as a leading expert by *The Best Lawyers in Canada*. Sean has published extensively, co-authoring several articles and papers on anti-terrorism law, including publications in *The International Journal of Not-for-Profit Law*, *The Lawyers Weekly*, *Charity & NFP Law Bulletin* and the *Anti-Terrorism and Charity Law Alert*, as well as presentations to the Law Society of Ontario and Ontario Bar Association CLE learning programs.

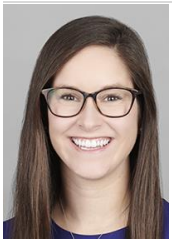
Nancy E. Claridge, B.A., M.A., LL.B. – Called to the Ontario Bar in 2006, Nancy Claridge is a partner with Carters practicing in the areas of corporate and commercial law, anti-terrorism, charity, real estate, and wills and estates, in addition to being the assistant editor of *Charity & NFP Law Update*. After obtaining a Master's degree, she spent several years developing legal databases for LexisNexis Canada, before attending Osgoode Hall Law School where she was a Senior Editor of the *Osgoode Hall Law Journal*, Editor-in-Chief of the *Obiter Dicta* newspaper, and was awarded the Dean's Gold Key Award and Student Honour Award.

Adriel N. Clayton, B.A. (Hons), J.D. - Called to the Ontario Bar in 2014, Adriel Clayton is a partner at Carters Professional Corporation, manages Carters' knowledge management and research division, and practices in commercial leasing and real estate. Before joining Carters, Adriel practiced real estate, corporate/commercial and charity law in the GTA, where he focused on commercial leasing and refinancing transactions. Adriel worked for the City of Toronto negotiating, drafting and interpreting commercial leases and enforcing compliance. Adriel has provided in-depth research and writing for the *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations*.

Jacqueline M. Demczur, B.A., LL.B. – A partner with the firm, Ms. Demczur practices in charity and not-for-profit law, including incorporation, corporate restructuring, and legal risk management reviews. Ms. Demczur has been recognized as a leading expert in charity and not-for-profit law by *Lexpert*, *The Best Lawyers in Canada* and *Chambers and Partners*. She is a contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*, and has written numerous articles on charity and not-for-profit issues for the *Lawyers Weekly*, *The Philanthropist* and *Charity & NFP Law Bulletin*, among others. Ms. Demczur is also a regular speaker at the annual *Church & Charity Law Seminar™*.

Urshita Grover, H.B.Sc., J.D. – Urshita was called to the Ontario Bar in June 2020 after completing her articles with Carters. Urshita worked as a research intern for a diversity and inclusion firm. Urshita has volunteered with Pro Bono Students Canada, and was an Executive Member of the U of T Law First Generation Network. Urshita was able to gain considerable experience in both corporate commercial law as well as civil litigation. Building on this background, Urshita is able to integrate her wide range of experience into a diverse and practical approach to the practice of charity and not-for-profit law for her clients.

Barry W. Kwasniewski, B.B.A., LL.B. – Mr. Kwasniewski is a partner with the firm and joined Carters' Ottawa office in 2008 to practice in the areas of employment law, charity related litigation, and risk management. After practicing for many years as a litigation lawyer in Ottawa, Barry's focus is now on providing advice to charities and not-for-profits with respect to their employment and legal risk management issues. Barry has developed an expertise in insurance law, and has been retained by charities, not-for-profits and law firms to provide legal advice pertaining to insurance coverage matters.



Heidi N. LeBlanc, J.D. – Heidi is a litigation associate practicing out of Carters' Toronto office. Called to the Bar in 2016, Heidi has a broad range of civil and commercial litigation experience, including matters pertaining to breach of contract, construction related disputes, defamation, real estate claims, shareholders' disputes and directors'/officers' liability matters, estate disputes, and debt recovery. Her experience also includes litigating employment-related matters, including wrongful dismissal, sexual harassment, and human rights claims. Heidi has represented clients before all levels of court in Ontario, and specialized tribunals, including the Ontario Labour Relations Board and the Human Rights Tribunal of Ontario.

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

Theresa L.M. Man, B.Sc., M.Mus., LL.B., LL.M. – A partner with Carters, Ms. Man practices in the area of charity and not-for-profit law, is ranked by *Lexpert*, *Best Lawyers in Canada*, and *Chambers and Partners*, and received the 2022 OBA AMS/John Hodgson Award of Excellence in Charity and Not-For-Profit Law. She is a co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* published by Thomson Reuters. She is a former member of the Technical Issues Working Group of the CRA Charities Directorate, a member and former chair of the CBA Charities and Not-for-Profit Law Section and the OBA Charities and Not-for-Profit Law Section. Ms. Man has also written on charity and taxation issues for various publications.

Esther S.J. Oh, B.A., LL.B. – A partner with Carters, Ms. Oh practices in charity and not-for-profit law, and is recognized as a leading expert in charity and not-for-profit law by *Lexpert* and *The Best Lawyers in Canada*. Ms. Oh has written numerous articles on charity and not-for-profit legal issues, including incorporation and risk management. Ms. Oh has written articles for *The Lawyer's Daily*, www.carters.ca and the *Charity & NFP Law Bulletin*. Ms. Oh is a regular speaker at the annual *Church & Charity Law Seminar*™ and has been an invited speaker to the Canadian Bar Association, Imagine Canada and various other organizations.

Ryan M. Prendergast, B.A., LL.B. - Mr. Prendergast joined Carters in 2010, becoming a partner in 2018, with a practice focus of providing corporate and tax advice to charities and non-profit organizations. Ryan has co-authored papers for the Law Society of Ontario, and has written articles for *The Lawyers Weekly*, *Hilborn:ECS*, Ontario Bar Association *Charity & Not-for-Profit Law Section Newsletter*, *Charity & NFP Law Bulletins* and publications on www.carters.ca. Ryan has been a regular presenter at the annual *Church & Charity Law Seminar*™, Healthcare Philanthropy: Check-Up, Ontario Bar Association and Imagine Canada Sector Source. Ryan is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*.

Esther Shainblum, B.A., LL.B., LL.M., CRM – Ms. Shainblum is a partner with Carters Professional Corporation, and practices in the areas of charity and not-for-profit law, privacy law and health law. She has been ranked by *Chambers and Partners.* Ms. Shainblum was General Counsel and Chief Privacy Officer for Victorian Order of Nurses for Canada, a national, not-for-profit, charitable home and community care organization. Before joining VON Canada, Ms. Shainblum was the Senior Policy Advisor to the Ontario Minister of Health. Earlier in her career, Ms. Shainblum practiced health law and corporate/commercial law at McMillan Binch and spent a number of years working in policy development at Queen's Park.

Martin U. Wissmath, B.A., J.D. – Called to the Ontario Bar in 2021, Martin joined Carters after finishing his articling year with the firm. In addition to his legal practice, he assists the firm's knowledge management and research division, providing in-depth support for informative publications and client files, covering a range of legal issues in charity and not-for-profit law. His practice focuses on employment law, privacy law, corporate and information technology law, as well as the developing fields of social enterprise and social finance. Martin provides clients with legal advice and services for their social-purpose business needs, including for-profit and not-for-profit organizations, online or off-line risk and compliance issues.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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