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CHARITY & NFP LAW UPDATE

OCTOBER 2024

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

OCTOBER 2024

SECTIONS

HIGHLIGHTS

PUBLICATIONS & NEWS RELEASES

1. Advisory Committee on the Charitable Sector Releases Report #4

By Theresa L.M. Man, Jacqueline M. Demczur & Terrance S. Carter

The Advisory Committee on the Charitable Sector ("ACCS") released its Report #4, on October 9, 2024, subtitled "Towards a federal regulatory environment that enables and strengthens the charitable and non-profit sector" ("ACCS Report #4"). This is the fourth of a series of ongoing reports by the ACCS. In this ACCS Report #4, the ACCS makes 18 recommendations for action in several areas. This Bulletin provides an overview of the ACCS Report #4.

As previously discussed in earlier *Charity & NFP Law Bulletins*, the ACCS was established in 2019 to serve as a consultative forum between the Government of Canada and the charitable sector. Its purpose is to foster dialogue on emerging issues affecting charities and to ensure the regulatory framework supports the vital work charities undertake. Following the 2019 Senate Special Committee on the Charitable Sector's report, *Catalyst for Change: A Roadmap to a Stronger Charitable Sector* (the "Senate Committee Report"), the ACCS was tasked with considering its recommendations.

Report #4 provides insights into various issues affecting Canada's charitable sector. It sets out recommendations to better improve the charitable sector, including modernizing the regulatory framework for charities, improving transparency, increasing collaboration with Indigenous organizations, and simplifying the charitable registration process, among others. The report highlights the importance of ongoing consultations with stakeholders to ensure regulatory approaches align with the sector's needs, and stresses the importance of government-charity partnerships to address societal challenges.

To read the remainder of the Bulletin, click here.

2. CRA News

By Esther S.J. Oh

CRA's Guidance on Filing Information Returns Electronically (Tax Slips and Summaries)

The Canada Revenue Agency's ("CRA") webpage on electronic filing, which was last updated on October 18, 2024, outlines how tax information returns can be filed electronically, such as T4, T4A, T5 and other types of returns, through online methods. It details options like Web Forms and Internet File Transfer (XML) for submitting original, amended, or canceled returns securely. Benefits include quick

confirmation of successful filing, flexibility to update filings, and the option for authorized representatives to file on a taxpayer's/organization's behalf. There is also guidance on making post-filing corrections.

The webpage covers the following four sections, hyperlinked to each page:

a) Get ready to file

The CRA's instructions on electronic filing covers key steps for businesses, including steps to determine the filing due date, determine if an organization must file electronically, and using XML formatting specifications for valid submission. The page outlines penalties that apply for incorrect submission methods and provides resources for setting up compatible XML files, with specific instructions on encoding and schema validation for different tax forms. Compliance is crucial as of 2024, as more returns require digital filing.

The 2025 XML specifications and schema for the electronic filing of information returns are now available, and will be accepted for processing starting January 13, 2025.

b) How to file

The CRA outlines the steps for electronically filing information returns as follows:

- Prepare Documentation: Create an XML file for your return.
- Determine your filing method: Use either Web Forms for small volumes (up to 100 slips) or Internet file transfer for larger submissions. These can be accessed via My Business Account or Represent a Client. To access directly to the Web Forms or Internet file transfer applications, you will need your account number or web access code.
- Transfer the file to the CRA: Instructions are provided for filing with Web Forms or Internet file transfer. Send your file, and receive a confirmation to ensure it was successfully filed.

The CRA webpage currently notes that electronic filing will be temporarily unavailable from December 2, 2024, to January 13, 2025.

c) Make correction after filing

The CRA provides a clear process for amending or canceling tax slips after an initial filing. Both Web Forms and Internet File Transfer (XML) can handle corrections, allowing users to adjust data while following the CRA's specific protocols.

d) Contact us

The CRA's contact page for electronic filing of tax returns provides resources for additional support, including links for technical help, secure email, and phone contacts.

Updated Guidance on Relief of Poverty and Charitable Registration Released

On October 23, 2024, the CRA released an updated version of guidance CG-029: Relief of poverty and charitable registration (the "Updated Guidance"). First reported on in the *January 2021 Charity and NFP Law Update*, the Guidance expanded on the brief description previously published in summary policy CSP-P03: Poverty, and provided an outline of charity law issues to help charities and applicants for charitable registration comply with the requirements of Canadian common law and the *Income Tax Act* ("ITA"). The latest provide a number of brief but significant changes.

Firstly, the Updated Guidance now has additional guidelines for determining eligibility for affordable housing in a specific community or area. These guidelines are specific to the locales in which an individual would be seeking housing, and are consistent with federally funded affordable housing programs. For example, in Toronto in 2024, a household seeking a three-bedroom accommodation would have an income threshold of $79,000.

Secondly, the Updated Guidance now includes a brief reference to the new granting regime which allows charities to make grants to non-qualified donees, a topic discussed numerous times in this publication. The Updated Guidance, while not describing this in depth, makes reference to other guidances, such as Guidance CG-032, Registered charities making grants to non-qualified donees.

Finally, the Updated Guidance has a number of changes for reader clarity, including plain language edits, updated terminology, and reorganized content in order make the document easier to navigate and understand. More examples for specific situations are provided for greater depth and understanding of the issues.

Charities are encouraged to review the Updated Guidance to ensure they are up to date on the changes.

3. Legislation Update

By Terrance S. Carter & Adriel N. Clayton

Department of Finance Proposes New Requirements for Reproductive Service Charities

On October 29, 2024, the Department of Finance ("Finance") released a backgrounder titled *Protecting reproductive freedom by preventing abuse of charitable status* (the "Backgrounder"). The Backgrounder,

published along with a News Release the same day, discusses an ongoing agenda topic for Canada's current ruling Liberal government: the concern that reproductive health charities with anti-abortion/pro-life views (or "anti-choice", according to the Backgrounder) may be spreading misinformation about reproductive care available during pregnancy. The Backgrounder is indicative of a broader issue concerning the possible politicization of charitable status, and the potential harm that this could bring to the charitable sector, and civil society as a whole in Canada. We last reported on this issue in the May 2024 *Charity & NFP Law Update*.

The Backgrounder states that the federal government is proposing amendments to the *Income Tax Act* to require charities offering reproductive health services to explicitly disclose any limitations in services, including if they do not provide abortion or birth control. This information would need to appear in both public communications and in annual information returns available through the Canada Revenue Agency's website. The specifics of the proposed disclosure requirements that would apply to registered charities are as follows:

> "If it does not provide abortion services, it must disclose that it does not provide abortion services;
>
> If it does not provide abortion services and it does not provide information on abortion services, it must further disclose that it does not provide information on how to obtain such services;
>
> If it does not provide abortion services and it does not provide the contact information for a provider of such services, it must further disclose that it does not provide the contact information for a provider of such services;
>
> If it does not provide birth control services or does not provide a range of birth control services, it must disclose whichever case applies;
>
> If it does not provide birth control services or does not provide a range of birth control services, it must further disclose if it does not provide information on how to obtain a range of birth control services; and,
>
> If it does not provide birth control services or does not provide a range of birth control services, it must further disclose if it does not provide the contact information for a provider of a range of birth control services or providers that collectively provide such a range of services."

The Backgrounder defines "birth control services" as referring to medications, devices, or procedures that prevent conception and are recognized in Canada. Further, the Backgrounder states that the amendments would classify "public communication" broadly, encompassing advertisements, social media posts, websites, and any other communication directed at the public about the charity's services or information

related to pregnancy. This definition would include physical ads like posters, billboards, and bus ads, as well as digital platforms.

The Backgrounder states that if a charity does not comply with these disclosure requirements, the Minister of National Revenue would have the authority to revoke its registration status. If passed, the amendments to the ITA would take effect 90 days after Royal Assent, with the disclosure obligations beginning in the 2025 taxation year.

Public Safety Canada Releases First *Supply Chains Act* Report

Public Safety Canada published its initial annual report (the "Report") on the first year of reporting under the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the "*Supply Chains Act*") on September 27, 2024. As mentioned in the May 2023 and January 2024 *Legislation Updates*, the *Supply Chains Act* was brought into force on January 1, 2024, after Bill S-211, the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* received Royal assent the year before on May 11, 2023.

By way of background, the *Supply Chains Act* reinforces Canada's global stance against forced and child labour by mandating annual reporting obligations for government institutions and large Canadian organizations (referred to in the Report as "entities"). Required reports cover an organization's structure, supply chains, policies, risk management, employee training, and remediation efforts. These reports are intended to foster transparency and accountability, as they are made publicly available through Public Safety Canada.

Public Safety Canada received 6,303 reports under the *Supply Chains Act* by July 31, 2024, including 145 from government institutions and 5,650 from entities. Of these, 2,086 were joint reports, and 135 were revisions. A searchable online catalogue publishes most submissions, excluding those failing quality checks. Notably, 796 entities are also bound by international supply chain laws, with 66% reporting under the UK's *Modern Slavery Act*. Reporting sectors span manufacturing, wholesale, and retail, with the majority headquartered in Canada (82%).

Public Safety Canada's report highlights that 17% of government institutions and 38% of entities identified forced or child labour risks in their supply chains, especially in areas involving raw materials, direct suppliers, or high-risk sectors like electronics and food services. Many entities cited challenges in visibility for indirect suppliers, particularly regarding migrant workers vulnerable to exploitation. Reporting efforts help these organizations address and manage identified risks by implementing practices such as due diligence, improved supplier oversight, and adopting codes of conduct.

Government institutions and entities under the *Supply Chains Act* have taken several steps to manage forced and child labour risks. Key measures include internal risk assessments, due diligence policies, supplier codes of conduct, and employee training, especially for purchasing decision-makers. That said, Public Safety Canada reported that only a small percentage of government institutions (2.1%) and entities (4%) implemented remediation measures to address forced or child labour issues. Remedial actions included reimbursing recruitment fees, establishing grievance mechanisms, and supporting workforce reintegration.

The *Supply Chains Act* outlines penalties for non-compliance, including fines up to $250,000 for obstructing officials, failing to submit reports, or ignoring ministerial orders. In 2024, the Act's enforcement focused on increasing awareness rather than punitive action, aiming to encourage transparency and proactive compliance from entities. No compliance orders under section 18 were issued, and no charges were filed under section 19.

Though the monetary threshold to be considered an entity under the *Supply Chains Act* is significant, some large charities and not-for-profits (NFPs) could be caught under that definition, and required to file reports. It is important that large organizations understand if the *Supply Chains Act* applies to them, and what is included in their subsequent obligations.

Amendment to *Workplace Safety and Insurance Act* will Affect Temporary Employment Agencies

A recent amendment to *Ontario's Workplace Safety and Insurance Act, 1997* creates a new classification for Temporary Employment Agencies ("TEAs"), which may be used by certain charities and NFPs, effective January 1, 2025. Classification 001281 allows TEAs to report administrative, clerical, and knowledge-based labour under Class L, with a premium rate of $0.20 per $100 of insurable earnings, reflecting the low injury risk of these roles. Previously, TEAs calculated premiums based on clients' classifications, often leading to higher rates even for low-risk jobs.

The classification covers roles such as IT services, human resources, and research, streamlining premium reporting for TEAs across diverse sectors. TEAs will continue using client classifications for labour outside this new category. The Workplace Safety and Insurance Board (WSIB) has provided advance guidance on the policy to support a smooth transition to the new system, offering TEAs a simplified approach to managing premium-setting for applicable roles. This adjustment is expected to reduce administrative costs and align premiums with actual workplace risks, particularly benefiting TEAs supplying workers across multiple industries.

4. Corporate Update

By Theresa L.M. Man

ONCA Transition Deadline

The three-year period for not-for-profit (NFP) corporations in Ontario to undertake an optional transition to the Ontario *Not-for-Profit Corporations Act, 2010* (the "ONCA") has now come and gone. As reported most recently in the *September 2024 Charity & NFP Law Update*, corporations were given until October 18, 2024, to transition to the ONCA by amending their letters patent (by adopting articles of amendment) and adopting ONCA-compliant by-laws. For those that did not undertake the transition as of October 19, 2024, any provisions in their letters patent, supplementary letters patent, by-laws, and special resolutions that were inconsistent with the ONCA (subject to a few exceptions listed in subsection 207(3) of the ONCA) are now deemed to be amended to comply with the ONCA.

Notwithstanding the deadline, which has now passed, those Ontario NFP corporations that did not transition by October 18, 2024, will not be dissolved or face any penalties. However, those corporations may find it difficult to operate with the automatic deeming mechanism going forward, as it may be confusing to determine which of the corporation's provisions have been deemed to be amended. These corporations should still consider revising or updating their corporate documents in order to be fully compliant with the ONCA.

Ontario Publishes Guide on Filing Future Dated and/or Back-to-Back Articles for 2024 Year-End

The Ontario Ministry of Public and Business Service Delivery and Procurement recently released a guide for organizations preparing year-end filings through the Ontario Business Registry ("OBR"), entitled Filing Future Dated and/or Back-to-Back Articles for 2024 Year-End (the "Guide"). The Guide sets out details on various service delivery channels for submitting filings, both for entity owners as well as for service providers and intermediaries. Generally, filings can be done online, by mail, or via email, with processing times varying by submission method. The Guide also sets expectations regarding document effective dates and the submission of future dated and/or back-to-back articles during the year end period, as well as various scenarios involving future-dating documents and submitting back-to-back filings using days that fall on weekdays, weekends, and statutory holidays.

The Guide points out common deficiencies encountered with filing Articles of Continuance and Articles of Amalgamation, including uncertified supporting documents from other jurisdictions, incorrect Dates of Authorization, incorrect Ontario Corporation Numbers/amalgamating corporation names, incorrect schedules for the chosen Method of Amalgamation, and incorrect successor names.

Lastly, the Guide contains a helpful Questions and Answers section to address some more common concerns with submissions.

5. Ontario Court Rules ONCA Does Not Explicitly Provide Oppression Remedy

By Urshita Grover and Adriel N. Clayton

In the decision of *York Condominium Corporation No. 76 v 10 The Marketplace Limited*, released on August 1, 2024, the Ontario Superior Court of Justice dealt with several issues arising from a lease amendment dispute involving land use in Toronto's Crescent Town area, including an oppression claim. The applicant, York Condominium Corporation No. 76 ("YCC76"), sought to challenge an amendment made to a 99-year lease held by Crescent Town Club Inc. ("CTC"), a not-for-profit corporation governed by the Ontario *Not-for-Profit Corporations Act, 2010* ("ONCA") and responsible for operating recreational, athletic and daycare facilities for the Crescent Town community. This amendment released CTC's rights over certain "Disputed Lands" in exchange for $500,000 paid by the property owner, Pinedale Properties Ltd. ("Pinedale").

The court addressed four main issues. First, YCC76 argued that it had a leasehold interest in the Disputed Lands based on agreements registered on title dating back to the 1970s. However, the court found that no such interest was created, as the relevant agreements and lease terms did not expressly grant YCC76 any rights over the Disputed Lands.

Secondly, YCC76 contested the validity of the lease amendment, claiming that CTC's board members had not adhered to the ONCA's conflict of interest rules in section 41 approving the amendment. YCC76 argued that two CTC board members had a non-arm's length relationship with Pinedale (the company benefitting from the lease amendment) and were present at the meeting, despite their abstention from voting.

For context, section 41 of the ONCA requires a director or officer of a corporation to disclose their interest and abstain from voting where they are either (i) a party to a material contract or transaction or proposed material contract or transaction with the corporation, or (ii) is a director or an officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the corporation.

The court ruled that section 41 did not apply and the two "representatives" did not have anything to disclose, as they were neither officers nor directors of Pinedale but only employees, they were not parties

to the lease amendment, and did not have a material interest in Pinedale. Regardless, both representatives abstained from voting on the amendment and declared a conflict of interest out of an abundance of caution, meeting ONCA requirements.

Thirdly, YCC76 asserted that the lease amendment required unanimous approval by the CTC Board as a matter of contract. The court, however, noted that CTC's bylaws required only a majority vote for such amendments, and that the amendment did not require unanimous consent as YCC76 failed to prove any direct prejudice to its position, financial or otherwise. The lease also permitted amendments without YCC76's consent.

Finally, YCC76 argued that the amendment constituted oppressive conduct under ONCA, alleging that it unfairly disregarded the rights and financial interests of condominium owners by potentially enabling future development on the Disputed Lands.

However, the court emphasized that unlike the Ontario *Business Corporations Act* ("OBCA") or *Canada Not-for-Profit Corporations Act* ("CNCA"), there is no explicit oppression remedy section in the ONCA – only section 174, which directs that a court may order an "investigation" of the corporation, in certain circumstances. Section 174 of the ONCA allows only for an investigation in cases of oppressive conduct but does not offer an explicit remedy to "unwind" decisions, including the lease amendment. The court also stated that "[i]f the legislature had intended the court to have the broad statutory powers under the ONCA as it has under the OBCA and CNCA, then it would have done so clearly as has been done in those Acts." Further, there was also no caselaw before the court where the ONCA had been interpreted in the broad and unlimited fashion that YCC76 urged upon the court.

In addition, the court mentioned that even if it was wrong in the absence of jurisdiction to grant an oppression remedy under the ONCA, YCC76's evidence of alleged prejudice was speculative and insufficient, as it failed to establish any reasonable expectation of exclusive recreational use of the lands for the remainder of the lease term.

The court therefore upheld the lease amendment, underscoring the importance of strict adherence to procedural requirements under the ONCA, as well as the limited scope of the ONCA's oppression related provisions. Regardless of the court's decision, this case is noteworthy as among the earliest cases addressing oppression under the ONCA.

6. Ontario Court Finds Scouts Canada Long-Time Volunteer Wrongfully Dismissed

By Ryan M. Prendergast

Wayne Hannan, an 86-year-old volunteer Scouter, was granted declaratory relief by the Ontario Superior Court of Justice after his annual application to renew his volunteer status was denied in November 2023 and he was advised that he could no longer serve as a Scouter for Scouts Canada's 115th Sea Scout Troop (the "115th"). The court's decision in *Hannan v Scouts Canada*, released September 27, 2024, considered Hannan's claim that Scouts Canada, a not-for-profit special act corporation, breached its internal policies, procedures and rules, including an Appointment of Scouters Procedure, Volunteer Screening Procedure and Disciplinary Management Procedures for volunteers when it failed to provide adequate reasons or due process for the denial of his renewal.

Hannan had been a Scouter with the 115th since 2001 and had been a volunteer with Scouts Canada since 1958, when he received a letter stating that his annual volunteer application had been denied for "safety concerns and resistance to program adaptation". However, both Hannan and the Skipper of the 115th had been unaware of such concerns. The letter further stated that the denial of his renewal would not affect his Scouts Canada membership, and encouraged him to seek other volunteer opportunities within the organization.

Hannan argued that the denial amounted to discipline, and that any discipline ought to have been carried out in accordance with Scouts Canada's Discipline and Performance Management Procedure, which includes regular performance feedback, permits the Group Commissioner to offer coaching or provide a written reprimand, and requires that "a record of all efforts undertaken to provide guidance to a Scouter" be maintained. Scouts Canada, on the other hand, argued that "discipline and suspension policies do not apply to this situation because the Group Commissioner has complete discretion in renewing volunteer Scouters" and that its termination and discipline policies do not apply to annual renewals. Scouts Canada also argued that the court had no jurisdiction over what it considered to be an internal matter.

The court therefore considered whether it had jurisdiction in these circumstances, whether non-renewal of a volunteer position constituted "discipline" under Scouts Canada's policies, whether Hannan breached Scouts Canada's Code of Conduct such that the non-renewal was justified, and what remedy would be appropriate in the case that Hannan was "wrongfully dismissed" as a volunteer. In considering its jurisdiction, the court found that the relationship of members to Scouts Canada is contractual in nature, given the "structure of the organization, the commitment by all members at all levels to live by the Code of Conduct, Scout Law and the well publicized policies and procedures for volunteers". It referenced the

Supreme Court of Canada's decisions in *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v Aga*, among other cases, in determining that it had jurisdiction to decide on the matter, stating that "[t]he court is not being asked to measure incorporeal and aspirational values such as kindness or benevolence but concrete issues such as breach of policies, and procedural fairness. These are questions within the core competence of a Court and precisely the kind of disputes normally before the Court in employment cases or other breach of contract actions."

In considering the alleged misconduct, the court found that the allegations of misconduct against Hannan were unsupported by any reliable evidence, and concluded that Hannan had not breached Scouts Canada's Code of Conduct. Following this, with regard to the question of discipline, the court stated that:

> […] there may be structural and other reasons that could result in particular volunteer roles being altered or eliminated. From time to time an organization such as Scouts Canada may need to reorganize its structure, eliminate or alter volunteer roles or shut down open or evolve Troops or other groups. No doubt the organization needs flexibility to do so, and volunteers have no right to demand the continuation of a particular role or position in such circumstances. That is not what happened here.

It then stated that where a volunteer is not renewed for purported breach of the Code of Conduct or for unsatisfactory performance, "the decision appears disciplinary". On this basis, the court concluded that Scouts Canada should have followed its disciplinary policies when opting not to renew Hannan's volunteer application.

The court therefore granted declaratory relief, affirming that Scouts Canada's policies applied to Hannan and that his non-renewal was wrongful. While the court acknowledged that Hannan had suffered a breach of contract, it found that no pecuniary loss had been proven, and issued a mandatory order requiring Scouts Canada to process any future applications from Hannan in good faith and in a timely manner. Additionally, Hannan was awarded costs.

This case is an important reminder of the contractual nature between voluntary organizations and their volunteers, as well as the importance of ensuring that decisions involving the status of volunteers, particularly where dismissal or non-renewal is involved, are consistent with the organization's policies.

7. Claims of Solicitor-Client Privilege Over Third-Party Communications Reviewed by Tax Court

By Sean S. Carter and Heidi N. LeBlanc

In a recent decision by the Tax Court of Canada (the "TCC"), *Coopers Park Real Estate Development Corporation v. His Majesty The King*, the court was asked to consider the scope of documentary discovery and, specifically, the impact of solicitor-client privilege upon parties' disclosure obligations regarding communications and materials provided by third party advisors. This decision provides practical insights on how to best assert and address claims of solicitor-client privilege in regards to communications with third party advisors.

The underlying appeal of the matter between Coopers Park Real Estate Development Corporation (the "Appellant") and the Minister of National Revenue (the "Respondent") relates to whether specific transactions in the 2004-2005 period were avoidance transactions within the meaning of the general anti-avoidance rule ("GAAR"), as set out in s 245(3) of the *Income Tax Act*. The Minister had disallowed losses, expenditures, and credits claimed by the Appellant in the 2007-2009 taxation years, on the grounds that the transactions involved primarily served to avoid tax obligations.

Significant challenges ensued between the parties on the appeal following oral discoveries, wherein both parties submitted further questions in writing and inquiries by way of undertaking. This decision specifically addresses the Respondent's motion for further production from the Appellant. As part of its opposition to the Respondent's motion, the Appellant asserted that a number of the documents requested for production were covered by solicitor-client privilege and therefore, could not be produced as part of the discovery process in the litigation.

In regards to the issue of solicitor-client privilege, the court was specifically asked to consider whether this privilege applied to a number of documents in the Appellant's possession (the "Documents") and was provided copies of same under seal for the purposes of its review and assessment on the motion. The Documents primarily contained the Appellant and its counsel's communications with KPMG Accounting, who had been retained to provide accounting services in relation to the relevant tax law matters. In asserting that solicitor-client privilege applied to the Documents, the Appellants argued that the Documents formed part of the chain of their communications with counsel for the purposes of obtaining legal advice, and that when KPMG authored material or forwarded its communications, it was doing so while acting as agent for the Appellant in communications with counsel.

In reaching its decision, the court summarized the test for solicitor-client privilege, stating that the privilege applies to communications between a lawyer and client involving the seeking or giving of legal advice, which the parties intend to be confidential. The court further confirmed that solicitor-client privilege also applies to documents within the "continuum of communication in which the solicitor tenders advice". While there is no such concept at law of accountant-client privilege, the court clarified that solicitor-client privilege can extend to circumstances where an accountant acts as a representative or agent for a client in regard to their obtaining of legal advice from their lawyer. There is no privilege, however, when an accountant simply gives its original and independent tax advice to either the lawyer or to the client, even if the lawyer has overall responsibility to provide advice for the transaction.

The court referred to *Imperial Tobacco Canada Limited v HMTQ* , wherein the TCC previously held that the application of solicitor-client privilege to third party communications would focus upon the true nature of the function that the third party was retained to perform and, when the party seeking to invoke the privilege's protection failed to lead evidence in support of the claim for privilege, the court would have to make an assessment solely on the face of the document in question itself. In the present case, the Appellant had not provided any supporting evidence on this issue and thus, in this instance, the court was required to assess the claims of solicitor-client privilege on the basis of the Documents themselves.

In conducting this assessment, the court reviewed the nature of KPMG's relationship in regards to what they had been retained to do, their relationship to the Appellant and related parties, and their actual conduct. Without the further evidence, the court found that there was not sufficient context provided to substantiate the Appellant's assertions that the majority of the Documents were part of the continuum of communications in which the Appellant was obtaining legal advice. It was found that KPMG had, on numerous occasions, acted beyond the scope of a role as agent for the Appellant in communicating with the Appellant's lawyer for the purposes of seeking and/or obtaining legal advice and, in fact, provided independent advice to the Appellant, falling outside of the scope of communications covered by solicitor-client privilege.

The court did find that the portion of the engagement letter between the Appellant and its counsel which related to the scope of the legal advice to be provided was protected by solicitor-client privilege and ordered that the privileged portion of the letter be redacted for the purposes of production. The court further noted that while it accepted a second document as being covered by solicitor-client privilege—a legal agreement prepared in coordination with counsel, McCarthy Tétrault—it was only protected because the Appellant could substantiate that it involved legal advice under direct legal instruction.

This decision serves a helpful reminder to parties and practitioners to exercise caution when engaging the services of third-party advisors in conjunction with the provision of legal advice in order to best preserve any intended claims of solicitor-client privilege. Parties and practitioners should be urged to think proactively in these circumstances, particularly in regards to the nature and scope of the relationship with the third party, the content of the communications, and the impact that same may have upon a future claim of solicitor-client privilege. Lastly, litigants should be prepared to support any solicitor-client privilege claims with detailed evidence to demonstrate the nature and scope of the relationship with third party advisors who are not providing legal advice in order to avoid any unintended, and potentially prejudicial, disclosure.

8. Refusal to Permit Rainbow Sticker on Volunteer Name Badge Not Discrimination

By Esther S.J. Oh and Cameron A. Axford

The Ontario Human Rights Tribunal (the "Tribunal") recently dismissed a discrimination claim filed by Peter Zanette against the Ottawa Chamber Music Society operating as Ottawa Chamberfest ("Chamberfest"). In *Zanette v Ottawa Chamber Music Society*, decided on July 15, 2024, the Applicant, Zanette, a long-time volunteer, alleged discrimination with respect to employment because of sexual orientation, gender identity, and gender expression after he was asked to remove a rainbow sticker from his volunteer name badge. In that regard, Zanette alleged that the Chamberfest's refusal to allow him to affix the rainbow sticker to his name badge was discriminatory. The Tribunal found no evidence of discrimination, and concluded that Chamberfest's actions were consistent with its uniform policy.

The incident occurred in 2019, while Zanette was volunteering as an usher at a Chamberfest performance. He had affixed a rainbow sticker, a symbol of the 2SLGBTQ2 community, to his name badge that was issued by Chamberfest for its volunteers. Loretta Cassidy, the Volunteer Manager at the time, requested that he remove the sticker. Following an email exchange with Peter MacDonald, the General Manager, Zanette complied with the request.

Zanette subsequently filed an application with the Tribunal, alleging that Chamberfest's refusal to allow him to display the sticker constituted discrimination under the Ontario *Human Rights Code* (the "Code"). Chamberfest denied the allegations, asserting that the request was made in accordance with its dress code policy for volunteers.

The Tribunal acknowledged Zanette's membership in a protected group under the Code (includes individuals with specific characteristics—such as race, gender, disability, or age—who are legally

safeguarded against discrimination in areas like employment, housing, and services) and that being asked to remove the sticker constituted adverse treatment. However, the Tribunal noted that the core issue was whether his protected characteristic was a factor in the adverse treatment.

The Tribunal emphasized that not all differential treatment is discriminatory under the Human Rights Code. Discrimination, in the legal sense, requires proof that the adverse treatment was connected to a protected ground under the Code:

> I have first considered whether the applicant's allegations amount to direct discrimination under s. 8 of the *Code*. It does not. The respondent's request that the applicant remove the rainbow sticker from the name tag that was issued to him was based on their uniform policy. This policy was applicable to all volunteers and there was no evidence to suggest that it was arbitrarily applied to the applicant because of his sexual orientation, gender identity or gender expression or because it was a form of advocacy for the 2SLGBTQ2 community.

In considering whether the allegations constituted direct discrimination under section 8 of the Code, the Tribunal found there was no evidence to suggest that the request to remove the sticker was arbitrarily applied to Zanette due to his sexual orientation, gender identity, or gender expression. Instead the Tribunal found that Chamberfest's policy was applied to all volunteers and employees.

The Tribunal also rejected the argument that the allegations constituted indirect discrimination under section 11 of the Code, noting that indirect discrimination occurs where a requirement, policy standard, qualification, rule or factor that appears neutral excludes or disadvantages a group protected by the Code. Again, the Tribunal found that the Chamberfest's policy applied equally to all volunteers and did not permit any personal expressions to be displayed on their name badges, without regard to the content of such alterations.

The Tribunal distinguished the case from *Hudler v London (City)*, where a mayor's refusal to proclaim "Pride Weekend" as requested by the Homophile Association of London ("HALO") was deemed discriminatory. During her term of office, the mayor had issued 252 proclamations and had only refused proclamation requests from HALO. In contrast, the Tribunal found there was no evidence to suggest that Chamberfest ever permitted any alteration to the name tags it issued, consistent with its desire to protect its brand, from any incursion.

The Tribunal also found that the *Amir and Siddique v Webber Academy Foundation* case did not apply. In that case, a school was found to have discriminated when it refused to accommodate students' request

for a quiet, private space for the purpose of praying and those students were subsequently prohibited from enrolling at the school for the following year because they insisted on performing their mandatory religious duties. The Tribunal differentiated this case by noting that daily prayers are an essential element of an individual's religious beliefs and that those beliefs were protected from discrimination under the Code. In contrast there was no evidence that the wearing of a rainbow sticker was an essential element of being a member of the 2SLGBTQ2 community.

Similarly, the Tribunal cited *Macdonnell v Waterloo (Regional Municipality)*, where a municipal employee's request to wear a kilt was denied. The Tribunal in that case found no discrimination, on the basis that wearing a kilt was not intrinsically connected to the applicant's Scottish ancestry and as such there was no evidence to establish *prima facie* discrimination based on ancestry. Similarly, the Tribunal in this case found no evidence that wearing a rainbow sticker was an essential element of Zanette's identity as a member of the 2SLGBTQ2 community and as such there is no evidence to establish *prima facie* discrimination based on sexual orientation, gender identity or gender expression.

In closing, the Tribunal concluded that Zanette failed to establish a *prima facie* case of discrimination under the Code as there was no evidence presented that suggested that Chamberfest's decision was motivated by bias against the 2SLGBTQ2 community nor was there any evidence that Zanette's sexual orientation, gender identity, or gender expression was relevant to the Chamberfest's request to remove the rainbow sticker from his name badge. The Tribunal dismissed the application, finding that Chamberfest's actions were consistent with its neutral uniform policy.

This case demonstrates that the protections from discrimination under the *Human Rights Code* are subject to reasonable limitations. In that regard, where an organization's policies are reasonable and reflect legitimate, operational needs of an organization, and where those policies are enforced equally and consistently with all employees and/or volunteers of the organization, this would not likely serve as the basis for a successful allegation of unlawful discrimination.

9. Employment Update

By Barry W. Kwasniewski and Martin U. Wissmath

Court Upholds Employer's Termination Provisions Excluding Common Law Notice

If there is no reasonable interpretation of an employment contract that could lead to an illegal outcome, then it would not violate employment laws, even if it does not exactly copy statutory language. That was the rationale in *Bertsch v. Datastealth Inc.*, as the Ontario Superior Court of Justice upheld an employer's

termination provisions, finding them compliant with the *Employment Standards Act, 2000* ("ESA") and dismissing an employee's claim for wrongful dismissal. The case was heard by motion under rule 21.01(1) of the Rules of Civil Procedure, brought by Datastealth Inc. to strike out the claim as disclosing no tenable cause of action. This decision, published October 8, 2024, is significant for charities and not-for-profits in Ontario, as it emphasizes the need for clear, legally compliant employment agreements that meet ESA standards. This case is also notable in comparison with recent jurisprudence as the court sided with the employer's arguments on the interpretation of the termination clauses.

Gavin Bertsch (the "Employee") was terminated from Datastealth Inc. (the "Employer") on July 7, 2024, after roughly eight and a half months of employment. The Employee received four weeks' pay in lieu of notice, which was higher than the one-week minimum required under the ESA. The written employment agreement dated July 14, 2023 limited the Employee's rights on termination to the minimum entitlements under the ESA, and also provided that "the plaintiff contracts out of common law notice requirements," according to the court.

Bertsch sued for wrongful dismissal, arguing the employment agreement's termination provisions were unenforceable because they were ambiguous and failed to properly reference the statutory prescription for termination without notice under the ESA in Ontario Regulation 288/01: *Termination and Severance of Employment* (the "Regulation"). The Employee argued that the termination provisions violated the ESA because, according to the court, they purported to allow "termination for cause, without notice, whether or not there was 'wilful misconduct, disobedience, or wilful neglect'." Seeking to enforce alleged common law rights, which are significantly higher than the ESA minimum standards, the Employee claimed twelve months' payment in lieu of reasonable notice, approximately $300,000.

The court found that termination provisions in employment agreements must "clearly comply with the ESA", and failure to do so would render them void. However, the court concluded that the provisions in this employment agreement were clear and unambiguous, and did not violate the ESA or the Regulation. Specifically, the court noted that the agreement did not unlawfully exclude the Employee from receiving his ESA entitlements and that the language regarding the exclusion of common law notice was enforceable.

The court cited several cases, including *Amberger v IBM Canada Ltd.*, *Nemeth v Hatch Ltd.*, and *Roden v Toronto Humane Society*, to support the finding that the contract did not breach the ESA. The court rejected the Employee's argument that the termination provisions were ambiguous, holding that there was no reasonable interpretation of the relevant clauses that would result in an illegal outcome.

The court concluded that no trial was necessary, as there were no facts in dispute that would require further examination. The Employee's claim was struck out without leave to amend, and the court ordered him to pay $6,000 in costs to the Employer within 30 days.

10. Privacy Update

By Esther Shainblum and Martin U. Wissmath

Federal Privacy Commissioner Collaborating on Privacy-Protective Age Assurance

The Office of the Privacy Commissioner of Canada ("OPC") is collaborating with international regulators to establish a unified approach to age-assurance methods, prioritizing children's privacy and data protection. This aligns with OPC's strategic focus and builds on stakeholder consultations for developing privacy-focused age-assurance guidance. The OPC announced its endorsement of the international joint statement, "Joint Statement on a Common International Approach to Age Assurance", published September 19, 2024 (the "Statement") on the OPC website. Endorsed by regulators in the United Kingdom, the Philippines, Argentina, and Mexico, the Statement includes 11 principles on the use of age-assurance technology.

"Age assurance can be one important way to protect children, both from inappropriate or harmful online content, and the risks that may arise from the collection and processing of their personal information," said Philippe Dufresne, Privacy Commissioner of Canada. The statement will remain open for signatures after its publication, allowing both working group members and other regulators that support the shared principles to endorse it.

Alberta Privacy Commissioner Rules Against Students' Union in Disclosure Case

Alberta's Privacy Commissioner ordered the University of Alberta Students' Union to comply with its privacy law obligations, as it faced scrutiny for publicly disclosing a former student council member's personal information without consent. *University of Alberta Students' Union (Re)*, published October 1, 2024, involves a complaint filed with the Office of the Information and Privacy Commissioner of Alberta ("PCA") regarding the University of Alberta Students' Union ("UASU")'s online disclosure of the former student council member's (the "Complainant") personal information, and breaches of Alberta's *Personal Information Protection Act* ("PIPA").

The personal information stemmed from a 2004 complaint about the Complainant's conduct while he was an elected member of the student council, along with information regarding his subsequent resignation. Although the UASU removed the information from its website during the inquiry and argued the matter

was moot, the Adjudicator found the inquiry was necessary to ensure future PIPA compliance. The Adjudicator also determined the disclosed information constituted the Complainant's personal information under PIPA. The UASU argued that it was exempt from PIPA as a non-profit organization. It also took the position that "as the Complainant did not request that the student council discuss the complaint and the application *in camera*, he consented to the disclosure of his personal information on the internet." While the Adjudicator agreed that the UASU is a non-profit organization, it did not meet the requirements under PIPA as a non-profit "incorporated under the *Societies Act*, the *Agricultural Societies Act*, or Part 9 of the *Companies Act*."

The UASU's disclosure was found to violate PIPA because it lacked the authority to disclose the information without consent and the Complainant did not consent, nor could consent be deemed under PIPA. Furthermore, the disclosure did not meet the reasonableness requirements of PIPA, as the UASU failed to demonstrate how the nearly two-decade-long online publication of the complaint served a legitimate purpose of transparency and accountability. The Adjudicator ordered the UASU to continue complying with PIPA in handling the Complainant's personal information.

Privacy Sweep Report from OPC Finds Majority of Apps and Websites use Deceptive Design

The Office of the Privacy Commissioner of Canada ("OPC"), with 25 global privacy authorities, participated in the Global Privacy Enforcement Network Sweep (the "Sweep"), examining deceptive design patterns ("dark patterns") on websites and apps. The Sweep occurred early this year between late January and early February, and the OPC published its *Office of the Privacy Commissioner Sweep Report 2024: Deceptive Design Patterns* on July 9, 2024 (the "Report").

Coordinated with the International Consumer Protection and Enforcement Network, the Sweep assessed 145 sites across sectors like retail, social media, and entertainment, including child-focused platforms. Dark patterns manipulate users' privacy choices, often leading to excessive personal data sharing. The Sweep revealed that 97% of the websites and apps reviewed found one or more dark patterns, potentially leading individuals to disclose more personal information online.

"Websites and apps should be designed with privacy in mind," said Privacy Commissioner of Canada Philippe Dufresne in an announcement on the Report's findings. "This includes providing privacy-friendly default settings and making privacy information easy to find." Notably, the OPC reported that "websites and apps aimed at children used, more often than websites and apps targeted at the general population, emotive language or nagging to manipulate users into making less privacy-friendly choices."

The OPC focused on five design patterns based on OECD criteria to understand how these tactics impact user privacy decisions and highlight consumer protection issues:

1. Complex and confusing language: technical and/or excessively long privacy policies that are difficult to understand;
2. Interface interference: design elements that can influence users' perception and understanding of their privacy options;
3. Nagging: repeated prompts for users to take specific actions that may undermine their privacy interests;
4. Obstruction: the insertion of unnecessary, additional steps between users and their privacy-related goals; and
5. Forced action: requiring or tricking users into disclosing more personal information to access a service than is necessary to provide that service.

The Report found that the most common deceptive design pattern involved privacy policies that were lengthy (over 3,000 words) or used complex language, making them challenging to understand. This issue appeared in 96% of reviewed cases, with 33% of policies rated as highly difficult to read. Obstruction was another prominent tactic, where users encountered obstacles in account deletion processes; only 25% of sites allowed account deletion within two clicks, while 43% offered no visible option to delete accounts. Additionally, 65% of platforms pre-selected less privacy-protective settings, steering users toward reduced privacy. These patterns often serve the platform's interests over user privacy, the Report noted.

Charities and not-for-profits should take note of this Report and make efforts to avoid any dark patterns in their website design or applications. Privacy policies should be clear and comprehensive, but also succinct and not unnecessarily lengthy. Legal advice should be obtained to review policies and advise organizations on best practices to comply with privacy expectations.

11. AI Update

By Martin U. Wissmath and Cameron A. Axford

Basic Principles for Developing a Responsible AI Policy in a Rapidly Evolving Legal Landscape

An effective Artificial Intelligence ("AI") legal policy is essential for Canadian charities and not-for-profits (NFPs) as they increasingly use AI technologies to enhance fundraising, manage stakeholder

relationships, and streamline operations. Given the sensitive nature of personal data collected by charities and NFPs, compliance with applicable privacy laws and best practices is critical to safeguarding the trust of members and donors. Moreover, AI policies help organizations proactively address ethical considerations, prevent algorithmic bias, and ensure transparent data practices, aligning with Canada's human rights standards and promoting fairness. As the proposed *Artificial Intelligence and Data Act* (AIDA — still in debate in Parliament and not yet in force) could introduce new regulatory requirements, having a robust AI policy helps organizations proactively navigate legal obligations, manage reputational risks, and leverage AI responsibly to support their missions and activities.

A comprehensive AI legal policy for Canadian organizations should begin with data privacy and protection measures, detailing guidelines for personal data handling. This includes securing clear consent, purpose-specific data collection, and minimizing data retention. Strong cybersecurity protocols, such as encryption and access controls, are essential to guard against unauthorized access and data breaches, especially for sensitive information. Transparency about data use is also critical, as organizations must inform individuals about how their data is used, stored, and shared, especially when AI informs decision-making processes.

Ensuring fairness and mitigating bias is equally important. Organizations should implement AI systems with anti-discrimination measures in mind, regularly auditing them to detect and correct biases that could infringe on human rights or breach Canadian anti-discrimination laws. Regular algorithmic impact assessments should be conducted to identify biases in data or models that might lead to unfair outcomes.

The policy should prioritize transparency, supported by clear documentation of AI models, data sources, and decision-making criteria to help stakeholders understand the impact of AI. For high-stakes applications, AI decisions should be explainable in plain language so individuals affected can comprehend and, if needed, challenge AI-driven conclusions. Risk management and accountability structures are also necessary. Organizations should define roles for AI oversight, ensuring compliance with legal and ethical standards, and establish risk assessment processes to address potential harms. Meeting standards set out in AIDA will also be required, should it become law, or successor legislation, particularly for high-risk AI systems requiring enhanced transparency and record-keeping.

Regular internal audits can verify policy adherence. A feedback system allows stakeholders to raise concerns and suggest improvements. An ethics framework focused on human-centered values and incorporating human-in-the-loop mechanisms for critical AI decisions can provide accountability and address biases. Finally, the policy should include provisions for ongoing legal compliance and regular

updates, maintaining alignment with evolving regulations like AIDA, and, where applicable, engage relevant international standards such as the European Union's Artificial Intelligence Act for organizations operating across borders.

These elements will assist charities and NFPs to deploy AI responsibly, minimize legal risk and promote trust among stakeholders. With the ongoing development of AI regulations in Canada and around the world, policies must remain flexible, with regular review and updates, to adapt to new standards and emerging best practices. Charities and NFPs should work with their legal counsel to assist in crafting their AI policies to effectively manage legal risks, establish clear accountability, and maintain ethical standards that align with both legal obligations and organizational values.

12. AML/ATF Update

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

Canada's 2024 Intelligence Priorities Framework: Implications for Charities and Non-Profits

In September 2024, the Canadian Privy Council Office released an updated framework for Canada's intelligence priorities (2024 Framework), aiming to address an expanding array of security threats, including foreign interference, cyber risks, and economic vulnerabilities. While charities and non-profits may not immediately see themselves as a primary focus of these priorities, many aspects of this document are highly relevant for the sector, particularly as organizations operate in increasingly interconnected, digital, and internationally influenced environments.

The Canadian government's 2024 Framework emphasize transparency, diversity, and inclusion in national security, acknowledging persistent challenges, such as unconscious bias and discrimination within intelligence organizations. Recognizing negative past experiences among marginalized communities, the government aims to rebuild trust through concrete action, including gender-based and identity-sensitive analysis ("GBA Plus") to inform policy and mitigate unintended impacts on minority groups. Transparency efforts include information sharing, executive accountability, and policy engagement, with a focus on understanding and addressing the unique risks faced by vulnerable communities in Canada and globally.

The 2024 Framework outlines Canadian intelligence as a critical tool for government decision-making, supplying analyzed information on national security concerns, like foreign threats, cybersecurity, and organized crime. Intelligence is collected legally by agencies like CSIS and the RCMP, processed into reports, summaries, and assessments, then shared within government or, when appropriate, declassified

for public awareness. This intelligence helps predict threats, supports policy, and guides responses to risks impacting Canada's economy, infrastructure, and public safety. Additionally, the document highlights diversity and transparency commitments within intelligence, aiming for fair and inclusive security practices.

Canada's intelligence oversight includes three main bodies: The National Security and Intelligence Committee of Parliamentarians, which examines intelligence frameworks and activities across agencies; the National Security and Intelligence Review Agency (NSIRA), ensuring activities by CSIS and the RCMP are lawful and reasonable; and the Intelligence Commissioner, who reviews ministerial authorizations before specific intelligence operations proceed. Together, these bodies maintain legal compliance and accountability in Canadian intelligence practices.

Canada's 2024 Framework guides intelligence efforts across four main objectives: countering foreign threats, advancing prosperity and security, defending national interests, and protecting Canadians from serious risks. These priorities address issues, such as foreign interference, economic security, and cybersecurity. They also include environmental, health, and climate-related risks, acknowledging their growing impact on national security.

Canada's intelligence priorities offer a framework for aligning intelligence efforts with national interests, aiming to improve transparency and public trust. This first publication reflects a commitment to engage Canadians in national security matters, supported by oversight and review bodies. Facing complex, evolving threats to security and prosperity, Canada's intelligence community collaborates with domestic and international partners to build resilience and address future challenges. The government pledges ongoing efforts to enhance public understanding and confidence in intelligence activities.

Canada's 2024 Framework provides charities and not-for-profits (NFPs) with a good understanding of the comprehensive security regime the Canadian Government and its priorities when considering how best to comply with Canada's anti-terrorism legislation, In this regard, charities are reminded that the CRA Charities Directorate has recently posted an updated checklist on how charities can comply with Canada's anti-terrorism legislation titled "Checklist: How to protect your charity against terrorist abuse" that was reported on in our *September 2024 Charity and NFP Update*.

A Review of Canada's 2023-2026 AML/ATF Strategy

In addition to the report on Canada's 2024 Intelligence Priorities Framework referenced above, it is worth mentioning that in March 2023, the Department of Finance Canada ("Finance") released its 2023-2026

Anti-Money Laundering (AML) and Anti-Terrorist Financing (ATF) Strategy ("AML/ATF Strategy"), its first AML/ATF Regime Strategy published by the Government of Canada. The stated goal of the AML/ATF Strategy is to fortify the country's defenses against financial crimes that fund terrorism, organized crime, and other unlawful activities. Central components are stated to include bolstering regulatory standards, increasing inter-agency collaboration, enhancing beneficial ownership transparency, and leveraging technology to identify and address risks in both traditional and emerging financial sectors.

The AML/ATF Strategy states that it aims to safeguard the financial system and national security by countering money laundering and terrorist financing. It outlines coordinated actions among federal, provincial, and international partners to address financial crime risks. The strategy emphasizes public accountability, regulatory improvements, intelligence sharing, and enforcement support to enhance transparency and efficiency. Priority areas are stated as including strengthening interagency cooperation, addressing high-risk sectors, and adapting to emerging threats, ensuring comprehensive, ongoing protection of Canada's financial integrity and public safety.

Money laundering is stated as concealing the origin of criminal funds, benefiting criminals and organized crime, while terrorist financing involves gathering funds for terrorism, potentially leading to violent acts. Canada's Anti-Money Laundering and Anti-Terrorist Financing ("AML/ATF") Regime is stated as working on three pillars: policy and coordination (assessing risks and creating policies), prevention and detection (ensuring compliance and analyzing financial intelligence), and investigation and disruption (identifying and prosecuting offenses). Together, these pillars are intended to detect, prevent, and disrupt financial crimes, enhancing security and stability, both in Canada and internationally.

Canada's AML/ATF Strategy is stated as emphasizing global partnerships to tackle international financial crimes. Canada works with the Financial Action Task Force ("FATF"), FATF-Style Regional Bodies ("FSRBs"), the Egmont Group Financial Intelligence Units, and the Five Eyes partnership with the US, the UK, Australia and New Zealand to identify trends, share intelligence, and establish AML/ATF standards. As an active contributor, Canada coordinates with these partners, supporting transnational investigations and adopting best practices to counter money laundering and terrorist financing. Collaborative international efforts are stated as helping to strengthen Canada's domestic AML/ATF framework and enhance overall security and financial integrity.

Canada's AML/ATF Strategy also emphasizes staying ahead of evolving money laundering and terrorist financing threats. With rapid digitalization across financial sectors, risks have emerged from technologies like virtual currencies, fintech, and digital identity systems, especially in the pandemic's wake. The

National Inherent Risk Assessment ("NIRA") identifies primary money laundering sources in Canada, such as drug trafficking and fraud, while highlighting groups like Hizballah as key terrorist financing threats. The NIRA, updated in March 2023, also addresses risks from ideologically motivated violent extremists and assesses sectors like banking and trade-based services for vulnerability, enhancing national AML/ATF readiness.

Recent evaluations found Canada's AML/ATF Regime to be effective, with improved coordination and reporting supervision, producing "good quality intelligence". However, gaps remain in areas, like information sharing, convictions, and proceeds recovery. Reports, including the 2016 FATF evaluation, noted weaknesses, particularly around beneficial ownership transparency, recovery of the proceeds of crime, and information sharing. Non-profit organizations, distinct from registered charities, apparently face potential terrorist financing risks due to a monitoring gap. To address these, Canada's AML/ATF Regime continues to adapt via its governance framework, improving standards based on international guidelines and internal assessments.

Though the AML/ATF Strategy was released last year, it is an ongoing progress and should be reviewed by charities and NFPs who might be at risk of terrorist financial abuse due to the nature of their activities and the geographic regions in which the operate.

Canada Lists Samidoun as a Terrorist Entity

On October 15, 2024, the Canadian government listed Samidoun, also known as the Palestinian Prisoner Solidarity Network, as a terrorist entity under Canada's Criminal Code. This listing aligns with similar actions taken by the United States and Germany, as Samidoun is linked to the Popular Front for the Liberation of Palestine ("PFLP"), a listed terrorist organization. This classification criminalizes any form of support, including financial and material assistance, to Samidoun. Any charity or NFP that are continuing to deal with Samidoun should be seeking legal advice.

13. October 2024 Legal Risk Management Checklists for Ontario-based Charities and Not-for-Profits

By Terrance S. Carter and Jacqueline M. Demczur

The annual Legal Risk Management Checklist for Ontario-Based Charities, as well as the Legal Risk Management Checklist for Ontario-Based Not-For-Profits, updated as of October 2024, are now available through our website at carters.ca.

14. Carters Annual Charity & Not-for-Profit Law Webinar

Carters Annual Charity & Not-for-Profit Law Webinar hosted by Carters Professional Corporation will be held on **Thursday, November 14, 2024**. Special Guest Speakers will be The Honourable Ratna Omidvar, C.M., O.Ont., Senator for Ontario & Mr. Bruce MacDonald, President and CEO of Imagine Canada. Details are available here. **On demand video replay will now be available for all webinar registrants.**

IN THE PRESS

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

RECENT EVENTS & PRESENTATIONS

Association of Treasurers of Religious Institutes hosted the ATRI 2024 Conference in Ottawa, Ontario. Terrance S. Carter presented on Saturday, September 28, 2024, on the topic of The CRA's New Regime of Qualifying Disbursements.

Canadian Society of Association Executives is hosting 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".

UPCOMING EVENTS

Canadian Society of Association Executives is hosting the CSAE 2024: Connections National Conference in Ottawa, Ontario from October 29th – November 1st at the Westin Hotel. Esther Shainblum and Barry Kwasniewski will be co-presenting 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.

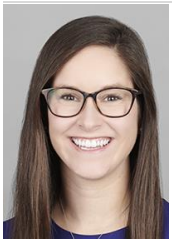
Nancy E. Claridge, B.A., M.A., LL.B. – Called to the Ontario Bar in 2006, Nancy Claridge is a partner with Carters practicing in the areas of corporate and commercial law, anti-terrorism, charity, real estate, and wills and estates, in addition to being the assistant editor of *Charity & NFP Law Update*. 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.*

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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.

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