

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

## SEPTEMBER 2024

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### [Carters Annual Charity & Not-for-Profit Law Webinar](#)

**Thursday, November 14, 2024**

Hosted by Carters Professional Corporation

[Online Registration](#) available at [www.carters.ca](http://www.carters.ca)

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## PUBLICATIONS & NEWS RELEASES

### 1. CRA News

By [Jacqueline M. Demczur](#) and [Esther S.J. Oh](#)

#### **CRA Releases Report on Charities Program 2022 to 2023**

On September 4, 2024, the Charities Directorate of the Canada Revenue Agency released a [Report on the Charities Program 2022 to 2023](#) (the “CRA Report”).

##### a) Overview

High level highlights of the CRA Report include the following: implementing a new way for charities to work with non-qualified donees by making grants; making changes to the Form T3010 Registered Charity Information Return; and decreasing the average processing time for final decisions on applications for registration from 213 days to 147 days.

The CRA Report stated that in 2022, there were 74,544 charitable organizations, 6,549 private foundations and 4,862 public foundations in Canada, totaling 85,955 registered charities.

##### b) Breakdown of Assets, Revenue and Expenditures of Registered Charities

The following chart provides a break-down of the assets, revenue, and expenditures of each type of registered charity (in billions of dollars) based on information obtained through the Registered Charity Information Returns which were submitted by registered charities for the 2021 calendar year (which is self-reported by registered charities) (“2021 Charity Returns”):

	<b>Assets</b>	<b>Revenue</b>	<b>Expenditure</b>
Charitable organizations	\$468	\$309	\$293
Private foundations	\$87	\$11	\$6
Public foundations	\$48	\$15	\$8

In 2021, funding from the government was the main revenue source for all charities, totaling 69% of all revenue. Revenue from the sale of goods and services (7%), tax-receipted gifts (6%), non-tax-receipted revenue (3%), and revenue from other registered charities (3%) and the combined amounts in the “other” category made up 12% of charity revenue. Regarding expenditures in 2021, 73% of expenditures reported by charities were allocated to charitable activities, 23% on “other” expenditures (such as administrative, management, and professional fees) and 4% of expenditures were on gifts to qualified donees. Charities spent approximately \$3.8 billion on activities outside of Canada in 2021 (which is required to be reported on line 200 of the T3010). Again, the above information is based on the 2021 Charity Returns.

c) Applications for Charitable Status

During the 2022 to 2023 fiscal year, the CRA Report stated that 88.1% of applicants for charitable status used online services to submit applications, documents, and correspondence. The CRA received 2,058 applications for registration as a charity and 115 applications for registration as other qualified donees. In total, 2,398 decisions on applications for registration were made by the CRA.

Of the applications for charitable status reviewed in the 2022-2023 fiscal period, 90.1% were new applications, and 9.9% were re-registrations. Approval of registration represented the majority outcome for both charities and other qualified donees in this time period, while denial of registration was the least common, representing 1% in each category. Reasons for denial of charitable status included a lack of information provided on proposed activities, the carrying on non-charitable activities, acting as a conduit and/or a lack of direction and control over the use of resources.

d) CRA Audits

During the 2022-2023 fiscal year there were 222 audits done by CRA. The CRA Report stated that common non-compliance findings included:

- Incomplete or incorrect T3010 return
- Incomplete or inaccurate donation receipts
- Inadequate books and records

The CRA Report stated that outcomes of those audits were as follows:

<b>Audit outcome for the fiscal year 2022-2023</b>	<b>Number of times outcome occurred</b>
Education letters	113
Compliance agreements	51
Notices of intention to revoke	40
Voluntary revocations	6
Other*	5
Penalties/suspensions	4
No change	2
Annulment	1

\*such as pre-registration and revocation tax audits

e) Advisory Committee on the Charitable Sector

The Advisory Committee on the Charitable Sector (“ACCS”) is described by the CRA Report as a “consultative forum for the Government of Canada to engage in meaningful dialogue with the charitable sector.” The CRA Report stated that the ACCS was established in order to “improve the Government’s

relationship with the charitable sector and modernize the regulatory framework under which charities operate.”

The CRA Report noted that 11 new members from the charitable sector were onboarded between May and October 2022. The ACCS met five times over the fiscal year.

f) Technical Issues Working Group

The Technical Issues Working Group (“TIWG”) was established in 2004 to serve as “a forum ... to discuss trends and technical issues, explore workable administrative solutions, and expand the CRA’s understanding of the charitable sector.”

Membership on the TIWG membership is refreshed every two years and includes key stakeholders from the charitable sector, including umbrella organizations and professional associations, academics, and accounting and legal experts.

Most recently, the committee was consulted on a variety of topics including the CRA guidance [Registered charities making grants to non-qualified donees \(CG-032\)](#), the CRA’s approach to promoting compliance, and the CRA’s policy priorities.

g) Office of the Taxpayers’ Ombudsperson Review

On March 27, 2023, the Office of the Taxpayers’ Ombudsperson released a report titled *Charity Begins with Fairness: More to Explore*, which examined how charity audit files are selected, the quality of services provided to charities audited by the Charities Directorate, and the CRA’s efforts to make its employees aware of their potential unconscious biases that could lead to discriminatory behavior toward charities run by racialized communities.

The CRA Report stated that the Ombudsperson had found that “CRA’s risk assessment criteria is reasonable and that its auditors carried out audits professionally and courteously. Overall, the CRA follows fair processes and the report did not identify any indicators that were problematic or could unfairly affect certain charities.”. It recommended that the CRA create a mandatory unconscious bias training course for all employees, targeting the course to make it mandatory for all employees involved in the CRA audit process. The CRA Report indicated that CRA agreed with the above recommendations, and developed a three-phased approach that goes beyond the Ombudsperson’s recommendations. For the full text of what the Ombudsperson said in his report on this matter, [click here](#).

## **CRA Reminds Charities of September 30 Deadline for T3010 Filing**

With the September 30<sup>th</sup> filing deadline fast approaching, charities whose fiscal year ended on March 31 must submit their [T3010 annual information return](#). The CRA has [urged charities](#) to file their returns online through [My Business Account](#) (MyBA) or [Represent a Client](#) for faster processing and easier form completion.

The CRA has provided various tools to assist in the filing process, including an [updated T3010 charity return page](#), a [guide](#) on completing the return Completing the Registered Charity Information Return (Form T4033), and a [webinar](#) which walks charities through the steps to completing the T3010 online.

Charities that need to update their information, such as adding a new director or changing their mailing address, can do so through MyBA. For those new to the online system, the CRA offers resources and webinars to help get started.

For assistance, charities can contact the Charities Directorate client service team at 1-800-267-2384, available Monday to Friday, 8 am to 5 pm Eastern time.

## **CRA Releases Latest Quarterly Update**

The Charities Directorate has published its [second edition of quarterly updates](#) on September 5, 2024, highlighting significant developments and ongoing efforts to support the charitable sector as the fall season begins.

The update coincides with the International Day of Charity, and summarizes various initiatives undertaken since the last update. These include [a webinar](#) on maintaining books and records, [an announcement](#) regarding the ACCS' open call for new members, and the publication of [refreshed content](#) aimed at educating charities about compliance and the risks of terrorist abuse.

In its update, the CRA recognized that while most charities strive to operate within legal requirements, some engage in high-risk non-compliance areas. The update identifies the CRA's top three high-risk non-compliance areas of focus as follows: aggressive tax planning, offshore activities and ineligible individuals. The CRA also re-iterated its commitment to ensuring compliance through education, audits, and stakeholder engagement.

Looking ahead, CRA announced [upcoming webinars](#) focused on public policy dialogue and development activities. Charities are encouraged to stay informed and participate in these educational opportunities.

For more details and to view past webinars, charities can visit the [Charities media gallery](#). The CRA also invites stakeholders to spread the word and encourage others to subscribe to their [mailing list](#) for future updates from CRA.

## **CRA Posts “Charitable purposes and activities: Useful tips to draft and describe them”**

Recently, the CRA posted an update to their [News and events for charities](#) page which provides tips on drafting and describing charitable activities. The update stated the tips are intended to assist those applying for charitable registration or for those registered charities that are wanting to change their purposes or carry on new activities.

The update began by explaining that a registered charity must be constituted [exclusively for charitable purposes](#) and conduct charitable [activities](#) that support those purposes. [Purposes](#), also known as objects, are the goals an organization aims to achieve and should be clearly outlined in the organization’s governing document. The update briefly explained that charitable purposes must fall into one of four categories: [relief of poverty](#), [advancement of education](#), [advancement of religion](#), or [other purposes that benefit the community](#). Registered charities can also be constituted to make gifts to qualified donees.

For further guidance, charities can refer to the CRA’s resources or contact the Charities Directorate client service team.

## **2. Legislation Update**

By [Terrance S. Carter](#) and [Adriel N. Clayton](#)

### **Ontario Digital Platform Workers’ Rights Act, 2022**

Ontario’s new digital workplace legislation, the [Digital Platform Workers’ Rights Act, 2022](#) (the “DPWRA”), has been proclaimed to come into force on July 1, 2025. The DPWRA was enacted through Bill 88, the *Working for Workers Act, 2022*, which came into force on April 11, 2022, but it was not given an in-force date until its proclamation on September 5, 2024. Together with the proclamation, the Government of Ontario filed [Ontario Regulation 344/24, General](#) under the DPWRA on the same date.

As discussed in our [March 2022 Charity & NFP Law Update](#), the DPWRA amends the *Employment Standards Act, 2000* to establish certain rights for individuals who provide “digital platform work”, which the DPWRA defines as “subject to the regulations, the provision of for payment ride share, delivery, courier or other prescribed services by workers who are offered work assignments by an operator through the use of a digital platform”. The DPWRA provides digital platform workers with basic rights to

information, minimum wage, a recurring pay period and pay day, notice of removal from an operator's digital platform, the right to resolve workplace disputes and freedom from reprisal.

**Amendments to O Reg. 347/18 under Ontario's *Police Record Checks Reform Act, 2015***

[Amendments to Ontario Regulation 347/18, Exemptions](#) under the *Police Record Checks Reform Act, 2015* (the "PRCRA") which proposed on May 8, 2024 have now been approved, and will become effective January 1, 2025. The amendments are intended to ensure that police record checks subject to the *Child, Youth and Family Services Act, 2017* (the "CYFSA") and the *Intercountry Adoption Act, 1998* (the "IAA") are performed in the same manner in order to have consistent police record check requirements between both Acts.

Once effective, required police record checks under both Acts will be exempted from the requirements contained in the PRCRA, and will instead be subject to the safeguards set out in O Reg 347/18. Section 1 of O Reg 347/18 will be amended to cover the types of roles/positions in the child and youth services sector that are currently excepted from the PRCRA, such as the subsection 2(2) paragraph 8 exception for searches requested by a children's aid society for the purpose of performing its functions under the CYFSA.

Searches governed by the CYFSA or IAA that are related to other roles or positions similar to those currently listed at section 1 of O Reg 347/18 will also be added to O Reg 347/18 for consistency.

The intent is that searches for all types of checks required under these Acts will be subject to all the procedural safeguards under O. Reg. 347/18. Examples of such safeguards include restrictions on when non-criminal information can be disclosed, as well as processes to respond to requests from individuals to review their results, correct inaccuracies, or request a reconsideration of the disclosed information.

The amendments are also intended to streamline and clarify when and from whom police record checks are required, the practices and procedures to be followed with required checks, and the information police services must consider disclosing based on the type of check. As well, they will stipulate that individuals (rather than children's aid societies) will request and receive their check directly from a police service.

### 3. Corporate Update

By [Theresa L.M. Man](#)

#### **Reminder About the Approaching Optional ONCA Transition Deadline**

Not-for-profit corporations in Ontario are again reminded of the approaching deadline to transition under the Ontario *Not-for-Profit Corporations Act, 2019* (the “ONCA”), which is fast approaching on October 18, 2024. Corporations have now had nearly three years to undertake the optional transition process by amending their letters patent (by adopting articles of amendment) and adopting ONCA-compliant by-laws. For those that do not undertake the transition, any provisions in their letters patent, supplementary letters patent, by-laws, and special resolutions that are inconsistent with the ONCA (subject to a few exceptions) will be deemed to be amended to comply with the ONCA as of October 19, 2024. For further details on ONCA transitions, please see the [August 2024 Charity & NFP Law Update](#).

#### **Proposed Amendments to Regulation 16 under Ontario’s *Agricultural and Horticultural Organizations Act***

[Proposed amendments](#) to Regulation 16 under the *Agricultural and Horticultural Organizations Act* (the “AHOA”) were posted in Ontario’s Regulatory Registry on August 30, 2024. By way of background, Bill 139, *Less Red Tape, More Common Sense Act, 2023*, which received Royal Assent on December 4, 2023, will introduce amendments to the AHOA allowing payments to directors, officers or members of agricultural or horticultural societies for services performed in capacities other than their official duties, and enabling less onerous financial reviews. These amendments will be brought into force on a day to be named by proclamation of the Lieutenant Governor.

Following this, new regulatory amendments have been proposed to Regulation 16 under the AHOA which the Ministry is now proposing regulatory amendments to Regulation 16 under the AHOA to do the following: (a) There will be new sections 10 and 11 to provide details on the proposed options allowed for financial review and reporting for agricultural and horticultural organizations. In this regard, agricultural and horticultural societies and agricultural associations whose annual revenue is \$500,000 or less can conduct an informal financial review and provide a financial review certificate rather than conduct formal audits. However, those organizations whose annual revenue is more than \$500,000 will still be required to provide audited financial statements. (b) There will be a new subsection 6(2) to allow for a one-time \$1,500 grant, which will be made when a horticultural society reaches its 100<sup>th</sup> anniversary. The grant will be applied retroactively for those horticultural societies that have already reached their 100<sup>th</sup> anniversary.



#### **4. Federal Court Quashes CRA's Attempted Reassessment After Voluntary Disclosure by Foundation**

By [Ryan Prendergast](#)

In the decision of [\*Milgram Foundation v Canada \(Attorney General\)\*](#), released on September 9, 2024, the Federal Court of Canada quashed a decision by the Minister of National Revenue (“Minister”) to reassess the tax liability of the Milgram Foundation (“Foundation”), highlighting the Federal Court’s jurisdiction to review the Minister’s conduct, especially when it involves procedural fairness and abuse of process, even though the Tax Court of Canada has exclusive jurisdiction over tax assessments.

The case involved the Foundation, a non-resident entity established in 1964 in Liechtenstein, which did not file tax returns in Canada until 2015. In that year, after considering that the Foundation might be deemed a Canadian resident for income tax purposes under the *Income Tax Act* (Canada), the Foundation disclosed its financial information for the tax years 2003 to 2014 under the Canada Revenue Agency’s (“CRA”) Voluntary Disclosure Program (“VDP”). The disclosure was accepted by the CRA, and taxes were assessed and paid. However, in 2018, the CRA alleged to have discovered undisclosed investment income from the years 1998 to 2002 and proposed to reassess the Foundation for those years, citing misrepresentation by the Foundation due to neglect, carelessness or wilful default. The Foundation sought judicial review of this decision, arguing that the CRA’s actions breached a previous agreement and amounted to an abuse of process.

First, in order to determine whether the court had jurisdiction over the issue, the court examined whether the Minister’s decision to reassess the Foundation for earlier tax years was reviewable and that the Foundation was not launching a collateral attack on the tax assessment itself. The court concluded that the reassessment involved the Minister’s discretionary powers, making it subject to review by the court under administrative law. In doing so, the court referenced the Supreme Court of Canada’s decision in *Dow Chemical Canada ULC v Canada* and stated that “[t]he appropriate forum for appealing the tax assessment itself, the amount of taxes owing or the product, is before the Tax Court. Whereas to challenge the Minister’s discretionary decision—her conduct, or process leading up to the tax assessment—the taxpayer should seek judicial review at the Federal Court.”

The court found that the Minister had accepted the Foundation’s voluntary disclosure in 2015, but three years later, attempted to reassess the earlier years without providing sufficient justification. This reversal, according to the court, “violated the community’s sense of fair play, as well as the principles of judicial

economy, consistency, finality and the integrity of the administration of justice. It therefore amounts to an abuse of power.”

Ultimately, the court quashed the Minister’s decision to reassess the Foundation’s tax liability, ruling that the CRA’s reversal after accepting the voluntary disclosure filed by the Foundation was arbitrary and unjustified. The court granted the Foundation’s application for judicial review, stating that the Minister’s conduct failed to meet the standards of administration of justice and fairness expected in administrative processes. The court also directed the CRA to reconsider its decision and “take such actions as are necessary to give effect to the reconsidered decision”, and awarded costs to the Foundation.

This decision reflects ongoing tensions between taxpayer protections in the voluntary disclosure process and the CRA’s authority to reassess past tax liabilities. It is not known at this time if the CRA will appeal the decision to the Federal Court of Appeal.

## 5. Employment Update

By [Barry W. Kwasniewski](#) and [Martin U. Wissmath](#)

### **Labour Board Decides No Need for Employee Response to Wilful Misconduct Investigation**

Ontario’s minimum employment standards do not impose a procedural duty of fairness on an employer that is terminating an employee for wilful misconduct, according to the Ontario Labour Relations Board (the “Board”). [Max Aicher \(North America\) Limited v Richard Bell](#) is a Board decision published July 29, 2024, in which the employer, Max Aicher (North America) Limited (the “Employer”) sought review of an Order to Pay under the *Employment Standards Act, 2000* (the “ESA”) issued by an Employment Standards Officer (“ESO”) in favour of Mr. Bell (the “Employee”), who was terminated without statutory notice or severance pay. The Board vacated the Order to Pay and found in favour of the Employer. This tribunal decision is not binding on Ontario courts. However, it offers charities and not-for-profits an example of how a complaint may be decided under current employment standards laws where there is wilful misconduct by an employee.

The Employer operates a steel rolling mill in Hamilton that processes steel billets into tempered steel rebar. The Employee had worked at the mill from March 2016 until his termination on January 9, 2023. On January 3, 2023, the Employee had caused certain water pumps to be turned off at the end of his day shift without telling the night shift worker, causing \$50,000 in lost production of rebar. The next day, January 4, 2023, the night shift worker arrived early, and countermanded the Employee’s attempt to turn off the water pumps at the end of the day, avoiding any lost production. The night shift worker reported

the Employee's conduct to a manager and characterized it as sabotage. The Employer conducted an investigation without interviewing the Employee and terminated his employment without notice.

At issue were two paragraphs of a regulation under the *ESA*, namely *Ontario Regulation 288/01: Termination and Severance of Employment*:

**Employees not entitled to notice of termination or termination pay**

2. (1) The following employees are prescribed for the purposes of section 55 of the Act as employees who are not entitled to notice of termination or termination pay under Part XV of the Act:

[...]

3. An employee who has been guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer.

[...]

**Employees not entitled to severance pay**

9. (1) The following employees are prescribed for the purposes of subsection 64 (3) of the Act as employees who are not entitled to severance pay under section 64 of the Act:

[...]

6. An employee who has been guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer.

The ESO had found that the Employer failed to provide the Employee with procedural fairness by not giving him an opportunity to respond to allegations of wilful misconduct before terminating his employment. The Employer argued that the Employee's actions constituted wilful misconduct and that they were not obligated to provide him with procedural fairness.

The Board agreed with the Employer, finding the Employee had engaged in wilful misconduct, and stating:

68. There is nothing in the Act or the Regulations which imposes a duty of procedural fairness (including the opportunity to be heard) upon an employer who seeks to rely upon an employee's wilful misconduct, disobedience or wilful neglect of duty in invoking sections 2 (1) 3 and 9 (1) 6 of *Regulations 288/01*.

The Board also agreed with the Employer's argument that "after acquired cause", where an employer finds cause for dismissal after termination of an employee, demonstrates that there is no duty of procedural

fairness at common law. An employee in that situation would never have had a chance to respond to the allegations of misconduct that led to their dismissal.

While this tribunal decision is an example of an employer successfully arguing that they did not need to interview an employee or obtain their response to allegations of misconduct prior to termination without notice or severance, it is not a guarantee that a court would rule another case the same way. It is generally recommended that employers allow employees to respond to misconduct allegations and undertake a full investigation, including an in-depth interview of the employee before making the decision to terminate for cause. An employment lawyer should be consulted prior to any decision to terminate an employee without notice, or for alleged cause.

## **6. Ontario Court of Appeal Awards Significant Damages in Personal Injury Case**

By [Barry W. Kwasniewski](#) and [Cameron Axford](#)

Personal injury claims are costly affairs for charities and not-for-profits, especially when the court rules in favour of the plaintiff. A recent decision from the Ontario Court of Appeal demonstrates just how significant damage awards can be in particular cases. Such awards can be devastating if they exceed liability insurance limits, which for many organizations is \$2 million per occurrence.

[\*Aubin v Synagogue and Jewish Community Centre of Ottawa \(Soloway Jewish Community Centre\)\*](#), decided by the Ontario Court of Appeal on August 15, 2024, involved an appeal of a trial judge's prejudgment interest order. The appellants were Doris Aubin, who had suffered a serious head injury in 2015 when she fell on the respondent's premises and her spouse, Aimee Zweig.

At the initial jury trial, the appellants were awarded total damages of \$3,602,839.83 (after a five per cent deduction for contributory negligence). Of that amount, \$216,000 represented Ms. Aubin's non-pecuniary damages for pain and suffering and \$665,595 was awarded as her past pecuniary damages. Her spouse, Aimee Zweig, was awarded non-pecuniary damages of \$85,000 under s. 61 of the *Family Law Act*, for loss of care, guidance, and companionship. The balance of the jury's award was for future losses, medical care and assisted living.

The central issue on appeal was the trial judge's decision to deviate from the presumptive five percent prejudgment interest rate for non-pecuniary damages, setting it at 1.3 percent, and for past pecuniary damages, setting it at 0.8 percent. The appellants argued that the trial judge erred in her approach and that

the interest rates should be set at 8.46 percent based on the rate of return earned by the respondents' insurer and their own investments.

The Court of Appeal found that the trial judge erred in several ways. First, she failed to give effect to the statutory presumption of the five percent prejudgment interest rate for non-pecuniary damages. Second, she misconstrued the purpose of non-pecuniary damages, concluding that they covered future as well as past losses. Third, she misinterpreted the criterion of prejudgment interest rates, allowing it to overwhelm her analysis to the exclusion of other relevant factors under s. 130(2) of the *Courts of Justice Act* (CJA), including the interest earned by the respondents' insurer and the appellants' investments.

The Court of Appeal also found that the trial judge erred in her interpretation of "market interest rates" under s. 130(2)(a) of the CJA, as it held that "market interest rates" should be interpreted broadly, not necessarily defined by reference to any particular index.

Based on these findings, the Court of Appeal allowed the appeal and set aside the trial judge's prejudgment interest award. It ordered that the prejudgment interest rate for the appellants' non-pecuniary damages be set at 8.46 percent and that the rate for Ms. Aubin's past pecuniary damages be set at 8.46 percent, which significantly increased the award for the appellants.

*Aubin* is notable for charities and not-for-profits as it is an example of a how significant damage awards can be in personal injury cases – in this case, in excess of \$3 million. As many organizations have general liability insurance policies limited to \$2 million per occurrence, directors and officers may want to consult with their insurance and legal advisors to assess if their current coverage is adequate. Charities and not-for-profits are exposed to liability on a multitude of fronts, especially those that operate physical spaces open to the public or members, and it is essential that they are protected against significant claims.

## 7. Privacy Update

By [Esther Shainblum](#) and [Martin U. Wissmath](#)

### **Facebook Violated Privacy Laws, Failed to Obtain Valid Consent: Federal Court of Appeal**

[\*Canada \(Privacy Commissioner\) v Facebook, Inc.\*](#) is a Federal Court of Appeal decision, released on September 9, 2024, with implications for all organizations handling personal data in Canada, including charities and not-for-profits. The Federal Court of Appeal allowed an appeal by the Office of the Privacy Commissioner of Canada (the "Commissioner") after the lower court dismissed the Commissioner's application alleging that Facebook, Inc. (now Meta Platforms Inc.) breached the *Personal Information*

*Protection and Electronic Documents Act (PIPEDA)*. The Commissioner challenged how Facebook managed the personal data of its users, particularly in sharing information with third-party applications, after an investigation into the scraping and selling of Facebook user data by an app “for psychographic modeling purposes between November 2013 and December 2015.”

The Commissioner had investigated a complaint and concluded that Facebook failed to obtain valid and meaningful user consent before sharing personal information with external applications connected through Facebook’s “Platform” technology that enabled third parties to build apps for users to install and run on Facebook. By 2013, there were 41 million of these apps, the court noted. Specifically, it was found that Facebook did not adequately inform users of the extent of data sharing or the potential risks involved, leading to privacy breaches.

In its defence, Facebook argued that it had implemented sufficient privacy controls, provided users with clear consent mechanisms and that “people could only use Facebook after agreeing to its Data Policy and Terms of Service”. However, the Commissioner contended that Facebook’s consent process was insufficiently transparent, leaving users unaware of how their data could be used beyond the immediate platform. The Federal Court of Appeal agreed with the Privacy Commissioner, and declared that Facebook “breached PIPEDA’s requirement that it obtain meaningful consent from users prior to data disclosure and failed its obligation to safeguard user data.” The court declined further compliance orders beyond the declaration of a breach of PIPEDA, given the amount of time that has transpired since the breaches occurred and Facebook’s claims “that there have been many changes in its privacy practices since then”. However, the court invited the parties to find agreement “on the terms of a consent remedial order” or to make further submissions “on the question of remedy.”

The Federal Court of Appeal’s decision in this case underscores the importance of adhering to PIPEDA’s requirements for clear and informed consent, especially in digital platforms that involve third-party data sharing. While the court did not impose fines, it reinforced the necessity for businesses to implement robust consent practices and privacy controls that align with Canadian privacy legislation.

For charities and not-for-profits, this case highlights the critical need for compliance with privacy laws, particularly in the context of data sharing with third-party service providers or platforms. Many charities and not-for-profits increasingly rely on digital tools and social media to reach their stakeholders, and this case serves as a reminder of the risks associated with inadequate data protection measures.

The decision in *Canada (Privacy Commissioner) v. Facebook, Inc.* signals a broader movement towards enhanced privacy protections. Charities and not-for-profits, especially those engaged in online platforms and services where personal information is shared or processed, should comply with the principles in Schedule 1 of PIPEDA, although the statute may not apply directly to them, as a national best-practice standard for the protection of personal information.

### **Amendments to Comprehensive Quebec Privacy Act Come into Effect**

Several amendments to the *Act Respecting the Protection of Personal Information in the Private Sector* (Quebec Privacy Act or “Law 25”) came into effect this month. As discussed in the [June 2024 Charity and NFP Law Update](#), on May 15, 2024, Québec introduced the first Canadian regulation on data anonymization, establishing specific criteria and guidelines for how personal information should be anonymized. This regulation requires organizations to follow “generally accepted best practices” to ensure that anonymized data can no longer identify individuals, either directly or indirectly. The regulation is part of the broader provisions in Law 25, which largely came into effect on September 22, 2023, and applies to both the private sector and public bodies in Québec.

As of September 22, 2024, the final amendments to Law 25 are in force. These have the stated purpose of enhancing individual access rights. Barring “serious practical difficulties” (which include complex practical procedures and high costs) individuals can request their computerized personal information from organizations in a “structured, commonly used technological format”. They can also ask organizations to transfer this information “to any person or body authorized by law to collect such information.” Collectively, these new rights are known as “data portability”.

Organizations are required to provide personal information in a portable format not only to the individual but also, upon request, to any legally authorized entity. The term “authorized by law” means that the recipient must comply with legal obligations related to the collection of personal information under the applicable privacy laws.

Since the right to data portability extends from the right of access, organizations must follow the rules of the *Quebec Privacy Act* when handling such requests. This includes verifying the identity or legal authority of the requester, responding within 30 days, and providing assistance if a request is denied. While non-compliance with data portability requirements isn’t directly subject to fines, the Commission d’accès à l’information du Québec can issue orders for corrective action, and failure to comply with these orders may result in enforcement actions and penalties.

To comply with the new data portability right, charities and not-for-profits should take several key steps. They must identify the information that falls under the right to data portability and ensure it can be provided in a structured, commonly used format. Organizational policies should be reviewed to ensure they can handle data portability requests effectively and should be revised to inform individuals of their right to access said data. Finally, if a request is denied due to “serious practical difficulties,” the organization should document the specific reasons for the refusal.

## **8. Reminder to Review Obligations Under New *Foreign Influence Transparency and Accountability Act***

By [Urshita Grover](#) and [Cameron A. Axford](#)

In an era where foreign influence into the political process of democratic nations is becoming an increasing concern, governments around the globe are taking measures to ensure transparency and limit interference. In Canada, this comes in the form of Bill C-70, *An Act respecting countering foreign interference*. As detailed in our May, 2024 [Charity and NFP Law Bulletin No. 527](#), the stated goal of Bill C-70 is to implement several measures to combat foreign interference targeting all levels of government, the private sector, academia, diaspora communities, and the broader public.

One of these measures is the enactment of the *Foreign Influence Transparency and Accountability Act*, which will create a registry of individuals and entities in “arrangements” with “foreign principals”.

Bill C-70 received Royal Assent on June 20, 2024. The *Foreign Influence Transparency and Accountability Act* will come into force on a date to be determined by Governor-in-Council. Canadian charities and not-for-profits, particularly those engaged with international entities, should be aware of the potential impact this new legislation may have on their operations, and what their obligations under the new regime will be. In this regard, reference can be made to our *Bulletin No. 527* for a full, in-depth discussion of the new Act.

## **9. Carters Submission to Finance on Trust Reporting**

As reported in [Charity & NFP Law Bulletin No. 528](#), the Department of Finance Canada (“Finance”) published draft legislation on August 12, 2024 proposing amendments to the trust reporting provisions under the *Income Tax Act*, and sought public feedback and comments on the draft legislation. In response, Carters Professional Corporation has submitted a response to Finance’s consultation on trust reporting



requirements, particularly as it relates to registered charities and not-for-profits. To view our response to the consultation, please [click here](#).

## 10. 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](#).

## IN THE PRESS

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

Terrance S. Carter, managing partner of Carters Professional Corporation, was [quoted in the Senate Debates](#) on September 24, 2024, by the Honourable Senator Ratna Omidvar. The quote related to an article published in our [May 2024 Charity & NFP Law Update](#) regarding a recent recommendation made by the Standing Senate Committee on Fisheries and Oceans in its report, [Sealing the Future: A Call to Action](#) (the “Report”). While the Report recommended that the *Income Tax Act* be amended to allow the Canada Revenue Agency to revoke the charitable status of organizations which “produce or promote misinformation and/or disinformation about the seal harvest or seal products industry”, Senator Omidvar raised the same concerns about the potential politicization of revocations, among other things that were raised in our May 2024 article, linked above.

## RECENT EVENTS & PRESENTATIONS

**The Osgoode Hall Law School, York University** hosted The International Charity Law Network Conference on Friday September 19-20, 2024 in Toronto. Mr. Terrance S. Carter presented on the topic of Issues to Consider in Working with the Qualifying Disbursement Regime.

**Philanthropic Foundations Canada** hosted their 25<sup>th</sup> Anniversary Conference from Monday Sept. 23 – Wednesday Sept. 25<sup>th</sup> in Ottawa. Mr. Terrance S. Carter presented as part of a panel discussion, on the topic of Granting to Non-qualified Donees: What You Need To Know.

## UPCOMING EVENTS

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

**Canadian Society of Association Executives** will host the CSAE 2024: Connections National Conference in Ottawa, Ontario from October 29<sup>th</sup> – November 1<sup>st</sup> at the Westin Hotel. Esther Shainblum and Barry Kwasniewski will be co-presenting on Friday November 1<sup>st</sup> on the topic of “Contract Essentials for Associations and NFPs”. Terrance S. Carter will be presenting on Wednesday October 30<sup>th</sup> on the topic of “Top Ten Risk Management Tips 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 articulated 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*, 5<sup>th</sup> Edition (2023 LexisNexis Butterworths), and co-author of *Branding and Copyright for Charities and Non-Profit Organizations* 3<sup>rd</sup> 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 articulated 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. Nancy is recognized as a leading expert by *Lexpert*.



[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*<sup>TM</sup>.



[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 (CCCCB). 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](http://www.carters.ca) and the *Charity & NFP Law Bulletin*. Ms. Oh is a regular speaker at the annual *Church & Charity Law Seminar*<sup>™</sup> and has been an invited speaker to the Canadian Bar Association, Imagine Canada 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](http://www.carters.ca). Ryan has been a regular presenter at the annual *Church & Charity Law Seminar*<sup>™</sup>, 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.



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