CARTERS
BARRISTERS
SOLICITORS
TRADEMARK AGENTS

CHARITY & NFP LAW UPDATE

JUNE 2021

EDITOR: TERRANCE S. CARTER
ASSISTANT EDITORS: NANCY E. CLARIDGE,
RYAN M. PRENDERGAST AND ADRIEL N. CLAYTON

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

JUNE 2021

SECTIONS

HIGHLIGHTS

CHARITY AND NFP MATTERS

- Bill S-222 Passes Through Senate, Introduced in House of Commons
- Legislation Update
- CRA News
- Corporate Update
- Pending Disbursement Quota Consultations: Questions for Consideration
- CAGP Publishes Guidelines on Charitable Donations of Life Insurance
- Canada's First Site-Blocking Order Upheld by FCA
- Privacy Law Update
- AODA Accessibility Compliance Reports Due June 30
- AML/ATF Update

COVID-19 UPDATE

- Ontario COVID-19 Update
- COVID-19 Employment Update
- Ontario Superior Court Addresses COVID-19 Temporary Layoff Provisions But Uncertainty Remains
- Carters is Pleased to Welcome Martin U. Wissmath as a New Associate

Carters/Fasken Check-Up 2021: Healthcare Philanthropy Webinar

SAVE THE DATE – Wednesday, September 22, 2021

A complimentary webinar hosted by Carters Professional Corporation and Fasken Martineau
Details will be posted soon at www.carters.ca

28th Annual *Church & Charity Law Webinar*™

SAVE THE DATE – Thursday, November 4, 2021

Hosted by Carters Professional Corporation
Details will be posted soon at www.carters.ca

Get on Our Mailing List:

To automatically receive the free monthly *Charity Law Update*,
Click here or send an email to info@carters.ca with "Subscribe" in the subject line.

RECENT PUBLICATIONS AND NEWS RELEASES

CHARITY AND NFP MATTERS

Bill S-222 Passes Through Senate, Introduced in House of Commons

By Terrance S. Carter and Theresa L.M. Man

The Honourable Senator Ratna Omidvar's Bill S-222, the *Effective and Accountable Charities Act* ("Bill S-222"), made its way through the Senate and passed Third Reading without amendment on June 17, 2021. It has now been introduced in the House of Commons and completed First Reading on June 23, 2021.

As reported in the May 2021 *Charity & NFP Law Update*, Bill S-222 proposes significant changes to several provisions in the *Income Tax Act* governing charities to eliminate the "own activities test" and the related Canada Revenue Agency ("CRA") "direction and control" regime in order to permit charities to provide their resources to non-qualified donees, provided that charities take reasonable steps to ensure those resources are used exclusively for a charitable purpose.

Prior to the Third Reading in the Senate, the Bill had been sent to the Standing Senate Committee on National Finance (the "Finance Committee") for consideration. The Finance Committee met with witnesses on June 1, 2021, hearing from representatives from the Department of Finance Canada, the CRA, Imagine Canada, and Cooperation Canada. It also heard from Terrance S. Carter, who spoke in support of Bill S-222 stating that the Bill would replace a burdensome regime with one that more effectively allows charities to achieve their charitable purposes. On June 8, 2021, the Finance Committee undertook a clause-by-clause consideration of Bill S-222 and agreed that the Bill would carry and be reported to the Senate for Third Reading.

As the House of Commons prorogued on June 23, 2021 for the summer break, it is anticipated that review and debate of Bill S-222 will resume in the fall when Parliament resumes.

Legislation Update

By Ryan M. Prendergast

Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*

In a step towards reconciliation, legislation seeking to align Canadian law with a universal international human rights instrument, the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), received Royal Assent on June 21, 2021. Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* "represents a critical step in recognizing, promoting, protecting and upholding the human rights of Indigenous Peoples in Canada," according to a joint statement by the Honourable David Lametti, Minister of Justice and Attorney General of Canada and the Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations.

Bill C-15 affirms the UNDRIP's application in Canadian law and provides a framework for the federal government to implement the UNDRIP. Further to this, Bill C-15 requires the federal government to take "all measures necessary to ensure that the laws of Canada are consistent with the [UNDRIP], and must prepare and implement an action plan to achieve the objectives of the Declaration." The federal government will be required to provide annual reports to Parliament, prepared in consultation and cooperation with Indigenous peoples, setting out the progress made with ensuring Canadians laws are consistent with UNDRIP and in implementing the action plan.

Bill C-30, *Budget Implementation Act, 2021, No. 1* Passes Third Reading in House of Commons

The first federal budget bill for 2021 has passed through the House of Commons, and is now before the Senate. Bill C-30, *Budget Implementation Act, 2021, No. 1*, passed Third Reading in the House of Commons on June 23, 2021 and entered First Reading in the Senate on the same day. Bill C-30 includes amendments to the *Income Tax Act* that will impact charities and not-for-profits, as discussed in *Charity & NFP Law Bulletin* No. 492, including amendments for registered journalism organizations as a category of qualified donees (described in the June 2020 *Charity & NFP Law Update*), enhanced anti-terrorism provisions, an expanded definition of ineligible individuals, and provisions concerning suspension of receipting for false statements. The Senate will sit until June 29, 2021 before it breaks for the summer, and it is anticipated that Bill C-30 will be on their agenda with the aim of passing the Bill before the summer break.

Ontario Bill 307, *Protecting Elections and Defending Democracy Act, 2021*

The Government of Ontario has invoked the notwithstanding clause to pass a provincial bill that regulates third party political advertising before an election, including by charities and not-for-profits. Sections of Bill 254, the *Protecting Ontario Elections Act, 2021* ("Bill 254"), which received Royal Assent April 19, 2021, were struck down as unconstitutional by the Ontario Superior Court on June 8 (the "Decision"). Bill 254 amended the *Election Finances Act, 2017* (the "Act") including a provision that extended the "pre-election period" from six to 12 months. In response to the Decision, the provincial government introduced Bill 307, *Protecting Elections and Defending Democracy Act, 2021*, which received Royal Assent on June 14 ("Bill 307"), re-enacting provisions from Bill 254 notwithstanding that they are unconstitutional. In this regard, the 12-month pre-election period for registering and reporting financial activities leading up to fixed election dates in Ontario has been re-enacted. Charities and not-for-profits that meet the $500 threshold for spending on election advertising within a period of 12 months prior to fixed election dates are therefore required to register and file election financing reports.

Clause 53.1 of Bill 307 invokes subsection 33(1) — known as the "notwithstanding clause" — of the *Canadian Charter of Rights and Freedoms* (the "Charter"), a seldom-invoked provision that allows a province to enact legislation "notwithstanding" provisions of the Charter. The use of the notwithstanding clause in Bill 307 is, however, being challenged, according an announcement by Working Families that it will be launching a constitutional challenge of the Government's use of the clause in Bill 307.

Alberta Bill 58, *Freedom to Care Act*

Alberta is extending liability protection for volunteers and will "make it easier for non-profit organizations to identify and access existing exemptions to regulations". Alberta's Bill 58, *Freedom to Care Act* received Royal Assent on June 17, 2021, and will come into force on September 1, 2021.

The *Freedom to Care Act* provides that volunteers of a non-profit organization (which, as defined in the Bill, may include charities, societies, and other not-for-profits) or the Crown are not liable for damage caused by acts or omissions on behalf of the organization, provided the damage is not caused by wilful, reckless or criminal misconduct or gross negligence; while operating a vehicle; or caused while a volunteer was unlawfully impaired by alcohol or drugs. Further, to be exempt from liability, volunteers must have been acting within the scope of their responsibilities in the organization, and been properly licensed, certified or authorized, where required by law. Further, the *Freedom to Care Act* does not affect non-profit organizations' liability for damage for which the volunteer has been exempted from liability.

Where a non-profit organization submits a request for exemption from regulations under other Acts, the *Freedom to Care Act* will also allow an exemption to be granted for a specified, limited period of time. According to a Government of Alberta announcement, this provision has been included to ease the burden on non-profit organizations that are subject to regulations for commercial purposes "that prevent them from addressing immediate needs in their communities."

Quebec Bill 96, *An Act respecting French, the official and common language of Québec*

Quebec's Minister Responsible for the French Language, Simon Jolin-Barrette, introduced Bill 96, *An Act respecting French, the official and common language of Québec* to the National Assembly of Quebec on May 13, 2021. Broadly speaking Bill 96 affirms that Quebec's only official language is French, proposes to amend the *Charter of the French language* and the *Civil Code of Quebec*, among other legislation, and proposes broad amendments with regard to the French language, including French as the only language required for work in the province.

Of particular note, Bill 96 proposes to amend the language rules regarding trademark, signage and posters under the *Charter of the French language*, which already requires Quebec organizations, including charities and not-for-profits, with non-French trademarks on outdoor signage to ensure a "sufficient presence of French" on outside signage, as discussed in the October 2019 *Charity & NFP Law Update*. Proposed amendments under Bill 96 would make this requirement more onerous on charities and not-for-profits with non-French trademarks. While Bill 96 explicitly allows for trademarks on public signs and posters to be drawn up in a language other than French provided that they are registered under the *Trademarks Act*, it also requires that French be "markedly predominant" where a non-French trademark on a public sign or poster is visible from outside premises.

CRA News

By Esther S.J. Oh

Reminder of Filing Deadline for T3010 Registered Charity Information Returns

In an announcement released by the CRA on June 8, 2021, registered charities with a fiscal period ending on December 31st were reminded to file their Form T3010, Registered Charity Information Return before the June 30, 2021. In 2020, the CRA had provided relief to charities in response to the COVID-19 pandemic by extending the filing deadline for T3010s originally due between March 18, 2020 and

December 31, 2020, to December 31 2020. However, this extension is no longer available and T3010s must be filed by their regular deadlines, *i.e.* within six months of the charity's fiscal year-end.

The CRA encourages charities to file the T3010 online through My Business Account (MyBA), and has provided a new webpage on online filing. Further, the CRA indicates that online filing provides several benefits, including: (1) automated identification of forms, sections and schedules that need to be completed, together with reminders to attach required documentation such as financial statements; (2) immediate confirmation that the T3010 has been filed (with no need to mail or fax additional copies); (3) confirmation that the online submission date is the date the CRA officially received the T3010; and (4) display of the charity's updated T3010 information on the CRA's online List of Charities database on the day following submission.

Corporate Update

By Theresa L.M. Man

Public Consultation on CNCA Launched

As part of review of the *Canada Not-for-profit Corporations Act* ("CNCA"), the Minister of Innovation, Science and Industry (the "Minister") launched a public consultation on the CNCA (the "Consultation") on June 18, 2021. The CNCA requires the Minister to provide a report to Parliament on the provisions and operation of the CNCA and any recommendations for amendments ten years after it came into force. This report would then be referred to a Senate committee, the House of Commons, or both for study and report. The Consultation will allow the government to assess whether the CNCA is currently meeting its objectives of ensuring transparency, accountability and good governance standards, and is intended to provide a framework for public consultations that will contribute to the Minister's report.

The consultation paper indicates that the statutory review follows the 2019 Report of Senate Special Committee on the Charitable Sector, "Catalyst for Change: A Roadmap to a Stronger Charitable Sector", which provided 42 recommendations as discussed in *Charity & NFP Law Bulletin* No. 451, but refrained from making corporate law recommendations, noting the upcoming statutory review of the CNCA.

The Consultation's primary focus is on the merits of amending the CNCA, and is divided into sections discussing issues identified by stakeholders or that have emerged since 2011. These include issues related to audit and financial reporting obligations; boards of directors; hybrid and virtual decision-making; classes of membership; members' rights; permitted distribution of assets; and recent developments in

business corporations legislation. Each section concludes with a question that stakeholders are invited to comment on. Stakeholders are also invited to comment on other matters not directly addressed in the Consultation, including whether and how other modifications to the CNCA may be warranted.

Stakeholders may provide written comments by July 30, 2021, with submissions provided electronically in plain text or in a Word document emailed to: ic.nfpactreview-examenloibnl.ic@canada.ca

Ontario Prepares for ONCA Implementation through New Regulations and Business Registry

Two regulations supporting the implementation of the Ontario *Not-for-Profit Corporations Act, 2010* ("ONCA") and 12 regulations supporting the upcoming launch of the Ontario Business Registry were filed on June 3, 2021.

Ontario Regulation 395/21, *General* and Ontario Regulation 396/21, *Corporations Sole – Application of Act and Regulations*, both under the ONCA, were initially released as draft regulations in June 2020, as discussed in the June 2020 *Charity & NFP Law Update*. Ontario Regulation 395/21 contains provisions related to technical matters under the ONCA, and Ontario Regulation 396/21 lists provisions under the ONCA that apply to corporations sole. The two filed regulations generally remain unchanged from their draft forms, with changes to Ontario Regulation 395/21 including amendments to provisions concerning authorization of representatives, proxies, and notice by electronic means. The two regulations will come into force after certain sections of both the ONCA and Bill 154, *Cutting Unnecessary Red Tape Act, 2017* come into force.

As well, Ontario Regulation 394/21, *Names and Filings* under the ONCA is among the 12 regulations supporting the upcoming launch of the Ontario Business Registry, together with regulations under various Ontario corporate statutes, including the Ontario *Corporations Act*, *Corporations Information Act*, *Extra-Provincial Corporations Act*, and *Business Names Act*. Draft forms of these regulations (except Ontario Regulation 405/21, *General* under the *Business Regulation Reform Act, 1994)* were previously released in June 2020 for consultation. Broadly speaking, the regulations will come into force after certain sections of Bill 154, *Cutting Unnecessary Red Tape Act, 2017* come into force.

The filing of these regulations will facilitate the launch of the digital Ontario Business Registry, which the Government of Ontario anticipates will launch later this year. The proclamation of the ONCA is contingent on the launch of the Ontario Business Registry. The Ontario Business Registry is a new online platform that will provide digital solutions for Ontario not-for-profits and other entities that are registered,

incorporated or licensed to carry on business in Ontario. It allows these entities to complete registrations and other filings online.

Ontario Bill 276 Receives Royal Assent

After considerable debate and consideration by the Standing Committee on General Government, Ontario's Bill 276, *Supporting Recovery and Competitiveness Act, 2021* received Royal Assent on June 3, 2021. As discussed in the April 2021 *Charity & NFP Law Update*, Bill 276 provides temporary relief to corporations under the Ontario *Not-for-Profit Corporations Act* ("ONCA") during the COVID-19 pandemic. Corporations are permitted to carry on electronic meetings during the "temporary suspension period", which currently ends on December 31, 2021, despite any provision in their constating documents that provide otherwise.

In addition to this temporary relief, Bill 276 makes various 'housekeeping' amendments to the ONCA and the Ontario *Corporations Act*, including amendments to give effect to the removal of class voting and non-voting members' rights under the ONCA as a result of Motion 89. As discussed in the September 2020 *Charity & NFP Law Update*, Motion 89 extended the proclamation period of the ONCA by one year until December 31, 2021, but did not extend ONCA provisions dealing with class voting and non-voting members' rights.

Pending Disbursement Quota Consultations: Questions for Consideration

By Terrance S. Carter and Jacqueline M. Demczur

As reported in our *Charity & NFP Law Bulletin No. 492*, the 2021 Federal Budget released on April 19, 2021 proposes launching public consultations with charities to potentially increase the disbursement quota, as well as update the related tools at the CRA's disposal beginning in 2022. The Budget anticipates that these steps could possibly increase support for the charitable sector and those who rely on its services by between $1 billion and $2 billion annually.

The "disbursement quota" is the minimum amount that a charity must spend on its charitable activities or gifts to qualified donees to ensure that charitable funds are used for charitable purposes and are not simply accumulated indefinitely. At present, each charity must disburse 3.5% of its assets not used directly in its charitable activities and administration (referred to as the "3.5% disbursement quota"). Prior to 2010, charities were also required to disburse 80% of the receipted donations by the following year (referred to as the "80% disbursement quota"), subject to a number of complex exceptions.

As background, the disbursement quota used to apply to charitable foundations (but not charitable organizations), and was set at 4.5% before it was reduced to 3.5% for taxation years that began after March 22, 2004. This 2004 change to a 3.5% disbursement quota was an important amendment to the *Income Tax Act* ("ITA") because, charities were finding it difficult to meet the 4.5% disbursement quota due to low interest rates at the time. In 2004, the 3.5% disbursement quota was also extended to charitable organizations, with the 80% disbursement quota subsequently being eliminated in 2010.

It is expected that there will be many differing opinions in the charitable sector about what the disbursement quota should look like in the future. In this regard, Philanthropic Foundations Canada on June 16, 2021, released a thoughtful Policy Brief entitled, *Renewing Our Social Contract: Private Philanthropy for the Public Good*. It recommended that a holistic approach should be brought to the disbursement quota change discussions in order that those changes will be made part of a larger conversation concerning "how can foundations better fulfill their missions and better serve the common good".

The Canadian Bar Association ("CBA"), through its Charity and Not-for Profit Law Section, has also weighed in on the discussion. In a June 15, 2021 letter to the Honorable Christa Freeland, Minister of Finance, the CBA described the possible problems that a disbursement quota increase could have on endowments that are subject to capital expenditure restrictions. The letter points out that if, contrary to the terms of any endowment agreement, a total return approach (*e.g.* the expenditure of realized capital gains as well as interest and dividend income) or expenditure of any original capital is required in order to meet an increased disbursement quota, then charities may have to commence potentially expensive court applications in order to obtain formal authorization to vary the terms of existing endowment agreements.

There will, no doubt, be much discussion over the coming months regarding what specifically needs to be "fixed" with regard to the 3.5% disbursement quota and what that "fix" should look like. It will be important for charities, particularly public and private foundations holding sizeable investment assets, to carefully monitor these discussions and participate in the consultations once announced by the Department of Finance. During these consultations, it might be helpful to consider the following questions amongst others that may be proposed:

1. What data exists about compliance or lack of compliance by charities with the 3.5% disbursement quota?
2. What is the tax policy objective to be achieved by amending the disbursement quota?

3. Are there other tax policies that need to be considered in amending the disbursement quota, such as eliminating the "its own activity" test in the ITA and the related CRA "direction and control" regime as proposed in Bill S-222, the *Effective and Accountable Charities Act*, that recently passed Third Reading in the Senate?

4. Should an increase in the 3.5% disbursement quota be accompanied by a change in administrative policies by the CRA to allow impact investment (*e.g.* program related investments and social investments) to be counted as charitable expenditures in meeting the disbursement quota?

5. What consideration should be given to donor intent where donors impose restrictions on the expenditure of capital, including realized capital gains, that might otherwise need to be varied through a court order to meet an increased disbursement quota?

6. What are the advantages and disadvantages of placing the disbursement quota into regulation, rather than the ITA?

CAGP Publishes Guidelines on Charitable Donations of Life Insurance

By Jacqueline M. Demczur

In recent years, insurance industry regulators have expressed concern over donations of life insurance. Most prominently, the British Columbia Financial Institutions Commission ("FICOM"), now the BC Financial Services Authority (the "BCFSA"), took the position in November 2019 that charities soliciting or accepting donations of life insurance policies from BC residents was considered "trafficking" in contravention of BC's *Insurance Act.* It should be noted, though, that BCFSA subsequently clarified its position that *bona fide* charities were not prohibited from soliciting donations of life insurance policies or benefits, which was discussed in the May 2020 *Charity & NFP Law Update*.

Following these concerns, the Canadian Association of Gift Planners ("CAGP") published the Charitable Donation of Life Insurance Package – CAGP Guidelines (the "Guidelines") in March 2021 in response to recommendations that interested parties "establish best practices to ensure appropriate processes and measures are followed when making use of insurance products for charitable donation purposes." The Guidelines are published as four separate sets of guidelines tailored to the various parties involved, including guidelines for donors, advisors, charities, and insurers, and are all applicable to both policy transfers as well as the setup of new charitably-owned policies.

Of particular interest to charities, the Guidelines for Canadian Charities ("Charity Guidelines") was designed to assist charities with making informed decisions about accepting gifts of life insurance policies. The Charity Guidelines are also intended to help charities remain compliant with provincial regulators by minimizing the risks of taking part in the trafficking of life insurance policies, such as Stranger-Owned Life Insurance (STOLI) and viatical settlements, both of which are currently prohibited in almost all Canadian provinces apart from Quebec and Saskatchewan.

The Charity Guidelines set out best practices for determining whether a valid relationship exists between a charity and a donor prior to a gift being made, for example whether the donor has a history of donating to or volunteering with the charity. While the absence of an existing relationship does not make a gift illegitimate, charities are warned to proceed with caution and to ensure that the donor has a clear, philanthropic intent beyond simply obtaining a tax receipt. The Charity Guidelines also set out best practices regarding the transfer itself, including ensuring the donor obtains appropriate independent advice about the gift, and that the charity accepts the insurance policy as a gift rather than purchasing the policy from the donor. Charities are also advised to obtain a detailed illustration of the insurance policy and conduct an independent review of the policy to determine its viability. In this regard, due diligence questions are provided for charities to consider during their review.

The Charity Guidelines also outline preferred types of policies for charities, including "limited pay" policies, which minimize the risk that donors may need to make lengthy commitments to a long premium paying periods. Charities are warned to exercise "extreme caution" in cases of split-dollar donations where donors retain ownership of part of the policy due to their complicated and risky nature, as well as against sharing ownership of policies with other charities.

The Charity Guidelines then provide guidance on interacting with insurance advisors, for example refraining from compensating any advisors that interact with the donor as an incentive to transfer the policy (though unrelated third-party advisors may be paid to provide an independent analysis of the proposed policy). Once they become owners of the policy, charities are not obligated to retain the same advisor as the policy's advisor of record. Finally, a charity donation checklist is provided to help charities ensure that all proper steps and due diligence have been taken leading up to the gift.

Three supplemental documents are also included with the Guidelines, including: (1) Understanding Tax Receipting of Charitable Gifts of Life Insurance; (2) How to use Life Insurance as a Charitable Gift; and (3) What is Insurance Trafficking?

As they are best practices guidelines only, the Charity Guidelines are obviously optional. However, they are a very helpful and comprehensive resource that set out a standard of best practices for all parties involved in the gift of a life insurance policy, and will be of great interest to charities, donors, as well as advisors and insurers. As such, the Charity Guidelines will serve as an excellent resource for charities to ensure that the risks of accepting gifts of life insurance policies are minimized for all parties involved.

Canada's First Site-Blocking Order Upheld by FCA

By Sepal Bonni

In a May 26, 2021 judgment in *Teksavvy Solutions Inc. v Bell Media Inc.* ("Teksavvy"), the Federal Court of Appeal ("FCA") upheld the Federal Court's decision in a copyright infringement action granting a site-blocking order requiring third party Internet Service Providers ("ISPs") to block access to certain websites operated by anonymous defendants that distribute infringing television and motion picture content. The order is unprecedented, as it is the first time a site-blocking order has been issued by the Federal Court, and therefore offers a new remedy for copyright holders to prevent access to infringing content. It is also noteworthy because the ISPs it applies to are not the defendants, but otherwise innocent third parties; the actual defendants in the underlying legal action are unidentified persons operating unauthorized internet subscription services.

Seeking the order was Bell Media Inc., Groupe TVA Inc. and Rogers Media Inc. For further discussion on the facts of the underlying legal dispute in the Federal Court decision, *Bell Media Inc v GoldTV.Biz*, see the January 2020 *Charity & NFP Law Update*. Although unopposed by most ISPs, one ISP (Teksavvy) opposed the order and brought the appeal.

The FCA considered the three main issues: (a) Whether the Federal Court had the power to grant a site-blocking order; (b) If so, the relevance of freedom of expression; and (c) Whether the order was just and equitable. In its analysis, the FCA found that site-blocking orders are within the power and jurisdiction of the Federal Court as a remedy for infringing intellectual property rights. With respect to the freedom of expression claim, the FCA accepted that customers' freedom of expression rights might be implicated by the order; however, it found the Federal Court's analysis adequate, and concluded that "[i]n considering the issue of freedom of expression in the context of a particular equitable remedy, it was not necessary for the Judge to engage in a detailed Charter rights analysis separate and distinct from the balance of convenience analysis that is already to be considered". To determine if the order was just and equitable,

the proper test to be applied is the RJR MacDonald test for a mandatory injunction: 1. a strong *prima facie* case must be shown; 2. Irreparable Harm; and 3. Balance of convenience. The Court of Appeal agreed with the motion judge that all three elements of the test were met in this case.

This case serves as a cautionary tale for charities and not-for-profits that stream copyright protected content online.

Privacy Law Update

By Esther Shainblum

Ontario Gov't Publishes Paper, Hosts Public Consultations for Privacy Law Reform

Ontario's Ministry of Government and Consumer Services (MCGS) wants to improve privacy law in the province and provide better legislative coverage to charities and not-for-profits. In a White Paper, published on June 17, 2021, titled "Modernizing Privacy: Empowering Ontarians and Enabling the Digital Economy", the provincial government describes its vision to "make Ontario the world's most advanced digital jurisdiction" (the "Paper"). The Paper notes "several points of weakness" in the federal Bill C-11, *Digital Charter Implementation Act, 2020*, introduced into the House of Commons on November 17, although it has yet to pass first reading. Bill C-11 would replace the current federal privacy regime under the *Personal Information Protection and Electronic Documents Act* (*PIPEDA*). Coinciding with the White Paper's publication the province announced a Public Consultation on Modernizing Privacy in Ontario, from June 17 to August 3 (the "Public Consultation").

While accepting that Bill C-11 "includes some welcomed new developments", the Paper criticizes how the federal bill's "consent framework could allow organizations to collect and use citizens' data for commercial interests without their knowledge; it does not provide special protections for children and youth; and its digital rights do not go far enough to protect individuals from new risks such as surveillance." After considering feedback from a 2020 privacy consultation, the Paper states the provincial government's commitment to a "fundamental right to privacy for Ontarians". This would involve introducing additional safeguards for artificial intelligence, "dedicated protections for children, update consent rules to reflect the modern data economy, promote responsible innovation and correct the systemic power imbalances that have emerged between individuals and organizations that collect and use their data."

The Paper discusses seven thematic areas for privacy legislation reform in Ontario:

- rights-based approach to privacy;
- safe use of automated decision making;
- thoughtful consent and lawful uses of personal data;
- data transparency for Ontarians;
- protecting children and youth;
- a fair, proportionate and supportive regulatory regime; and
- support for Ontario businesses and innovators.

According to the Paper, there are significant gaps in the federal privacy regime, which is limited to commercial activities. Many private sector organizations, including charities, unions, associations and other non-profits, would not be covered under the proposed Bill C-11, "despite the collection and use of Ontarians' personal information by these organizations," the Paper states. The province is considering expanding the scope of privacy requirements under each of the seven themes discussed in the Paper, "to include non-commercial organizations, ensuring that Ontarians' personal information receives adequate coverage and protection in every aspect of life."

The webpage for the Public Consultation states "MCGS is seeking feedback from organizations, impacted stakeholders and the general public on these proposals for improving privacy protections in Ontario." A public information webpage on the Ontario government website: "Strengthening privacy protection in Ontario" offers a summary of the Paper's proposed legislative reforms and themes for public feedback.

Privacy Commissioners of Canada Comment on Vaccine Passports in Joint Statement

Vaccine passports are "an encroachment on civil liberties that should be taken only after careful consideration", according to a statement from Canada's Privacy Commissioners. The Office of the Privacy Commissioner of Canada published the "Joint Statement by Federal, Provincial and Territorial Privacy Commissioners" on May 19, 2021, titled *Privacy and COVID-19 Vaccine Passports* (the "Joint Statement"). In response to some "governments and businesses" considering vaccine passports "as a means of allowing a return to something more closely resembling normal life" amidst the COVID-19 pandemic, the Joint Statement was issued "in an effort to ensure that privacy is considered at the earliest opportunity as part of any discussions about vaccine passport development."

The Joint Statement describes vaccine passports as a verified means of proving that an individual has been vaccinated, and may take different forms, "such as a digital certificate presented on a smart phone app or a paper certificate". Their use is justified based on the idea that individuals who have been vaccinated are at a "significantly decreased risk" of becoming infected or infecting others, according to the Joint Statement, and may provide a "substantial public health benefit." However, the vaccine passport "presumes that individuals will be required or requested to disclose personal health information– their vaccine/immunity status – in exchange for goods, services and/or access to certain premises or locations" and raises a number of privacy considerations. The Joint Statements states that vaccine passports must comply with applicable privacy laws, incorporate "privacy best practices" and "the necessity, effectiveness and proportionality of vaccine passports must be established for each specific context in which they will be used." The Joint Statement describes these three criteria:

> **Necessity:** vaccine passports must be necessary to achieve each intended public health purpose. Their necessity must be evidence-based and there must be no other less privacy-intrusive measures available and equally effective in achieving the specified purposes.
>
> **Effectiveness:** vaccine passports must be likely to be effective at achieving each of their defined purposes at the outset and must continue to be effective throughout their lifecycle.
>
> **Proportionality:** the privacy risks associated with vaccine passports must be proportionate to each of the public health purposes they are intended to address. Data minimization should be applied so that the least amount of personal health information is collected, used or disclosed.

These criteria must be continually monitored, the Joint Statement notes, and vaccine passports must be decommissioned if, "at any time, it is determined that they are not a necessary, effective or proportionate response to address their public health purposes."

The Joint Statement provides that organizations using vaccine passports should limit the collection, use, disclosure and retention of personal health information to that which is necessary for the purpose, and the active tracking or logging of an individual's activities should not be permitted. Additional consideration must be given to other privacy principles such as transparency, accountability, safeguards, independent oversight as well as limiting the time and scope for the use of information obtained by vaccine passports. Charitable and not-for-profit organizations considering utilizing vaccine passports are encouraged to read the full statement.

Regulators Issue Joint Resolution on Privacy and Access to Information During Pandemic

Canada's Information and Privacy regulators called on the federal and provincial governments to show leadership by implementing 11 access to information and privacy principles. The 11 principles were adopted as part of a joint resolution published June 2, 2021 by the federal, provincial and territorial information and privacy commissioners and ombudsman (the "Joint Resolution"). In the Joint Resolution, "regulators took note of the serious impact of the COVID-19 pandemic" on Canadians' quasi-constitutional privacy rights as well as the right of access to information. The global pandemic accelerated concerning trends, already ongoing prior to March 2020, about "increasing surveillance by public bodies and private corporations and the slowing down of processing access requests," according to the Joint Resolution. The COVID-19 pandemic also "highlighted the need to modernize the access to information system by leveraging technology and innovation to advance transparency."

The 11 principles are divided into two categories. "In terms of Access" sets out five access- related principles, including calling for federal provincial and territorial institutions to recognize the importance of transparency and ensuring that business continuity plans include measures for processing access requests during emergencies, providing clear guidance on information management, and emphasizing proactive and voluntary disclosure of government information.

Six privacy-related principles are set out "In terms of Privacy", including calling for a recognition of the "fundamental nature of the right to privacy" to address "digital transformation", not using privacy laws as a barrier to appropriate collection use and sharing of information but rather, ensuring responsible data use that "supports public health and promotes trust in our healthcare system", incorporating "privacy by design" to ensure transparency and accountability in the collection and disclosure of personal information for emergency measures, restricting measures that allow collection, use and disclosure of personal information without consent in emergencies to those that are evidence-based, necessary, not overbroad and time limited, destruction of personal information records collected during an emergency after the crisis ends, and respect for the "principles of data minimization and use limitation". The full Joint Resolution is available on the website of the Information and Privacy Commissioner of Ontario.

AODA Accessibility Compliance Reports Due June 30

By Barry W. Kwasniewski

Charities and non-profits with 20 or more employees have until June 30, 2021 to submit accessibility compliance reports. As reported in the October 2020 *Charity & NFP Law Update*, the deadline for submission was initially December 31, 2020, but a half-year extension was given to provide some relief in response to the COVID-19 pandemic.

Accessibility compliance reports are required under subsection 14(1) of the *Accessibility for Ontarians with Disabilities Act* and must be submitted in order to meet the Act's current accessibility requirements. Failure to complete accessibility compliance reports by the extended June 30, 2021 deadline could result in enforcement action, including financial penalties. To assist organizations with completing and submitting the report, instructions are available online from the Government of Ontario.

AML/ATF Update

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

Anti-Money Laundering Amendments Include Virtual Currency Reporting Obligations

A series of substantial amendments to regulations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the "Act") are now in force. The amendments are part of ongoing regulatory changes made over the past two years, which came into force on June 1, 2021 (the "Amendments"). New guidance from the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") is effective as of the same date. Included among the Amendments are new virtual currency obligations for reporting entities ("REs") under the Act; new definitions; changes to record keeping and ongoing monitoring requirements; and requirements for continuously updating the veracity of beneficial ownership information, which includes beneficial ownership of charities and not-for-profit organizations.

Although usually not considered REs, charities involved in certain activities, such as carrying out a related business that falls under the definition of a money services business ("MSB") would be included among the REs under the Act and must comply with all applicable obligations. The Amendments have added reporting and record-keeping requirements for all REs for virtual currency transactions of $10,000 or more in a single 24-hour period; MSBs are subject to record keeping requirements for virtual currency transactions of $1,000 or more. MSBs are also required to maintain records for electronic fund transfers of $1,000 or more.

Among the new definitions introduced to the Act are "prepaid payment product" ("PPP") and "prepaid payment product account" ("PPPA") along with new obligations for financial entities that issue these. The definition for a PPPA explicitly excludes charities, and means an account —

> **other than** an account to which only a public body or, if doing so for the purposes of humanitarian aid, a **registered charity** as defined in subsection 248(1) of the *Income Tax Act*, can add funds or virtual currency — that is connected to a prepaid payment product and that permits
>
> (a) funds or virtual currency that total $1,000 or more to be added to the account within a 24-hour period; or
>
> (b) a balance of funds or virtual currency of $1,000 or more to be maintained [emphasis added].

The FINTRAC Guidance describes "beneficial owners" as "individuals who directly or indirectly own or control 25% or more of a corporation or an entity other than a corporation" and "cannot be other corporations, trusts or other entities. They must be the individuals who are the owners or controllers of the entity." New in the Amendments is the extension of beneficial ownership requirements for all RE sectors, including "designated non-financial businesses and professions", such as accountants, real estate brokers, developers or sales representatives, and agents of the Crown.

According to a notice published by FINTRAC on its website last month, compliance with the regulatory requirements in effect prior to June 1, 2021 will be assessed until March 31, 2022. FINTRAC will begin assessing compliance with the Amendments on April 1, 2022; however, "FINTRAC may assess transactional information for a period prior to April 1, 2022, while exercising reasonability and taking into consideration the flexible measures that FINTRAC has previously communicated in the Notice on forthcoming regulatory amendments and flexibility."

Charities and not-for-profits, especially those carrying on a related MSB, are encouraged to read the new FINTRAC Guidance for all the requirements and obligations now in force under the Act.

COVID-19 UPDATE

Ontario COVID-19 Update

By Terrance S. Carter and Adriel N. Clayton

Ontario Enters Step 1 of Reopening in Province's "Roadmap to Reopen"

Following its "Roadmap to Reopen", the Government of Ontario transitioned the province into the first of a three-step plan for reopening the economy on June 11, 2021, after a province-wide shutdown due to the ongoing COVID-19 pandemic. As of June 11, new "Step 1" regulations, set out in Ontario Regulation 82/20, *Rules for Areas in Shutdown Zone and at Step 1* ("O Reg 82/20") under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* ("*Reopening Ontario Act*"), have been in force province-wide, relaxing certain rules restricting workplaces and increasing capacity limits for public events and gatherings.

Schedule 7 of O Reg 82/20 sets out a list of businesses that may be open under Step 1, while Schedule 8 sets out a list of places that must either close or may only be open subject to certain conditions. However, even where a business or organization may be open, it is important for employers, including charities and not-for-profits, to note that restrictions for working remotely under Step 1 still require that staff only be at the workplace if "the nature of their work requires them to be on-site at the workplace". Where this requirement has not been met, O Reg 82/20 provides each person responsible for an organization that is open "shall ensure that any person who performs work for the business or organization conducts their work remotely."

As discussed in greater detail in *Ontario Moves Into Step 1 of Reopening Regulations*, O Reg 82/20 permits outdoor activities and gatherings of up to 10 people, as well as non-essential retail at 15 percent capacity, under Step 1, subject to certain restrictions. Indoor gatherings "for the purposes of a wedding, a funeral or a religious service, rite or ceremony" are permitted at 15% capacity of the room they are held in, while outdoor gatherings for the same purpose have no capacity limits, provided that two metres' physical distancing can be maintained at all times. Outdoor public events and social gatherings associated with weddings, funerals, and religious services, rites, or ceremonies are allowed up to 10 people, while indoor gatherings for the same purpose continue to be prohibited under Step 1.

Beyond Step 1, the Government of Ontario's "Reopening Ontario" webpage was updated on June 24, 2021 to indicate that the province would move to Step 2 on June 30, 2021. In support of the transition,

Ontario Regulation 263/20: *Rules for Areas in Step 2* (formerly *Rules for Areas in Stage 2*) under the *Reopening Ontario Act* was amended on June 23, 2021. Under Step 2, the restrictions for working remotely remain the same as those under Step 1, and employers will continue to be responsible for ensuring that only those who are required to be at the workplace are present remain the same.

The capacity for indoor gatherings for weddings, funerals and religious services, rites and ceremonies will increase from 15% under Step 1 to 25% under Step 2. Outdoor gatherings for the same purpose are permitted provided that all persons present comply with public health guidance on physical distancing. Indoor social gatherings *associated with* a wedding, funeral, or religious service, rite or ceremony are now permitted to a maximum of 5 people, while the limit for associated outdoor social gatherings has been increased from 10 under Step 1 to 25 under Step 2.

COVID-19 Employment Update

By Barry W. Kwasniewski

Ontario's Deemed Infectious Disease Emergency Leave for Workplaces Extended

The Government of Ontario has again extended the availability of Infectious Disease Emergency Leave ("IDEL") under the Ontario *Employment Standards Act, 2000* ("ESA"), which will continue to provide unpaid, job-protected leave during the COVID-19 pandemic to employers and employees in Ontario. IDEL, which was previously extended until July 3, 2021, as discussed in the January 2021 *Charity & NFP Law Update*, will now be available until September 25, 2021. Ontario Regulation 412/21 was filed on June 4, 2021 to extend the "COVID-19 Period" in Ontario Regulation 228/20, *Infection Disease Emergency Leave* and under section 50.1 of the ESA.

The extension of the COVID-19 period means that non-unionized employees who have been temporarily laid off due to an infectious disease emergency, such as the COVID-19 pandemic, will not be deemed to be laid off or constructively dismissed, but instead will be deemed to be on IDEL until September 25, 2021, providing them with unpaid by job-protected leave during the pandemic. According to the Government of Ontario, as of September 26, 2021, employees on IDEL will no longer be deemed to be on unpaid IDEL, and the regular rules concerning constructive dismissal and temporary layoffs under the ESA will resume. Please see *Charity & NFP Law Bulletin* No. 497 below regarding recent court decisions regarding deemed IDEL and constructive dismissal actions.

July 1st Mandatory Immunization Policy for Ontario Long-Term Care Homes

A new government directive for long-term care homes in Ontario requires either proof of COVID-19 vaccination, a documented medical exemption, or participation in a vaccine education program. The Ministry of Long-term Care published the directive on May 31, 2021, and it will be effective starting July 1, 2021 (the "Directive"). Under section 174.1(1) of the *Long-Term Care Homes Act, 2007* (the "Act), the Minister "may issue operational or policy directives respecting long-term care homes where the Minister considers it to be in the public interest to do so." The Directive's stated objectives are to:

- set out a provincially consistent approach to COVID-19 immunization policies in long-term care homes
- optimize COVID-19 immunization rates in long-term care homes
- ensure that individuals have access to information required to make informed decisions about COVID-19 vaccination

Accordingly, the Directive will require that all staff, student placements and volunteers in Ontario long-term care homes provide at least one of the following three options:

1. Proof of COVID-19 vaccine administration as per the following requirements:
   i. if the individual has only received the first dose of a two-dose COVID-19 vaccination series approved by Health Canada, proof that the first dose was administered and, as soon as reasonably possible, proof of administration of the second dose **or**
   ii. if the individual has received the total required number of doses of a COVID-19 vaccine approved by Health Canada, proof of all required doses
2. Written proof of a medical reason, provided by either a physician or registered nurse in the extended class, that sets out:
   i. that the person cannot be vaccinated against COVID-19 **and**
   ii. the effective time period for the medical reason
3. Proof that the individual has completed an educational program approved by the licensee that addresses, at a minimum, **all** of the following:
   i. how COVID-19 vaccines work
   ii. vaccine safety related to the development of the COVID-19 vaccines
   iii. the benefits of vaccination against COVID-19
   iv. risks of not being vaccinated against COVID-19
   v. possible side effects of COVID-19 vaccination

Licensees under the Act are responsible for ensuring that the policy applies to staff, student placements and volunteers "regardless of the frequency with which they attend the home and regardless of the duration

of any period of time they attend the home." The requirements of the Directive must be met within 30 days for existing workers from July 1, 2021 or the first date that staff, student placements and volunteers attend the long-term-care home for work. Every licensee must provide a written policy to enforce the Directive, ensure it is communicated to workers, and make it available to residents. Consequences for not meeting the requirements must be clearly set out in the policy "in accordance with the licensee's human resources policies, collective agreements and any applicable legislation, directives and policies."

The Directive also requires licensees to "collect, maintain, and disclose to the Ministry of Long-Term Care, at a minimum on a monthly basis and in a manner set out by the ministry", statistical information: the total number of individuals subject to the long-term care home's policy for the reporting cycle; the total number of individuals who have submitted the proof as per the requirements, broken down by which type of proof was provided; and for each type of proof, the number of individuals who submitted each type of proof who are staff, student placements or volunteers.

The Ministry "may share any and all statistical information provided by licensees pursuant to this Directive with the Ministry of Health or local public health units at any time."

Ontario Superior Court Addresses COVID-19 Temporary Layoff Provisions But Uncertainty Remains

By Barry W. Kwasniewski

It is "just common sense" that a law intended to provide relief to employers during a state of emergency should not, as a result, subject them to wrongful dismissal claims, according to the Ontario Superior Court. Such a situation is inherently unfair and "would only serve to make the economic crisis from the pandemic even worse." This reasoning is from *Taylor v Hanley Hospitality* ("*Taylor*"), released June 7, 2021, which ruled on the legal effect of Infectious Disease Emergency Leave ("IDEL") provisions. IDEL was added to the Ontario *Employment Standards Act, 2000* ("*ESA*") by the provincial legislature last year and set by a government regulation in response to the COVID-19 pandemic. Amendments to the ESA introduced in May 2020 provided that all temporary layoffs relating to COVID-19 are deemed to be IDEL, retroactive to March 1, 2020, and continuing until the end of the COVID-19 period, which was recently extended to September 25, 2021. Charities and not-for-profits in Ontario are also impacted by this issue in considering the risks of placing employees on temporary leave for reasons related to COVID-19.

The decision in *Taylor* contradicts an April 27, 2021 judgment from the Ontario Superior Court in *Coutinho v Ocular Health Centre Ltd.* ("*Coutinho*"), leaving the current law in an uncertain state. The court in *Coutinho* held that IDEL, which gives employers the option to place employees on leave for reasons related to COVID-19, does not preclude employees from claiming constructive dismissal under the common law. The court in *Taylor*, on the contrary, ruled that allowing constructive dismissal claims at common law would render IDEL useless; therefore, according to established precedent, the statutory provisions must displace the possibility for employees to claim their common law rights. The disagreement between the two cases also involves the legal interpretation of "constructive dismissal" according to the common law, and its meaning under the *ESA*. This *Charity & NFP Law Bulletin* examines and compares the reasoning in both cases.

For the balance of this *Bulletin*, please see *Charity & NFP Law Bulletin* No. 497.

Carters is Pleased to Welcome Martin U. Wissmath as a New Associate

Carters is pleased to welcome Martin U. Wissmath, B.A., J.D., as an associate. Martin joins Carters after completing his articles with the firm and being called to the Ontario Bar in 2021. Martin assists the firm's knowledge management and research division covering a broad range of legal issues in charity and not-for-profit law. He has experience in journalism, working as a reporter for local newspapers in Alberta and British Columbia. Martin will also be practicing in the area of social enterprise and social finance.

IN THE PRESS

Charity & NFP Law Update – May 2021 (Carters Professional Corporation) was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.

Critical Privacy, Security Risks for Charities, Not-for-Profits written by Esther Shainblum was featured in the Lawyers Daily on June 10, 2021.

Recent Reports on Diversity, Equity and Inclusion on Boards of Directors written by Luis R. Chacin was featured in the CSAE Trillium FORUM Newsletter on June 14, 2021.

RECENT EVENTS AND PRESENTATIONS

Localization: CRA Challenges, Possible Reform and Practical Tips was presented by Terrance S. Carter at the Humanitarian Response Network Thematic Meeting on Localization held on May 17, 2021.

Governance 101 for Charities: Back to the Basics, Including Governance Issues and Directors' Fiduciary Duties was presented by Theresa L.M. Man at YWCA Canada on June 10, 2021.

Impact Investing by Charities was presented by Terrance S. Carter at the STEP Canada 23rd National Conference that was held virtually on June 15, 2021, as part of a panel discussion on Philosophical Philanthropy. Other panelists included Troy McEachren (Moderator), Kathy Hawkesworth, and Malcolm Burrows.

UPCOMING EVENTS AND PRESENTATIONS

SAVE THE DATE - Carters/Fasken Check-Up 2021: Healthcare Philanthropy Webinar will be held on **Wednesday, September 22, 2021**. This is a complimentary webinar hosted by Carters Professional Corporation and Fasken Martineau. Details will be posted soon at www.carters.ca.

SAVE THE DATE – **The 28th Annual Church & Charity Law Webinar™** will be held on **Thursday, November 4, 2021**, hosted by Carters Professional Corporation. Details will be posted soon at www.carters.ca.

CONTRIBUTORS

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

Sepal Bonni, B.Sc., M.Sc., J.D., Trademark Agent – Sepal Bonni is 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* (LexisNexis, 2020), and co-author of *Branding and Copyright for Charities and Non-Profit Organizations* (2019 LexisNexis). He is recognized as a leading expert by *Lexpert*, *The Best Lawyers in Canada* and *Chambers and Partners*. Mr. Carter is a 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. 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 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* and *The Best Lawyers in Canada*. 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™*.

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 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." Ms. Leddy is recognized as a leading expert by *Lexpert.*

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 and is recognized as a leading expert by *Lexpert*, *Best Lawyers in Canada*, and *Chambers and Partners*. In addition to being a frequent speaker, Ms. Man is co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* published by Thomson Reuters. She is past chair of the CBA Charities and Not-for-Profit Law Section, a member of the Technical Issues Working Group of Canada Revenue Agency's (CRA) Charities Directorate, and a member and former chair of 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.charitylaw.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.charitylaw.ca. Ryan has been a regular presenter at the annual *Church & Charity Law Seminar™*, Healthcare Philanthropy: Check-Up, Ontario Bar Association and Imagine Canada Sector Source. Ryan is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada.*

Esther Shainblum, B.A., LL.B., LL.M., CRM – Ms. Shainblum practices at Carters Professional Corporation in the areas of charity and not for profit law, privacy law and health law. From 2005 to 2017 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 Wissmath, B.A., J.D. – Martin joined Carters Professional Corporation as an associate after his call to the Ontario Bar in 2021. Martin assists the firm's knowledge management and research division covering a broad range of legal issues in charity and not-for-profit law. His practice area includes a focus on social enterprise and social finance, corporate and information technology law. Martin began writing for the Charity & NFP Law Update as an articling student with Carters in 2020 and has previous experience in journalism, working as a reporter for local newspapers in Alberta and British Columbia. He graduated from Osgoode Hall Law School in 2020.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

Links not Working: If the above links do not work from your mail program, simply copy the link text and paste it into the address field of your internet browser.

Get on Our E-Mailing List: If you would like to be added to our electronic mailing list and receive regular updates when new materials are added to our site, click here or send an email to info@carters.ca with "Subscribe" in the subject line. Feel free to forward this email to anyone (internal or external to your organization) who might be interested.

Privacy: We at Carters know how important your privacy is to you. Our relationship with you is founded on trust and we are committed to maintaining that trust. Personal information is collected solely for the purposes of: establishing and maintaining client lists; representing our clients; and to establish and maintain mailing lists for the distribution of publications as an information service. Your personal information will never be sold to or shared with another party or organization. For more information, please refer to our Privacy Policy.

Disclaimer: This is a summary of current legal issues provided as an information service by Carters Professional Corporation. It is current only as of the date of the summary and does not reflect subsequent changes in the law. The summary is distributed with the understanding that it does not constitute legal advice or establish the solicitor/client relationship by way of any information contained herein. The contents are intended for general information purposes only and under no circumstances can be relied upon for legal decision-making. Readers are advised to consult with a qualified lawyer and obtain a written opinion concerning the specifics of their particular situation.

CARTERS PROFESSIONAL CORPORATION
SOCIÉTÉ PROFESSIONNELLE CARTERS

PARTNERS:

Terrance S. Carter B.A., LL.B. (Counsel to Fasken)	tcarter@carters.ca
Jane Burke-Robertson B.Soc.Sci., LL.B. (1960-2013)	
Theresa L.M. Man B.Sc., M.Mus., LL.B., LL.M.	tman@carters.ca
Jacqueline M. Demczur B.A., LL.B.	jdemczur@carters.ca
Esther S.J. Oh B.A., LL.B.	estheroh@carters.ca
Nancy E. Claridge B.A., M.A., LL.B.	nclaridge@carters.ca
Jennifer M. Leddy B.A., LL.B.	jleddy@carters.ca
Barry W. Kwasniewski B.B.A., LL.B.	bwk@carters.ca
Sean S. Carter B.A., LL.B.	scarter@carters.ca
Ryan M. Prendergast B.A., LL.B.	rprendergast@carters.ca
Sepal Bonni B.Sc., M.Sc., J.D.	sbonni@carters.ca

ASSOCIATES:

Esther Shainblum B.A., LL.B., LL.M., CRM	eshainblum@carters.ca
Adriel N. Clayton B.A. (Hons), J.D.	aclayton2@carters.ca
Heidi N. LeBlanc J.D.	hleblanc@carters.ca
Martin Wissmath B.A., J.D.	mwissmath@carters.ca

Toronto Office
67 Yonge Street, Suite 1402
Toronto, Ontario, Canada
M5E 1J8
Tel: (416) 594-1616
Fax: (416) 594-1209

Orangeville Office
211 Broadway, P.O. Box 440
Orangeville, Ontario, Canada
L9W 1K4
Tel: (519) 942-0001
Fax: (519) 942-0300

Ottawa Office
117 Centrepointe Drive, Suite 350
Nepean, Ontario, Canada
K2G 5X3
Tel: (613) 235-4774
Fax: (613) 235-9838