

 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<h2>The 2022 Ottawa Region Charity & Not-for-Profit Law Webinar</h2> <h3>February 17, 2022</h3>
<h2>Essential Charity & NFP Law Update</h2> <p>By Jacqueline M. Demczur, B.A., LL.B. jdemczur@carters.ca 1-877-942-0001</p> <p>© 2022 Carters Professional Corporation</p>	
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OVERVIEW (Current as of February 14, 2022)

2021 Federal Budget Highlights	Bill S-216	Disbursement Quota Consultation
CRA Update & News	ACCS	Provincial Legislation Update
Federal Corporate Update	Provincial Corporate Update	General Case Law Review

All information in this PowerPoint is current as of February 14, 2022, but is subject to change. To sign up for our firm e-newsletter, click on the "Subscribe to our NEWSLETTER" button at www.carters.ca

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A. 2021 FEDERAL BUDGET HIGHLIGHTS

- Federal Budget 2021 was tabled on April 19, 2021
 - Bill C-30 implementing legislation was assented to on June 29, 2021
- Proposed consultation on amendments to increase the disbursement quota
- Proposed Enhanced Anti-terrorism Provisions in *Income Tax Act* (“ITA”) and *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, including
 - Immediate revocation of charitable status of qualified donees listed as terrorist entities (e.g. Proud Boys, a neo-fascist organization)
 - Provisions expanding FINTRAC’s powers
- Provided temporary financial support to Canada’s social sector, including charities and non-profits

- Expanded definition of “ineligible individuals” to include listed terrorist entities and their directors, trustees, officers and like officials, including individuals who controlled or managed, in any manner whatever, a listed terrorist entity “including a period prior to the date on which the entity became a listed terrorist entity”
- Amended ITA to allow for suspension of charity’s receipting privileges due to false statements
 - Previously the CRA was limited to revoking registration for false statements
- On February 4, 2022, the Department of Finance released draft legislative proposals implementing some of the measures from the 2021 federal budget, including:
 - Proposed change to ss 188(1.2) of ITA clarifying that a charity’s “winding-up period” (related to calculation of tax owed when charitable status revoked) can begin immediately after day it became a listed terrorist entity

B. BILL S-216, EFFECTIVE AND ACCOUNTABLE CHARITIES ACT

- Bill S-216 was introduced by the Honourable Senator Ratna Omidvar on November 24, 2021, after its predecessor, Bill S-222, died on the Order Paper when Parliament was dissolved on August 15, 2021
- The bill proposes changes to several provisions in the *Income Tax Act* governing charities, including eliminating the “own activities” test and the related concepts of “direction and control”
- The direction and control regime prohibits charities from making gifts to non-qualified donees for charitable purposes
- The proposed legislation would introduce a new regime of resource accountability
- Bill S-216 has passed through the Senate and completed its first reading in the House of Commons

For more discussion, see presentation by Honourable Senator Ratna Omidvar’s presentation: “Bill S-216 – ‘Resource Accountability’ and the Vulnerable Sector”

C. DISBURSEMENT QUOTA (“DQ”) CONSULTATION

- The Department of Finance ran the DQ consultation from August 6 until December 2, 2021
- The DQ is the minimum amount charities are required to spend on charitable programs or gifts to qualified donees
- Key questions for consideration included:
 - Should the disbursement quota be raised to produce additional funding for charities, and to what extent?
 - What additional tools should be available to the CRA to enforce the DQ rules?
- See Carters’ submission on DQ Consultation <https://www.carters.ca/pub/bulletin/charity/2021/chylb498.pdf>
- Also see presentation by Terrance S. Carter, “The Disbursement Quota for Charities: Issues to Consider”

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D. CRA UPDATE & NEWS

- CRA updated two Guidances:
 - RC4081 GST/HST Information for Non-Profit Organizations (updated on December 10, 2021)
 - RC4082 GST/HST Information for Charities (updated on December 6, 2021)
- As of October 18, 2021, organizations with “My Business Account” can online request authorized representatives (e.g. accountants, lawyers) to view tax information
- See presentation by Melissa Shaughnessy, Director of the Compliance Division of the Charities Directorate
- The Office of the Taxpayers’ Ombudsperson is reviewing CRA’s compliance activities and audit selection process. Charities may participate in their questionnaire until March 31, 2022: <https://www.canada.ca/en/taxpayers-ombudsperson.html>

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E. ADVISORY COMMITTEE ON THE CHARITABLE SECTOR

- The Advisory Committee on the Charitable Sector (“ACCS”) was established in 2019 as forum for federal government to engage with the charitable sector
- ACCS released Report #1 on March 12, 2021; Report #2 on April 28, 2021; and Report #3 on July 15, 2021
- Important recommendations from the Reports include:
 - Amend the ITA to remove the “own activities” test (to allow for “resource accountability”)
 - Allow all appeals to go to the Tax Court of Canada instead of some going to the Federal Court of Appeal
 - Improve relations with Indigenous communities, Indigenous-led charities and other stakeholders
 - Create a permanent “Home in Government” for the charitable and non-profit sector

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- Create a more supportive environment for earned income by charities by revising CRA’s guidance CPS-019 “What is a related business?”, including eliminating the “linked and subordinate” test
- Improve accessibility of CRA services to charities (particularly those serving vulnerable populations);
- ACCS made recommendations to Finance Canada’s consultation on the DQ dated August 31, 2021, including:
 - Improved data collection on the T3010 Registered Charity Information Return forms
 - Compliance be based on existing “education first approach”
 - Inclusion of “program related investments” in meeting DQ obligations

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F. PROVINCIAL LEGISLATION UPDATE

Bill 9, *Non-Profit Sector Appreciation Week Act, 2021*

- Bill 9 received royal assent on Dec 9, 2021 and declares the third week of February each year as Non-Profit Sector Appreciation Week

Bill 13, *Supporting People and Businesses Act, 2021*

- Bill 13 provides, among other amendments, for a definition of “volunteer” and that volunteers will not be required to pay a fee for a criminal record check or criminal record and judicial matters check
 - However, the fee exemption does not apply to vulnerable sector checks
- Bill 13 received royal assent on Dec 2, 2021

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Bill 27, *Working for Workers Act, 2021*

- Royal assent was given on Dec 9, 2021 and amends the Employment Standards Act
- Bill requires employers with ≥25 employees to have a “Disconnect From Work Policy”
- Non-Compete Agreements are also prohibited in most employment contracts
 - For more details on Bill 27, see presentation by Barry W. Kwasniewski “Employment Standards and Contracts Update”

Bill 43, *Building Ontario Act (Budget Measures), 2021*

- Bill 43 received royal assent on December 9, 2022 and enacts various measures announced in the 2021 Ontario Fall Economic Statement
- One of the bill’s changes amends the Assessment Act to exempt from property taxes land leased and occupied solely by a university if certain conditions are met

G. FEDERAL CORPORATE UPDATE

1. Import and Export under the *Canada Not-for-Profit Corporations Act* (“CNCA”)

- **Import** - On July 7, 2021, Corporations Canada (“CC”) updated its policies to add Alberta and New Brunswick legislation to the list of pre-approved provincial legislation for continuance from those acts to the CNCA
 - List previously included Ontario, Manitoba, Newfoundland & Labrador and Saskatchewan
- **Export** - CC also updated its policies to add the B.C. and New Brunswick legislation to the list of pre-approved provincial legislation that CNCA corporations can be exported to
 - List previously included Alberta, Manitoba, Saskatchewan and Newfoundland & Labrador

2. Online Filing Centre

- As of January 19, 2022, to access Corporations Canada's Online Filing Centre, a person or their registered intermediary must first log into My ISED Account
- Some services can be accessed from the Online Filing Centre without requiring a login to the My ISED Account, such as getting a certificate of compliance and ordering a corporate profile

3. 10-Year Review of CNCA

- Minister of Innovation, Science and Industry published a report on November 23, 2021 about its statutory review of the CNCA
- Generally, consultation found the CNCA continues to be a modern corporate statute and offered suggestions for reform, including reform of audit and reporting obligations

H. ONTARIO CORPORATE UPDATE

1. Ontario *Not-for-Profit Corporations Act* (ONCA) and Ontario Business Registry

- On October 19, 2021, the ONCA came into force, which started the 3 year transition period for existing corporations under the Ontario *Corporations Act* ("OCA")
 - See Theresa L.M. Man's presentation "Transition Challenges under the ONCA" and December 8, 2021 presentations about ONCA for details
<https://www.carters.ca/pub/seminar/charity/2021/ONCA>
- The Ontario Business Registry was launched on the same day the ONCA came into force
 - Registrations and filings previously submitted by mail or fax (which took six weeks or longer to complete) can now be done instantly online
 - Electronic filing of annual returns and notices of change also now possible
 - Registry is integrated with CRA's system enabling the identification of a NFP by a single business number

2. Electronic Meetings under OCA and ONCA

- Temporary relief to Ontario *Corporations Act* (“OCA”), *Co-operative Corporations Act* (“CCA”) and ONCA corporations in relation to holding electronic meetings of directors/members in response to the COVID-19 pandemic has been extended to September 30, 2022

- The rules in all three statutes were amended to permit electronic meetings of directors and members to be held during the temporary period

- This is the case regardless of contrary provisions in a corporation’s constating documents

3. Updated Not-for-Profit Incorporator’s Handbook

- In conjunction with the ONCA’s proclamation, the Ministry of the Attorney General updated its *Not-for-Profit Incorporator’s Handbook*, which provides general information and guidelines about incorporating not-for-profits and charitable corporations

4. Proposed Permanent Changes to ONCA

- Draft permanent changes were released by the Ministry of Government and Consumer Services on January 4, 2022, proposing the following:

- Allow corporations to hold virtual or hybrid meetings by default unless constating documents provide otherwise

- Allow votes and elections to be conducted virtually unless the corporation opts out in constating documents

- Permit notices to directors and members be sent by electronic means

I. GENERAL CASE LAW REVIEW

1. *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v Aga*, 2021 SCC 22 (May 21, 2021)

- Church, a voluntary association, expelled 5 members who then alleged Church did not follow internal practices and violated their s. 2(a) *Charter* rights
- Motions judge found no underlying contract between parties, which the Ont. Court of Appeal reversed on appeal
- Supreme Court of Canada further reversed this decision, finding no objective intention to create contract or enforceable legal relationship between parties
 - Rules of voluntary associations do not necessarily result in contractual relations among members
 - Courts will only intervene in decisions of voluntary associations where a legal right is affected

- *Aga* was subsequently cited in other cases, including:
 - ***Chinook Park-Kelvin Grove-Eagle Ridge Community Association v Minor Hockey Association of Calgary***, 2021 ABQB 532 (July 14, 2021) which cited *Aga* for the proposition that membership is not automatically contractual
 - Court concluded that when members of Hockey Calgary agreed to be bound by a common set of rules, this did not evidence an underlying objective intention to create legal relations
 - ***Hon v Liao***, 2022 ABQB 43 (January 13, 2022), which also cited *Aga* for the proposition that membership is not automatically contractual
 - Court found that the general contract principles were present and did evidence an objective intention to enter into legal relations

2. *Canada (National Revenue) v Miller, 2021 FC 851 (Aug 19, 2021)*

- Mr. Miller did consulting work for a client in Europe under an oral contract (there were no written contracts for services or invoices)
- CRA audited Mr. Miller for the tax years of 2007-2016 and sought a court order to have Mr. Miller to provide them with the information CRA requested
- Federal court found that under the ITA CRA can compel the production of any information that should be documented in books and records, even if a transaction was originally an oral agreement
- In a CRA audit, charities should be prepared to make reasonable efforts to accurately respond to requests for documents and information that fall within the scope of subsection 231.1(1) of the ITA

3. *Delta Patriots Cricket Club v West Coast Cricket Organization, 2021 BCCA 433 (Nov 17, 2021)*

- West Coast Cricket Organization (“Cricket BC”) faced scrutiny over its by-laws after a dispute arose between Delta Patriots Cricket Club and another cricket organization
- Cricket BC’s by-laws did not comply with BC’s corporate legislation, the *Societies Act*, because they allowed more than one vote for certain members and allowed certain unincorporated groups to be members
- The lower court found it did not have authority to order an annual general meeting where the non-compliant provisions could temporarily remain in force. Instead, it struck out and read down portions of the by-laws to comply with the Act
- The Court of Appeal agreed with the lower court and dismissed the appeal
- Case important to show need to keep by-laws compliant with governing legislation

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