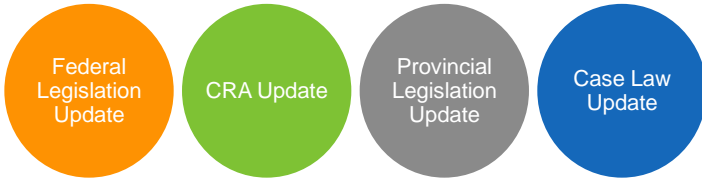
 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p>Carters Annual <i>Charity & Not-for-Profit Law</i> Webinar November 9, 2023</p>
<p>Essential Charity & NFP Law Update</p> <p>By Adriel N. Clayton, B.A., J.D. aclayton2@carters.ca 1-877-942-0001</p> <p>© 2023 Carters Professional Corporation</p>	
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INTRODUCTION & OVERVIEW



- The information in this PowerPoint is current as of November 7, 2023, but is subject to change
- For more information on topics listed below or to receive monthly updates on charity & not-for-profit law in Canada, please sign up for Carters' e-newsletter by clicking on the "Subscribe" button at www.carters.ca
- The latest Charity & NFP Law Updates for [September 2023](#) and [October 2023](#) can be viewed by clicking on the respective links

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A. FEDERAL LEGISLATION UPDATE

1. Federal Budget 2023

- The 2023 Federal Budget was tabled on March 28, 2023 (“Budget 2023”)
 - [Bill C-47 \(An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023\)](#) received Royal Assent on June 22, 2023, and contains provisions relevant to charities described below and explained in more detail in [Charity & NFP Law Bulletin No. 521](#)
 - [Legislative Proposals Relating to the Income Tax Act and the Income Tax Regulations \(Budget 2023 and other proposals\)](#), released on August 4, 2023 (“Aug 4/2023 Draft Legislation”), has further relevant provisions described below
- The 2023 Federal Budget provided no new major regulatory changes affecting the charitable and NFP sector
- There are significant tax issues, however, involving revisions to **alternative minimum tax**, as discussed by Theresa Man in her presentation to follow next, so stay tuned

- Budget 2023 sets out the Federal Government’s vision to combat financial crime with a plan for legislative amendments to the *Criminal Code* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA)
- There is to be a parliamentary review of the PCMLTFA launched in 2023, which “will include a public consultation that will examine ways to improve Canada’s Anti-Money Laundering and Terrorist Financing (AML/ATF) Regime”
- The public consultation part of this review took place between June 6, 2023 and August 1, 2023
- The CBA made a [submission](#) in response to this public consultation, which submission included a section dealing with the problematic impact of terrorist financing legislation on Canadian registered charities
- Budget 2023 also provides that the Government’s review of the digitalization of money will continue, as the Government seeks to “protect Canadians from the risks of crypto-asset markets”

2. Update Regarding Disbursement Quota Rules (“DQ”)

a) New Changes to the Disbursement Quota as of January 1, 2023

- [Bill C-32](#), *Fall Economic Statement Implementation Act, 2022* (“Bill C-32”) received Royal Assent on December 15, 2022, and amended the ITA to increase the DQ rate from 3.5% to 5% for property held by a charity in excess of \$1 million not used directly in charitable activities or administration
- Applies to taxation years beginning on or after January 1, 2023

b) Administration and Management Expenses

- Bill C-32 added s. 149.1(1.1)(d) to the ITA to provide that administration and management expenditures are deemed **not to satisfy** DQ requirements
- Guidance from the CRA on the administration and management expenses is expected at some point

c) DQ Obligation Reduction

- S. 149.1(5) of the ITA previously allowed the CRA to deem a specified amount expended by a charity to be an amount expended by a charity on its own charitable activities in satisfaction of the DQ
- Bill C-32 amended this to allow the CRA to instead deem a charity’s DQ obligation to be reduced upon application by the charity

3. Bill C-32 and Trust Reporting Requirements for Charities

- Onerous reporting obligations for charities with internal “express trusts” were introduced by Bill C-32 in December 2022
- See “Alternative Minimum Tax and New Trust Reporting Rules for Charities” presentation by Theresa Man for details

4. Bill C-41, *An Act to amend the Criminal Code and to make consequential amendments to other Acts*

- Following the Taliban's return to power in Afghanistan in August 2021, Canadian charities and NFPs were prohibited from providing aid due to restrictions under broad anti-terrorist legislation
- In response, the Federal Government adopted [Bill C-41](#) on June 20, 2023 to amend the anti-terrorist financing provisions in section 83.03 of the *Criminal Code*
- The amendments now permit Canadian organizations to provide humanitarian aid and other assistance to those in need, subject to requirements as set out in the amendments to the *Criminal Code*, as discussed in our [AML/ATF and Charity Law Alert No. 53](#)

a) **Modification of the Offences of Terrorist Financing in the *Criminal Code***

- Subsections 83.03(1) and (2) of the *Criminal Code* make it an indictable offence to make available property or financial or other related services for terrorist purposes or for use by terrorist groups
- Bill C-41 modifies the ATF offences by adding that terrorist financing activities may not be done “**wilfully and without lawful justification or excuse**”
- Examples of “lawful justifications” in Bill C-41 are contained in sections 83.03-83.0392 of the *Criminal Code*
 - (1) a blanket exception to terrorist financing offences that allows for “humanitarian assistance activities”, subject to certain stated criteria
 - (2) a narrower exception for certain listed activities that are dependent on an organization applying for and receiving an authorization from the Federal Government to carry out certain activities in a geographic area controlled by a terrorist group

b) Blanket Exception for “Humanitarian Assistance Activities”

- This exception is self-initiating and does not require a person (or organization) to apply to the Federal Government for permission, but must meet the following criteria:
 - The anticipated activities will be carried out “for the sole purpose of carrying out humanitarian assistance activities”;
 - The anticipated activities will be conducted under the auspices of “impartial humanitarian organizations”;
 - The anticipated activities will be carried out “in accordance with international law”; and
 - Reasonable efforts will be used to “minimize any benefit to terrorist groups”
- Guidelines from the Federal Government are expected later this year

c) Exception for Certain Activities when an Authorization is Granted

- To be eligible to apply for an authorization, there are three qualification requirements:
 - A person seeking an authorization from the Government must either be in Canada or be a Canadian outside of Canada (“eligible person”)
 - The activity must be carried out “in a specified geographic area that is controlled by a terrorist group”
 - The activity or specified class of activities must be providing or supporting the provisions of:
 - health services
 - education services
 - assisting individuals in earning a livelihood
 - promoting or protect human rights
 - services related to immigration

5. Senate Committee on Human Rights Report

- The Standing Senate Committee on Human Rights published a report, *Combatting Hate: Islamophobia and its Impact on Muslims in Canada*, on November 2, 2023
- The evidence heard by Committee included, “evidence of Muslim charities being disproportionately scrutinized by the CRA without evidence that they presented any additional risk”
- The report contains 13 recommendations, including some which would have an impact on the regulation of charities
 - E.g. That the “Department of Justice introduce legislation to establish an independent civilian body to review decisions of the CRA Charities Directorate and provide timely decisions on appeals”
- More details to come in our November 2023 *Charity & NFP Law Update*

B. CRA UPDATE

1. Qualifying Disbursements and the Draft Guidance

- See “New Qualifying Disbursement Regime for Charities: What Does it Mean in Practice” by Terrance Carter

2. Warning about Tax Shelter

- The CRA is taking action to combat tax schemes that promise to reduce taxes by increasing audits of promoters, improving information gathering, educating taxpayers on recognizing schemes, and investing in promoter compliance
- Beware of fraudulent practices, such as promising significant tax reductions (e.g. disguised as financial products or business opportunities) or promising substantial returns on small investments
- Participants and promoters of these schemes face severe consequences, e.g. penalties, court fines of up to 200%, jail time, and additional taxes

3. CRA Releases View on Directed Gifts to Municipalities

- The CRA released CRA View 2022-0945221E5 on February 1, 2023 concerning amounts collected by a charity and provided to a municipality that were to be directed to a non-profit organization
- The CRA was asked for comments concerning a municipality receiving donated funds collected by a registered charity, which was then to be directed to the non-profit organization, *i.e.* a non-qualified donee (“non-QD”) recipient
- A charity had proposed to assist the non-QD by collecting funds and issuing donation receipts on the non-QD’s behalf. The collected funds would be donated by the charity to the municipality; the charity would then “suggest” that the municipality could provide those funds to the non-QD, as part of a municipal program

- The CRA stated that the ITA does not contain specific rules relating to the use of funds by municipalities
- The CRA also stated that registered charities may be subject to revocation if they accept a gift, the granting of which was expressly or implicitly conditional on the charity making a gift to another person, club, society, association or organization other than a qualified donee
- It is a question of fact whether a gift has been made to a qualified donee
- The CRA said that donations can be received and receipted by a qualified donee, such as a municipality, provided that the municipality retains discretion as to how the donation is to be spent



Key Takeaway: CRA stated that where a municipality merely acts as a conduit by collecting funds from donors (including registered charities) on behalf of an organization that is legally or otherwise entitled to the funds, the municipality is not in receipt of a gift

C. PROVINCIAL LEGISLATION UPDATE

1. Alberta

- Alberta's new *Trustee Act* came into force on February 1, 2023 and contains new provisions regarding charitable trusts and non-charitable purpose trusts, and sets out provisions, for example, regarding the court's power to vary charitable trusts and to order the sale of property of charitable trusts

2. British Columbia

- [Bill 19](#), *Societies Amendment Act, 2021* amended the British Columbia *Societies Act* on October 28, 2021 to address directors and members registers, proxy voting, notice provisions, by-law requirements, and conflicts of interest

3. New Brunswick

- New Brunswick adopted [Bill 19](#), *Fiduciaries Access to Digital Assets Act* (Royal Assent on December 16, 2022), which grants trustees rights to access digital assets and also imposes fiduciary obligations in relations to these assets

4. Ontario

- Three year transition period to the Ontario Not-for-Profit Corporations Act, 2010 ("ONCA") expires on October 18, 2024
 - For an overview about the ONCA transition process, see "[Transitioning under the ONCA : More Complicated Than You Think](#)" by Theresa Man
- On June 8, 2023, Ontario's Omnibus [Bill 91, Less Red Tape, Stronger Economy Act, 2023](#) received Royal Assent

- Bill 91 amends s. 27.2 of the *Trustee Act* to clarify that delegated investment managers will be permitted to invest in mutual funds, pooled funds and segregated funds under variable insurance contracts
- The Bill also amended the ONCA and the OCA, as of October 1, 2023, to facilitate certain virtual processes:
 - Virtual and hybrid meetings and voting
 - Electronic notices and delivery of other documents
 - Electronic records storage and remote examination

5. Saskatchewan

- Saskatchewan's new *Non-profit Corporations Act, 2022* and *Non-profit Corporations Regulations, 2022* came into force on March 12, 2023 except for a select few subsections concerning manual signatures on certain security certificates

D. CASE LAW UPDATE

Fletcher's Fields Limited v The Ontario Rugger Union, 2023 ONSC 373 (January 16, 2023)

- Fletcher's Fields Limited ("FFL") was incorporated as a for-profit company under the OCA, but operated as an NFP dedicated to promoting and developing rugby in the GTA
 - FFL held six rugby fields in trust for the clubs for the purpose of playing rugby and for social events connected with rugby
- FFL's corporate documents were amended to say that its affairs would be carried on without the purpose of gain for its shareholders and that there should be no distributions among shareholders by way of dividend, property, profit, etc.
- By 2021, FFL had been experiencing financial difficulties and sold the six rugby fields for \$21.5 million
- FFL's governing documents did not contain provisions regarding distribution of assets upon dissolution

- \$11.65 million was donated to the Canadian Rugby Foundation
- FFL brought application to court for direction about how to distribute remaining proceeds
- Court found that FFL held the funds as a trustee for a specific, non-charitable purpose trust for the promotion and playing of the sport of rugby
- Even though FFL's corporate documents said shareholders (rugby unions and clubs) could not receive property from FFL, the court required FFL to equally distribute remaining net proceeds to shareholders in accordance with the OBCA



Takeaway: This case shows the willingness of the courts to protect the spirit and intent of the intended purpose of a trust, including one which is non-charitable in nature, as the impact of this decision was that funds went to the shareholders – organizations with the intended purpose of promoting rugby

Human Concern International v. His Majesty the King, Application for Leave to SCC (February 2, 2023)

- Human Concern International (“HCI”) applied to the Tax Court of Canada (“TCC”) for a postponement of a one-year suspension of receipting privileges received from the CRA
- The TCC denied the application, and the matter was appealed to the Federal Court of Appeal (“FCA”)
- FCA dismissed the appeal on the grounds that HCI had “not raised any error that would warrant this Court’s intervention”
- HCI applied for leave to appeal from the Supreme Court of Canada (“SCC”), and the SCC dismissed this application



Takeaway: Charities will generally face an uphill battle when requesting a court to postpone the application of a sanction (e.g. a suspension or a penalty) given the high threshold of having to prove that it would be “just and equitable” to do so

[ACTRA Performers' Rights Society v Re:Sound, 2023 ONSC 3533 \(July 14, 2023\)](#)

- Under CNCA s. 253, oppressive behavior may include the exercise of the powers of the directors or officers of a corporation that unfairly disregards the interests of a shareholder, creditor, director, officer or member
- The ACTRA Performers' Rights Society (the "Plaintiff" and a federal NFP corporation) brought an oppression claim against Re:Sound, another federal NFP corporation of which the Plaintiff was a member, and against individual directors personally, for not fulfilling its mandate to implement, advocate for, and properly enforce tariffs set by the Copyright Board of Canada
- The Plaintiff alleged that these directors (senior employees of major record labels in Canada) preferred the interests of their employers over the best interests of Re:Sound

- The individual defendants brought a motion before the court asking that the claims against them be struck and the action against themselves dismissed
- At the current stage of the matter, the court only needed to be satisfied that the oppression claim against the individual defendants was not doomed to fail



Takeaway #1: Directors and officers of NFP corporations under the CNCA can be personally named in an oppression claim brought by a member and directors and officers may need to take steps to defend themselves in court



Takeaway #2: The case is also a reminder to members and certain other stakeholders of not-for-profit corporations of the remedies available under the CNCA when the leadership of a corporation strays from their duty to pursue the purpose of the corporation

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