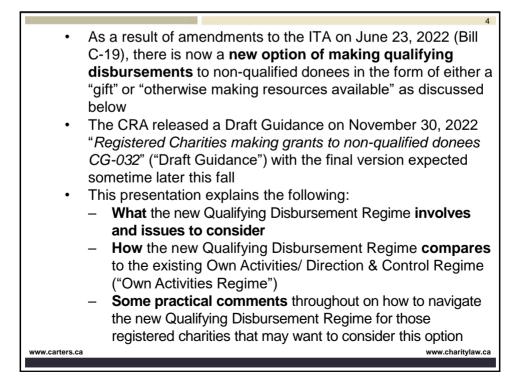


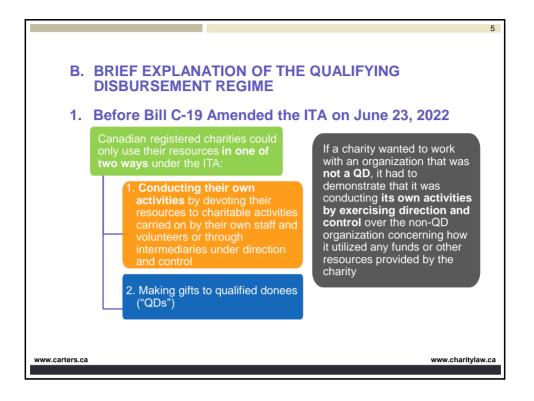
A. SETTING THE STAGE

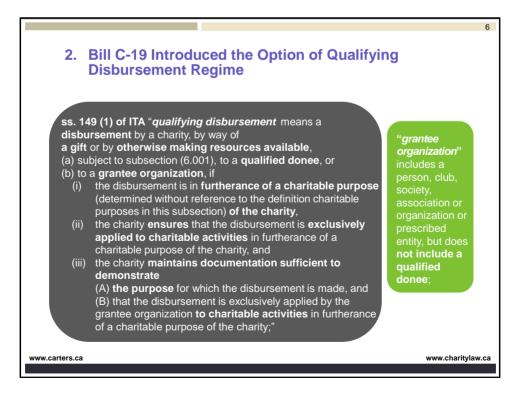
- Many registered charities will need to work with other organizations from time to time in order to achieve their charitable purposes
- When those other organizations are Canadian registered charities or other types of **qualified donees** listed under the *Income Tax Act* (ITA), (for example, Canadian amateur athletic associations, registered foreign universities, municipalities in Canada, municipal and public bodies performing a function of government in Canada, registered journalism organizations, *etc.*), then for income tax purposes this will not be an issue because a Canadian registered charity is able to make gifts to other qualified donees
- However, when a registered charity is having to work with an organization that is not a qualified donee under the ITA, like a non-profit organization, inside or outside of Canada, then compliance issues become more challenging

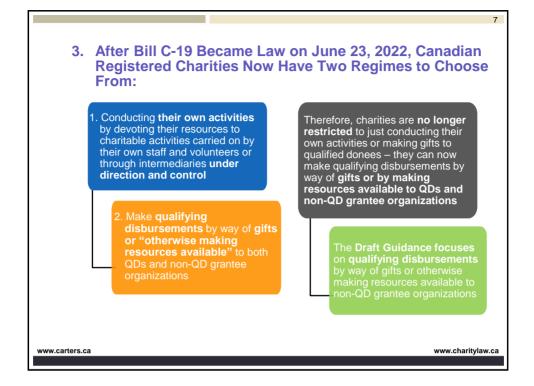
www.carters.ca

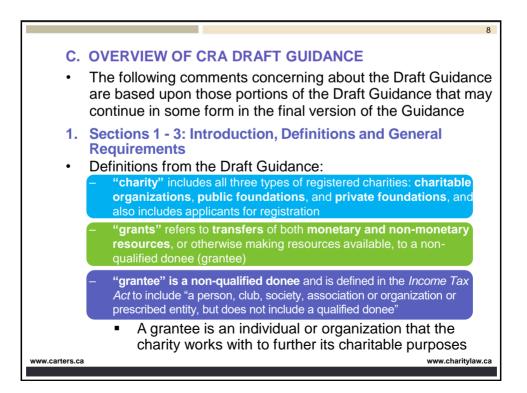
www.charitylaw.ca

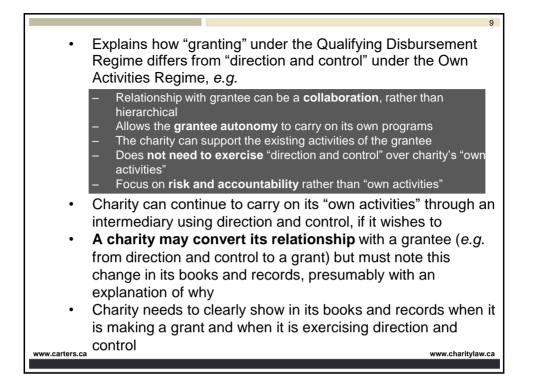


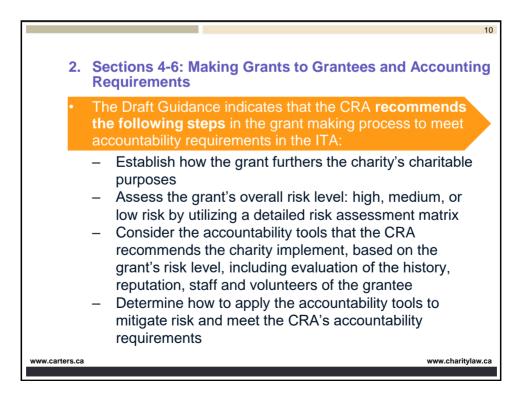


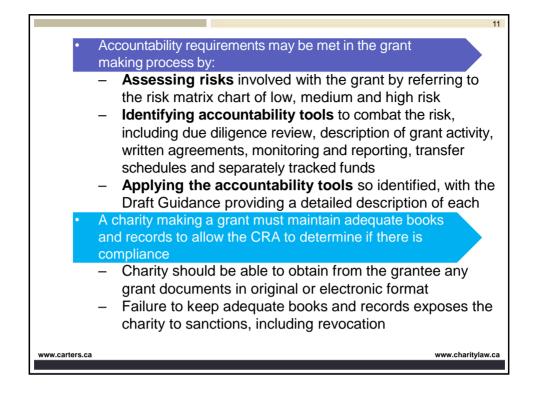


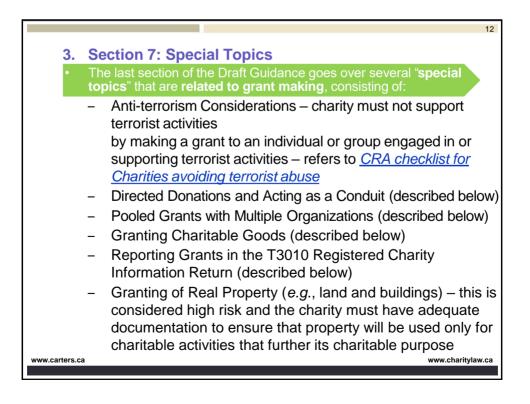




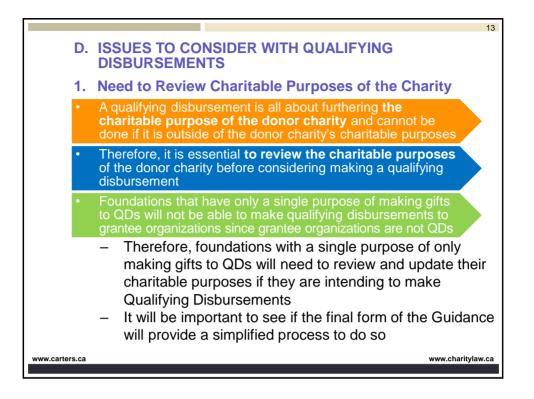


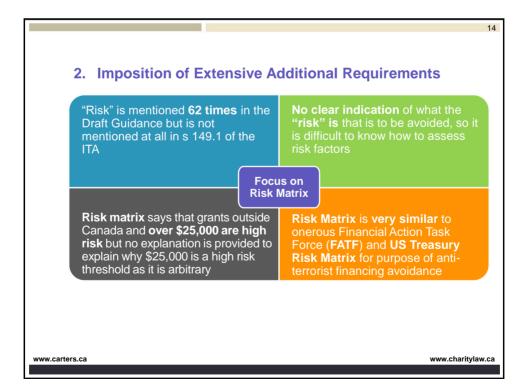


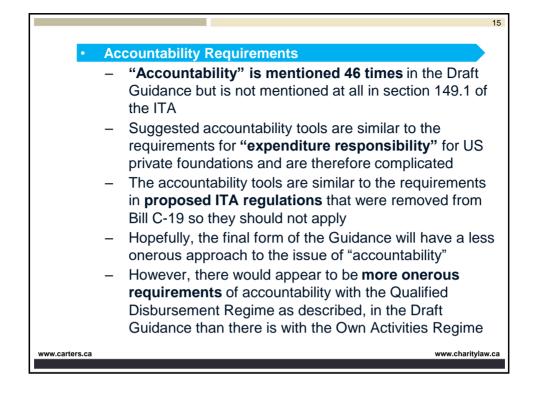


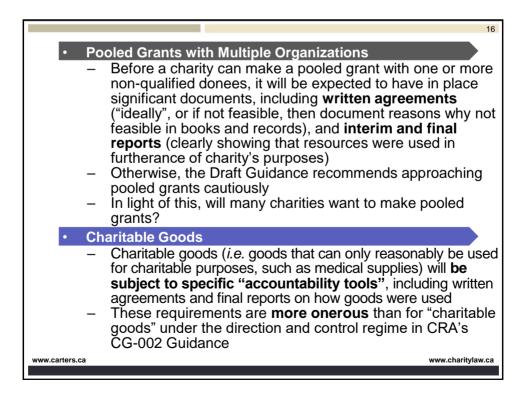


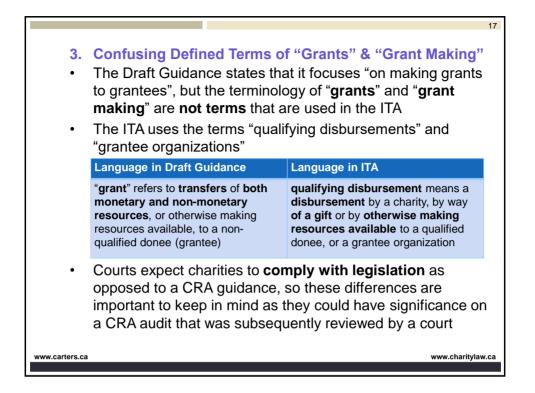
www.carters.ca

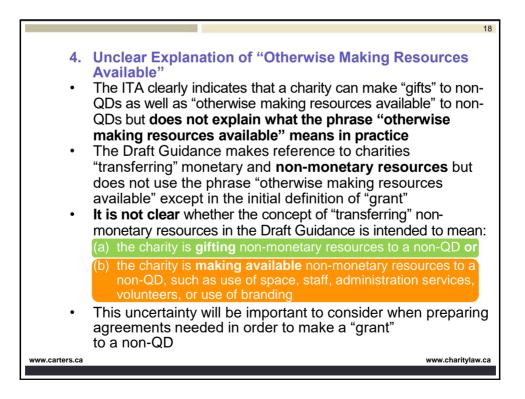


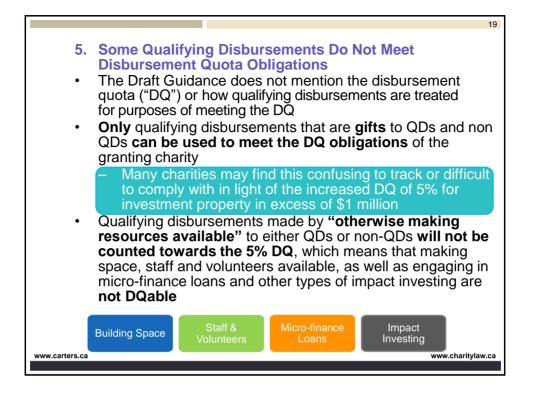




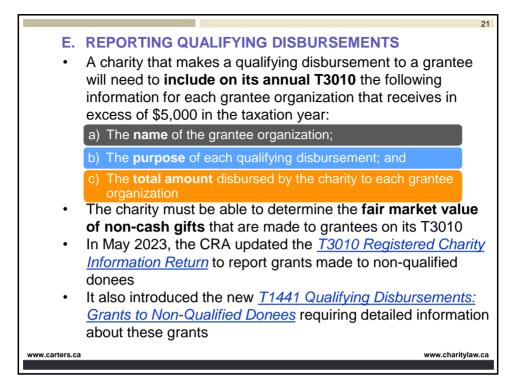








	20
6.	Does not Reflect The Wording in ITA About Directed Gifts
•	New paragraph 168(1)(f) of the ITA states that the CRA can
	revoke a charity's charitable registration if it accepts a gift
	"the granting of which was expressly or implicitly
	conditional on the charity [] making a gift to another
	person, club, society, association or organization other
	than a qualified donee"
	 e.g. Charity A accepting a gift that is "expressly or implicitly
	conditional" on Charity A making a gift to Non-Charity B
•	The Draft Guidance states that paragraph 168(1)(f) of the
	ITA is "intended to prevent a charity from acting as a
	conduit" but does not provide any explanation concerning
	what it considers a "conduit" to be"conduits" are relate
•	The Draft Guidance is also not clear what an express or
	implicit conditional gift is, since conditional gifts have
	particular meaning at common law
•	The directed gift provision, though, does not appear to
	apply to a charity carrying out its own activities through
	an intermediary under the charities direction and control
	because it is not a "gift" to a non QD
www.carters.ca	www.charitylaw.ca



		22
•	The T3010 asks:	
	 If the charity has made qualifying disbursements via grants to non- qualified donees 	
	 If any of these grants totaled more than \$5,000 in cash and non-cash grants in one fiscal period 	
	 The number of grantees receiving grants totaling \$5,000 or less 	
	 The total amount paid to grantees totaling \$5,000 or less in a fiscal period 	
•	The T1441, which records all grants individually, must include:	
	 The number of grantees that received grants totaling more than \$5,000 	
	 Report each grant separately, even if it's to the same grantee 	
	 The name of the grantee 	
	 The purpose of the grant 	
	- The total amount of cash and non-cash disbursements separately	
	 The country where grant activities were carried out, (unless permission is obtained due to safety concerns) 	
•	The CRA has updated T4033, Completing Form T3010 Registered	
	Charity Information Return, to assist charities in completing these form	าร
www.carters.ca	www.charityla	w.ca

F -		REGIME TO THE OWN AC	ri\ n i	now choose between the two
		Own Activities Regime		Qualifying Disbursement Regime
	-	Focus on the charity being the directing mind with an intermediary carrying out instructions received from the charity	-	Focus on supporting the activities of the grantee organization in achieving its purposes, not those of the donor charity
	-	More of a hierarchical top down relationship	-	More of a collaborative relationship of mutual co-operation and respect
	-	The funds or resources are not gifted , instead they are transferred to an intermediary as an extension of the charity by means of a contractual agreement	-	The funds or resources are either gifted or are otherwise made available to the grantee and become the property of the grantee organization to use for its own programs
	-	The applicable regulatory due diligence is in the form of ongoing direction and control by the charity over the activities of the intermediary	-	The applicable regulatory due diligence is in the form of applying a risk matrix and following extensive accountability requirement rather than providing ongoing direction and control
www.carters	s.ca			www.charitylaw.

	Own Activities Regime	Qualifying Disbursement Regime
-	An agreement is needed to reflect direction and control over own activities of the charity <i>e.g.</i> contract for service or co-operative participation	 For qualifying disbursements above \$5,000.00, a grant agreement will be needed to address a significant degree of risk assessment and accountability requirements
-	As the intermediary is acting as an extension of the charity under the direction and control of the charity, the charity may be exposed to liability by the intermediary	 Since the grant involves giving the funds to a grantee organization to support programs of the grantee, the charity will be less exposed to liability risk
-	Charitable programs done through an intermediary will count toward the disbursement quota of the charity	 Qualifying disbursements in the form of "otherwise making resources available" will not count towards the disbursement quota of the charity
-	Contracting with an intermediary to allow the intermediary to purchase land is subject to significant restrictions	 Gifting of real estate needs to be carefully documented but is generally less restrictive
-	Contracting with an intermediary in Canada " may" attract HST/ GST (need expert HST advice)	 Making a qualifying disbursement to a grantee in Canada will not attract HST/GST
-	Less onerous reporting requirements in T3010	 More onerous reporting requirements in T3010

