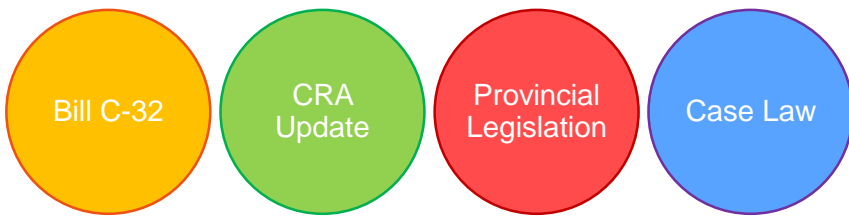
 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<h2>Carters Spring Charity and Not-for-Profit Law Webinar</h2> <p>March 2, 2023</p>		
<h3>Essential Charity & NFP Law Update</h3> <p>By Ryan M. Prendergast, B.A., LL.B. rmp@carters.ca 1-877-942-0001</p> <p>© 2023 Carters Professional Corporation</p> <table border="0"><tr><td data-bbox="259 833 645 882">CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001</td><td data-bbox="652 833 1209 882">Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.churchlaw.ca</td></tr></table>		CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001	Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.churchlaw.ca
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OVERVIEW



- All information in this PowerPoint is current as of February 27, 2023, but is subject to change
- 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

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A. BILL C-32, FALL ECONOMIC STATEMENT IMPLEMENTATION ACT, 2022

1. Overview


- The 2022 Federal Budget was tabled on April 7, 2022. Most of its proposed changes affecting charities were implemented by Bill C-19 and Bill C-32
 - Bill C-19 (*Budget Implementation Act, 2022, No. 1*) received Royal Assent on June 23, 2022 and amended the *Income Tax Act* (ITA) to allow charities to make qualifying disbursements to qualified donees and grantee organizations
 - Bill C-32 (*Fall Economic Statement Implementation Act, 2022*) was introduced in the House of Commons on November 4, 2022 and received Royal Assent on December 15, 2023


2. Changes to the Disbursement Quota


- Bill C-32 introduced the following changes to the disbursement quota (DQ), which came into effect on January 1, 2023:
 - Increased the DQ rate from 3.5% to 5% for applicable property (*i.e.* property not used directly in charitable activities or administration) where the value of that property exceeds \$1 million
 - Clarified that expenditures on administration and management of a charity do not satisfy the DQ
 - Allows the CRA to deem that a charity's DQ obligation is reduced (rather than the earlier process which allowed the CRA to deem that a charity had met the DQ)
 - The CRA is permitted to release information about applications to reduce a charity's DQ obligation
 - Charities may no longer accumulate property for a particular purpose such that the income earned from this property is not counted in the DQ calculation

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3. Changes to Trust Reporting Requirements

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Bill C-32 introduced changes originally announced in Budget 2021 that amend subsection 150(1.1) and add subsection 150(1.2) to the ITA so that charities with internal trusts (such as endowments) may be required to file separate T3 information returns for these trusts if they do not fall under a list of exceptions in 150(1.2)
- 

Changes come into effect for taxation years ending **after** December **30**, 2023 (*i.e.* taxation years ending **on** December **31**, 2023 or any time after that)
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The exact effect of this legislation remains unclear, as it has been the CRA's long-term administrative policy not to require separate T3s for internal trusts of charities, such as endowments

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4. Addition of New CRA Audit Powers

- Bill C-32 amended section 231.1 of the ITA to expand the audit and examination powers given to authorized persons (generally, the CRA) in relation to the administration and enforcement of the ITA
 - Now, an authorized person may – in relation to the administration and enforcement of the ITA – require a taxpayer or any other person to
 - participate in a video-conference or other form of electronic communication
 - give verbal responses to questions related to the administration or enforcement of the ITA
 - answer questions in writing, in any form specified by the authorized person
 - These amendments came into force upon Royal Assent, on December 15, 2022


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B. CRA UPDATE

1. Qualifying Disbursements

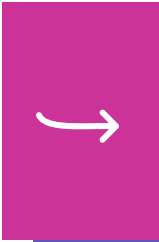
- In response to amendments to the ITA allowing charities to make qualifying disbursements, the CRA published draft guidance CG-032 “Registered charities making grants to non-qualified donees (draft)” on November 30, 2022




- Deadline for feedback was January 31, 2023
- The draft guidance will be discussed in more detail in Terrance S. Carter’s presentation “CRA Draft Guidance on Qualifying Disbursements: A Work in Progress”

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The CRA Charities Directorate has said that it is currently updating the T3010, Registered Charity Information Return (and accompanying guide T4033) to reflect the rules regarding making grants to non-qualified donees which they expect to make available in Spring 2023



Until the T3010 and T4033 are updated, charities are not required to report their granting activities, though they are required to keep adequate books and records with enough information for the CRA to assess whether the charity is operating in accordance with the ITA

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2. Update Regarding Disbursement Quota Rules

Amendments to the DQ came into effect on January 1, 2023

The CRA announced on February 21, 2023 that over the coming months it will be updating its website, forms, and other publications to reflect these new rules

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3. Statement from Taxpayers' Ombudsperson

- Following the Taxpayer's Ombudsperson's appearance before the Standing Senate Committee on Human Rights to discuss the progress of his office's review of the CRA's treatment of Muslim charities, the Ombudsperson provided a statement on November 21, 2022, stating that:
 - it would be impossible to validate certain aspects of the CRA's practices because of legislation (e.g. s. 241 of the ITA) and CRA policy (e.g. practice not to disclose risk assessment process because of national security concerns)
 - some participants told his office they felt they had been unfairly selected and/or intimidated, but these allegations could not be verified without access to complete taxpayer files

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C. PROVINCIAL LEGISLATION

- Alberta's new *Trustee Act* came into force on February 1, 2023 and contains new provisions regarding charitable trusts
- Saskatchewan's new *Non-profit Corporations Act, 2021* will come into force on March 12, 2023 except for a select few subsections concerning manual signatures on certain security certificates
 - The *Non-profit Corporations Regulations, 2022* under this act will come into force on the same day

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- Ontario *Not-for-Profit Corporations Act, 2010* ("ONCA")
 - Reminder that the three year transition period expires on October 18, 2024
 - For more details see presentation "*Transitioning under the ONCA: More Complicated Than You Think*" by Theresa Man
- New Brunswick adopted Bill 19, *Fiduciaries Access to Digital Asset 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
 - It will be interesting to see if other provinces adopt similar legislation related to digital assets going forward

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D. CASE LAW

1. *Leduc Society for Christian Education et al. v The King*, 2022 TCC 114 (October 5, 2022)

- A group of registered Christian education charities in Alberta, all of whom operated publicly-funded Christian schools (the “Schools”) collected fees from families and issued official tax receipts for 100% of these fees
 - School boards in Alberta may offer alternative education programs, and fees may be charged, but only for non-instructional costs
- The Minister of National Revenue brought penalties against the Schools for issuing receipts for these fees on the basis this was not in accordance with the ITA
- The court found that the fees were a contractual condition of enrolment and that the families were receiving a benefit in return, therefore a charitable receipt could not be issued

2. *Fortius Foundation v Canada (National Revenue)*, 2022 FCA 176 (October 19, 2022)

- A charity received notice from the CRA of its intention to publish a notice in the Canada Gazette revoking its charitable registration
- The charity brought a motion before the Federal Court of Appeal for interim relief to enjoin the Minister of National Revenue from publishing the notice of its revocation until after the charity had the opportunity to pursue an internal appeal process with the Minister
- The court was not convinced that the charity had provided sufficient evidence that there would be irreparable harm if the notice was published. It further found that the balance of convenience favoured the Minister because of the public’s legitimate interest in the enforcement of the ITA
- This case demonstrates that it is extremely difficult to persuade the court to delay the publication of a notice of revocation even while a charity is disputing the decision to revoke

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

- Fletcher's Field Limited ("FFL") was incorporated as a for-profit company under the Ontario *Corporations Act*, but operated as a not-for-profit dedicated to the promotion and development of rugby in the GTA.
 - The Ontario Rugger Union ("ORU") and its rugby clubs (there were five clubs at the time of the court decision) were shareholders of FFL
 - 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 the shareholders by way of dividend, property, profit, etc.

- By 2021, FFL had been experiencing financial difficulties and sold the six rugby fields and sold the fields for \$21.5 million
- FFL's governing documents did not contain any provisions regarding how assets were to be distributed 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 fields 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 that shareholders (ORU and the clubs) could not receive property from FFL, the court required FFL to equally distribute remaining net proceeds to its shareholders in accordance with the Ontario *Business Corporations Act*
- 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 effect of this decision was that funds went to the ORU and the clubs – organizations with the purpose of promoting rugby

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

- Human Concern International (“HCI”) had applied to the Tax Court of Canada (“TCC”) for a postponement of the one-year suspension of receipting privileges HCI had received from the CRA. The TCC dismissed the application, so HCI applied to the Federal Court of Appeal (“FCA”)
- The FCA dismissed HCI’s 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”)
- The SCC dismissed HCI’s application for leave to appeal
- This case highlights that charities will generally face an uphill battle when requesting a court to postpone the application of a sanction, given the high threshold to prove that to do so would be “just and equitable”

5. *Howley v. Cape Breton University Board of Governors*, 2023 NSSC 34 (February 6, 2023)

- A Member of a university’s Board of Governors (the “Board”) sought judicial review of two decisions by the Board to exclude him from an *in camera* portion of a Board meeting on October 22, 2021
- The Board was the incorporated entity governing the university, and had been formed by a special act which gave it the power to make by-laws, rules and ordinances for the regulation of its own meetings, procedures, and orders of business
- In March 2021, the Board adopted a policy that certain topics (such as personnel issues) would be treated *in camera* and that certain portions of each Board meeting would be held *in camera*

The Member was the president of the university’s faculty association and was therefore not considered to be an “external board member”

The Board held a portion of the October 22, 2021 meeting *in camera* such that only external board members could attend and issued a decision that the Member could not attend this *in camera* portion

The Court found that the decision to exclude the member was reasonable since the Board was following its own policy (and the Court had not been asked to review the reasonableness of the policy itself) and acted in accordance with its governing documents and legislation

This case demonstrates that if a court is to be asked to find that a not-for-profit corporation was acting reasonably and fairly, as a prerequisite the not-for-profit should be complying with its policies, by-laws, and governing legislation

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