

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

## NOVEMBER 2019

### SECTIONS

Recent Publications and News Releases	2
In the Press	16
Recent Events and Presentations	17
Upcoming Events and Presentations	17
Contributors	18

### HIGHLIGHTS

Recent Developments in IT Law Affecting Charities and NFPs
CRA News
Legislation Update
Corporate Update
CRA Indicates Meals Supplied by Charities to Seniors Are Not Generally Taxable
Alberta Court Finds Society's By-law Invalid due to Inadequate Approval
Ontario Court Reluctant to Intervene in Seminary Board Dispute Employee Taking Videos of Customer Results in Termination for Cause
Privacy Law Update
Accessibility Compliance Reporting and Accessible Websites Deadlines Approaching
Ontario Nonprofit Network Publishes Report on Sector Survey
Imagine Canada Publishes Report on Corporate Community Contributions
The 26 <sup>th</sup> Annual Church & Charity Law Seminar™ November 7, 2019

### [The 13th Annual Ottawa Region Charity & NFP Law Seminar](#)

**Thursday February 13, 2020**

Hosted by Carters Professional Corporation in Ottawa, Ontario,  
Guest Speaker includes **Tony Manconi**, Director General of the Charities Directorate of the CRA  
[Brochure](#) and [online registration](#) are available on our website.

### Get on Our Mailing List:

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

## RECENT PUBLICATIONS AND NEWS RELEASES

### **Recent Developments in IT Law Affecting Charities and NFPs**

By [Sean S. Carter](#), [Esther Shainblum](#) and [Luis R. Chacin](#)

The exponential development of new digital technologies in recent years has had a profound effect upon established concepts and principles of privacy law, intellectual property law, securities law, as well as charity and not-for-profit law, amongst others. Within this context, regulators are having to cooperate with each other in order to deal with digital technologies meant to reach users across multiple jurisdictions and harmonize their respective legal regimes to ensure that their respective jurisdictions remain competitive and are able to attract technology-oriented investments and talent.

As a result of this rapidly changing legal environment, new landmark court decisions are being released and legislation introduced on an increasingly frequent basis. In response to this changing legal landscape, this *Bulletin* is intended to provide a select summary of recent developments in the law over the last year dealing with Information Technology as it relates to charities and not-for-profits and their use of the Internet and social media.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 457](#).

### **CRA News**

By [Theresa L.M. Man](#)

#### **Update to the Guide for Completing Form T3010 Registered Charity Information Return**

On November 12, 2019, the Canada Revenue Agency (“CRA”) released a revised [Form T3010, Registered Charity Information Return](#) and accompanying [Guide T4033, Completing Form T3010 Registered Charity Information Return](#). While there are various minor changes to the T3010, the most notable change is replacing questions on political activities in Schedule 7 with questions on public policy dialogue and development activities (“PPDDAs”) that were introduced to the *Income Tax Act* (Canada) in December 2018. Under these new rules, charities may participate in PPDDAs without limitation, which has made the requirement to report the amount of a charity’s spending on political activities no longer relevant. To further reflect these new rules, the CRA also revised [Form T1236, Qualified donees worksheet / Amounts provided to other organizations](#), removing the reporting requirement for the amount of gifts that were intended for political activities.

In addition, Form TF725, *Registered Charity Basic Information Sheet* is no longer required to be filed with the T3010. As reported in the [November 2018 Charity & NFP Law Update](#), as of November 14, 2018, the CRA no longer provides charities with peel and stick bar code labels, which were part of Form TF725, with the T3010 annual information return package. In addition to that, now Form TF725 has altogether been removed as a requirement.

Charities subject to the Ontario *Corporations Act* filing a paper return are also required to file Form RC232, *Corporations Information Act Annual Return for Ontario Not-for-profits* with the T3010. However, if a charity received Form RC232-WS from the CRA, then the charity may file this form instead of Form RC232. Formerly, Ontario charities were required to file either Form RC232-WS, *Director/Officer Worksheet and Ontario Corporations Information Act Annual Return* (containing pre-populated corporate information) sent to charities with their Registered Charity Information Return package, or Form RC232.

## Legislation Update

By [Terrance S. Carter](#)

### **Ontario Bill 124, *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, Receives Royal Assent**

On November 7, 2019, Ontario [Bill 124, \*Protecting a Sustainable Public Sector for Future Generations Act, 2019\*](#) (“Bill 124”) received Royal Assent, with sections 1-38 being proclaimed into force on November 8, 2019. In accordance with the provincial government’s [Backgrounder](#), Bill 124 seeks to ensure that public sector compensation “reflects the province’s current fiscal reality” by establishing what the government’s Backgrounder describes as “a fair and reasonable approach to managing compensation”, as well as managing compensation growth. In this regard, Bill 124’s answer to this objective is to introduce a 1% cap annually on increases to public sector compensation for three years. Bill 124 applies its minimalist growth cap to certain public sector organizations, such as school boards, post-secondary institutions, children’s aid societies, not-for-profit long-term care homes, charitable or not-for-profit transfer payment recipients who received more than \$1 million in annual funding in 2018, and hospitals within the meaning of the *Public Hospitals Act*.

**Schedule 31 of Ontario Bill 100, *Protecting What Matters Most Act (Budget Measures), 2019* Proclaimed into Force**

Schedule 31 of Ontario [Bill 100, \*Protecting What Matters Most Act \(Budget Measures\), 2019\*](#) was proclaimed into force on November 4, 2019. This schedule amends the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) by adding a new Part III.1 on “Data Integration”. New Part III.1 generally allows for the Government of Ontario to create “data integration units” to collect and use personal information, which may include that of charities and not-for-profits, from various sources, including institutions under FIPPA. In other words, Part III.1 allows provincial agencies and ministries to indirectly collect personal information from other provincial agencies and ministries, which may then be used to compile information to enable analysis for the allocation of resources, and for planning and evaluating the delivery of programs and services provided or funded by the Government of Ontario. The schedule also amends the grounds on which personal information can be disclosed by public sector organizations to law enforcement agencies.

**Ontario Bill 138, *Plan to Build Ontario Together Act, 2019*, Passed Second Reading**

Ontario’s Budget [Bill 138, \*Plan to Build Ontario Together Act, 2019\*](#) (“Bill 138”) was introduced in the Legislative Assembly of Ontario on November 6, 2019. As of November 27, 2019, Bill 138 had passed Second Reading and has been referred to the Standing Committee on Finance and Economic Affairs. Bill 138 amends, among others, the *Child, Youth and Family Services Act, 2017* (“CYFSA”); the *Personal Health Information Protection Act, 2004* (“PHIPA”); and the *Co-operative Corporations Act*, which is discussed in the [Corporate Update](#), below.

Bill 138 amends the CYFSA by allowing a justice of the peace to issue warrants authorizing peace officers to bring a child to a place of safety in circumstances involving the child leaving or being removed from a child welfare authority’s care. It also introduces amendments related to the manner in which service providers request corrections to records of information.

Among the changes to PHIPA, Bill 138 prohibits the use of de-identified personal health information to identify an individual, subject to certain exceptions. Bill 138 also allows the Lieutenant Governor in Council to make regulations regarding the collection, use and disclosure of personal health information by and to Ontario Health, as well as regarding the collection, use and disclosure of personal health information by an Ontario Health Team. Further, Bill 138 gives Ontario’s Information and Privacy Commissioner the power to order the return of personal health information records that were improperly

collected, used or disclosed, but only if that would not be reasonably expected to adversely affect the provision of health care to an individual.

### **Ontario Bill 136, *Provincial Animal Welfare Services Act, 2019*, Passed Second Reading**

On October 30, 2019, Ontario [Bill 136, \*Provincial Animal Welfare Services Act, 2019\*](#) (“Bill 136”) was introduced in the Legislative Assembly of Ontario. As of November 27, 2019, Bill 136 had passed Second Reading and was referred to the Standing Committee on Justice Policy. Bill 136 enacts the *Provincial Animal Welfare Services Act, 2019*, and repeals the *Ontario Society for the Prevention of Cruelty to Animals Act* (“OSPCA Act”). Bill 136 was introduced as a result of the Ontario Superior Court of Justice decision in [Bogaerts v Attorney General of Ontario](#) (discussed in the [January 2019 Charity & NFP Law Update](#)) where the court found that it was unconstitutional for the government to have enacted legislation that delegated search and seizure powers to a private organization, the Ontario Society for the Prevention of Cruelty to Animals (“OSPCA”). While these provisions of the OSPCA Act were invalidated, the court suspended its declaration for a year (“interim period”) in order to allow the legislature to establish a new framework for animal welfare enforcement.

Following this, as recently reported in the [June 2019 Charity & NFP Law Update](#), the OSPCA relinquished its responsibilities with respect to the enforcement of animal welfare legislation in Ontario in March 2019. Subsequently, Ontario [Bill 117, \*Ontario Society for the Prevention of Cruelty to Animals Amendment Act \(Interim Period\), 2019\*](#) was passed in order to address the interim period, receiving Royal Assent on June 6, 2019. In a decision of the Court of Appeal of Ontario released November 14, 2019 ([Ontario \(Attorney General\) v Bogaerts](#)), the court set aside the application judge’s declaration of invalidity, holding that the OSPCA’s search and seizure powers were not unconstitutional. Nonetheless, the OSPCA has relinquished its search and seizure powers, and Bill 136 will continue to be debated at the Legislative Assembly of Ontario.

### **Part X of the *Child, Youth and Family Services Act, 2017* (Ontario) Coming into Force**

On January 1, 2020, [Part X of the CYFSA](#), which sets out the privacy framework for Ontario’s child and youth sector, will be brought into force. As was reported in the [May 2018 Charity & NFP Law Update](#), the CYFSA replaced the *Child and Family Services Act*. Once in force, Part X of the CYFSA will establish new rules for the collection, use, and disclosure of, and access to, personal information held by ministry-funded and licensed service providers. Part X of the CYFSA fills in the “legislative gap” that presently

exists in the child and youth service sector with regard to the personal information of children and youth by providing more consistent protections and rights for children, youth, and families.

## **Corporate Update**

By [Theresa L.M. Man](#)

### **Amendments to Nova Scotia's *Co-operative Associations Act***

Nova Scotia's [Bill 197, \*An Act to Amend Chapter 81 of the Revised Statutes, 1989, the Companies Act, Chapter 98 of the Revised Statutes, 1989, the Co-operative Associations Act, and Chapter 101 of the Revised Statutes, 1989, the Corporations Registration Act\*](#) received Royal Assent on October 30, 2019. These changes will permit co-operatives to keep register and recordkeeping requirements required under the *Co-operative Associations Act* electronically. In particular, they may store registers and records in a bound or loose-leaf format or in a photographic film format, or may enter or record them “in a system of mechanical or electronic data processing or an information storage device that is capable of reproducing information in an intelligible written format within a reasonable time.” When requested by a person entitled to examine the register or record, co-operatives must make a reproduction available or provide facilities to allow the person to examine and make copies of the register or record. However, co-operatives are required to “take reasonable precautions” to preserve and maintain the registers and records by “preventing their loss or destruction, preventing false entries and facilitating the detection and correction of inaccuracies.”

As well, directors will be permitted to attend board meetings by telephonic, electronic or other means that allow for all directors to communicate adequately with one another during the meeting. Further, directors of co-operatives will be able to pass written resolutions in lieu of a meeting of the directors or a committee of the directors, provided that the resolutions are signed by all directors entitled to vote on that resolution.

### **Proposed Amendments to Ontario's *Co-Operative Corporations Act***

Ontario's Budget [Bill 138, \*Plan to Build Ontario Together Act, 2019\*](#), which passed Second Reading on November 27, 2019 (as discussed in the [Legislation Update](#) above), proposes to amend the *Co-operative Corporations Act*. Bill 138 proposes, among other things, to remove the restriction on co-operative corporations from conducting 50 percent or more of their business with non-members, provided that the corporation is authorized to do so by its articles of incorporation or by-laws. Further, Bill 138 proposes to amend the conditions for exemption from certain audit provisions, and to repeal filing debt obligations

under section 53 and financial statement and auditors' report filing obligations under section 141. Bill 138 also proposes to amend the *Co-operative Corporations Act* to provide, where the primary object of a co-operative corporation is to provide employment to its members, that at least 75 percent of permanent full-time employees and 75 percent of all employees must be members of the co-operative corporation, unless otherwise prescribed by regulation.

## **CRA Indicates Meals Supplied by Charities to Seniors Are Not Generally Taxable**

By [Ryan M. Prendergast](#)

On November 6, 2019, the CRA released a GST/HST Ruling in document 189695r concerning the application of the goods and services tax ("GST") and harmonized sales tax ("HST") to prepared meals supplied by a charity ("Charity") to seniors in a seniors' residence facility (the "Facility"). The Charity is a registered charity for income tax purposes, and is a charity for GST/HST purposes, though it is not registered for GST/HST purposes. The Charity leases and operates a cafe in the Facility where it "provides food security to marginalized individuals" by preparing and serving food almost exclusively to senior residents of the Facility for consideration.

The CRA found that the Charity made supplies of food and beverage to seniors at their place of residence, *i.e.* the Facility, and was doing so under a program for that purpose. Based on this, the CRA ruled that the Charity's supplies of food and beverages to residents of the Facility would be exempt supplies pursuant to section 4 of Part V.1 of Schedule V to the *Excise Tax Act* ("ETA") and that such supplies would not be subject to GST/HST. This section provides a GST/HST exemption for supplies of food or beverages that are made by charities to seniors, underprivileged individuals, or individuals with a disability, and which are made under a program established and operated to provide prepared food to these individuals in their places of residence. Given this provision, the CRA added that a supply of food and beverage to a guest of the Facility would be subject to GST/HST, unless the supply was to another senior, or to an underprivileged or disabled individual.

The CRA also added that no tax is payable in terms of the Charity's taxable supplies, because the Charity is not registered for GST/HST, provided however that it is a small supplier for GST/HST purposes and is not required to be registered for the GST/HST.

## Alberta Court Finds Society's By-law Invalid due to Inadequate Approval

By [Esther S.J. Oh](#)

The Court of Queen's Bench of Alberta released its decision in [\*The Canadian Islamic Trust Foundation v The Muslim Community of Edmonton Mosque and Muslim House\*](#) on November 13, 2019. The case involved a legal challenge to the valid adoption of the by-law for The Muslim Community of Edmonton Mosque and Muslim House (the "Society"), which was purported to have been adopted by the members at a membership meeting held on March 9, 2014 ("2014 By-law"). In this regard, the Canadian Islamic Trust Foundation (the "Foundation"), a founding organization of the Society with the right to approve amendments to the Society's by-law (as set out in the Society's prior existing by-law from 1997), together with individuals associated with the Society, sought a declaration from the court invalidating the 2014 By-law.

The Foundation alleged that there were irregularities in the process to obtain membership approval over the 2014 By-law, including invalid status of the members who had voted to approve the 2014 By-law, as well as alleged irregularities in the process used to call the membership meeting to approve the 2014 By-law. These arguments were unsuccessful, as the court found the Foundation had failed to introduce the necessary evidence to support those arguments. The Foundation also alleged that the 2014 By-law was invalid on the basis that the Foundation's approval was not provided (as required by its previous by-law from 1997). In this regard, there was no dispute between the parties that the Society's previous by-laws adopted in 1987 and 1997 were validly enacted.

In response, the Society argued that the Foundation's approval had been provided by claiming that the Foundation's approval was granted by an individual named Mr. G. Nabi Chaudhary, who had purported to provide written approval of the 2014 By-law on behalf of the Foundation and on behalf of another organization that had no approval rights of the Society's by-law. However, the court found that the Society failed to introduce evidence confirming that Mr. Chaudhary had the valid authority to approve the Society's 2014 By-law on behalf of the Foundation, as the Society failed to demonstrate that Mr. Chaudhary had an official position at the Foundation, and failed to provide information outlining the basis on which Mr. Chaudhary had the valid authority to act as the Foundation's representative (*e.g.* that the Foundation had delegated its approval power to him). As a side comment, the court found that the written approval signed by Mr. Chaudhary approving the 2014 By-law lacked the wording confirming the Foundation's approval over the substantive changes reflected in the 2014 By-law. Instead, the written



approval contained wording purporting to approve the “processes” followed by the Society to approve the 2014 By-law, which were irrelevant insofar as the Foundation’s approval of the 2014 By-law was concerned. The court also noted earlier email correspondence was introduced into the evidence which demonstrated the Society’s own belief that the Foundation had not approved the 2014 By-law (contrary to the position taken by the Society before the court).

When adopting new by-laws and by-law amendments, it is essential that charities and not-for-profits fully comply with all requirements set out in their existing by-law, including the requirement to obtain the approval of an external organization over proposed by-law changes, where applicable. All steps taken to comply with the requirements to adopt a new by-law amendment should be carefully documented within the corporate records, in the event of future questions or legal challenge. Failure to comply with one aspect of the by-law approval requirements can invalidate the entire by-law on the basis that all appropriate requirements were not met, as occurred in this case.

## **Ontario Court Reluctant to Intervene in Seminary Board Dispute**

By [Jennifer M. Leddy](#) and [Terrance S. Carter](#)

The Ontario Superior Court of Justice released its decision on October 21, 2019 in [Amin-Hussain v Yousuf](#), concerning a deadlock between four directors of the Madina Seminary (“Seminary”), a registered charity. The Applicants, two directors of the Seminary, sought to sell the Seminary’s property in Mississauga (the “Property”) to pay off significant debts owed by the Seminary, while the remaining two directors, the Respondents, would not provide consent. As the Seminary’s by-laws require the corporation to be managed by four directors, and require a majority of directors to conduct any business, including the sale of property, this resulted in a deadlock with two directors on each side.

The Seminary purchased the Property in 2015 for \$3,950,000, which was financed through a mortgage in the amount of \$2,200,000, personally guaranteed by three of the directors. The Seminary had difficulties almost from the beginning in meeting its operating costs, paying its mortgage and repaying interest free loans. After many extensions, it defaulted on its mortgage and the mortgagee sought judgment and a writ of possession. The Seminary survived for a period on overdue interest-free loans with no plans to pay them back. In fact, one of the Applicants had, at times, mortgaged his own personal property to pay off Seminary loans. At a directors’ meeting on July 30, 2018, the directors discussed listing the Property, but

the deadlock between them ultimately meant that the Property could not be sold. The Applicants therefore sought an order from the court to exercise its inherent jurisdiction and order that the Property be sold.

The court relied on the Supreme Court of Canada's decision in *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall* ("Wall"), discussed in [Church Law Bulletin No. 54](#), stating that "as a general rule, religious organizations cannot seek judicial review to solve disputes that may arise between them where there are concerns of procedural fairness." Three exceptions to this rule outlined in Wall are (1) reviewing a state action; (2) reviewing matters of procedural fairness concerning a religious group's adherence to its own procedures where legal rights are at stake; and (3) where the matter is justiciable. While the court noted that Wall concerned judicial review, and this case did not, it found that the principle from Wall that "interference in religious organizations and their decision-making process should be avoided" still applied in this case. In effect, the Applicants were asking the court to use its inherent jurisdiction to overturn the directors' decision because of the unreasonableness of the Respondents' position. The court refused to do so.

The court also found that it was inappropriate to intervene because the Seminary already had a governance structure in its by-laws and there was no procedural unfairness. Further, because the Applicants had asked the court to use its jurisdiction to force the Respondents to act according to the Applicants' wishes, contrary to the Seminary's by-laws, the court held that "such an order in and of itself may result in procedural unfairness."

Finally, the court also stated that there was no reason to intervene when the Appellants had other "clear and well-established options" available, such as commencing an action with respect to the monies they had loaned to the Seminary; notifying the mortgagee that they had withdrawn their personal guarantee on the mortgage; campaigning to elect directors or members that would be supportive of the sale; or following the procedure in section 127.2 of the *Corporations Act* (Ontario) to remove directors not acting in the corporation's best interests through a majority vote of the members. As such, the court dismissed the application, noting that the action commenced by the mortgagee, along with enforcement options available to other creditors, would likely compel the Respondents to either agree to the sale or find other ways to pay off the mortgage, loans, judgments, and other probable lawsuits.

This case is a reminder to all charities and not-for-profits, and not just religious organizations, of the importance of carefully crafted by-laws. As noted by the court, "[w]hen the by-laws of the Madina Seminary were drafted, perhaps it was not anticipated that the directors would ever disagree in the way

they have. It is unfortunate that it was not thought prudent to allow for an uneven number of directors or set forth a procedure for when there is a tie vote.” As demonstrated in this case, where by-laws have been properly enacted, courts are reluctant to intervene in a charity’s internal matters, even where the result to the charity may be unfortunate.

## **Employee Taking Videos of Customer Results in Termination for Cause**

By [Barry W. Kwasniewski](#)

On September 30, 2019, the Court of Queen’s Bench of New Brunswick (the “Court”) released its decision in [Durant v Aviation A. Auto Inc.](#) (“*Durant*”), finding that an employee’s surreptitious taking of photograph and videos of a female customer without her consent or knowledge constituted just cause for the employee’s dismissal from employment. In this motion for summary judgment, the Court applied a contextual approach to determine that the employee, Robert Durant’s (“Mr. Durant”) misconduct was egregious as it invaded the female customer’s privacy, which was incompatible with Mr. Durant’s employment obligations towards his employer, Aviation A. Auto Inc. This *Charity & NFP Law Bulletin* summarizes the Court’s reasoning in *Durant*, the principles of which are relevant to charities and not-for-profits as employers.

For the balance of this Bulletin, please see [Charity & NFP Law Bulletin No. 458](#).

## **Privacy Law Update**

By [Esther Shainblum](#)

### **One Year Anniversary - OPC Reviews the First Full Year of Mandatory Data Breach Reporting and Recordkeeping Requirements**

November 1, 2019 marked the one-year anniversary of the coming into force of mandatory data breach reporting and recordkeeping requirements under the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”) and accompanying regulations (previously reported in [Charity & NFP Law Bulletin No. 429](#)). In appropriate recognition of this milestone, the Office of the Privacy Commissioner of Canada (“OPC”) released a [blog post](#) (the “OPC Report”) outlining its findings from the first full year of mandatory data breach reporting and providing an alarming snapshot of the privacy challenges faced by organizations in Canada.

The OPC Report revealed that, in a single one-year period, a shocking 28 million Canadians were impacted by a data breach. While some of 680 breach reports received by the OPC during the year arose from large organizations and headline-grabbing breaches, the OPC Report pointed out that a significant number of reports came from small- and medium-sized businesses, which are also impacted by data breaches. The bulk of the reported breaches – 58% – involved unauthorized access to personal information. Some unauthorized access incidents resulted from employee snooping, while others (one in four reported breaches), involved external attackers using social engineering techniques such as phishing and impersonation to gain access to personal information. 12% of reported breaches were due to the loss of a computer, other devices or paper documents while 8% involved the theft of documents, computers or computer components. 5% of reported breaches were due to accidental disclosure of personal information, such as situations in which personal information was mailed or emailed to the wrong person. The OPC Report statistics indicate that, while privacy breaches can result from cyber-attack incidents, such as phishing, social engineering and data theft, a significant percentage of breaches arise from internal organizational causes such as human error or employee snooping.

The OPC Report advised organizations to take steps to reduce privacy breaches including: (1) understanding their data so they can protect it – this means knowing what personal information they have and what they do with it; (2) assessing their vulnerabilities – testing their technical safeguards as well as looking at other risk exposures, such as contracts with third party service providers and their employees’ training and understanding of their responsibilities; and (3) staying on top of current trends and breaches in their industry, as attackers often use the same attacks against multiple organizations. The OPC Report also provided some tips to organizations that are responding to a breach, including to start with containment, designate someone to lead the response and investigation, and ensure that evidence is preserved.

Although the OPC Report deals exclusively with organizations subject to PIPEDA, it provides a snapshot of the privacy risks and exposures facing all organizations in Canada. Privacy breaches can result in legal liability, including class action litigation, regulatory investigations and enforcement, business interruption, financial loss and, perhaps most important in the charity and not for profit sector, reputational damage. Charities and not for profits should be proactively taking steps to reduce their risk of a privacy breach as well as putting in place incident response plans to guide their response to a privacy breach if and when it occurs.

## **Canadian Bar Association Submissions on *Privacy Act* Modernization**

In response to discussion papers issued by Justice Canada in June 2019, the Canadian Bar Association's ("CBA") Privacy and Access Law Section, with comments from the CBA Aboriginal Law Section, made a [submission](#) on the modernization of the *Privacy Act*. The CBA submission makes clear that the *Privacy Act*, which was enacted in 1982, "has not kept pace with societal and technological developments, or with parallel legislation for the private sector, most notably the *Personal Information Protection and Electronic Documents Act* (PIPEDA)." As such, in order to modernize the *Privacy Act*, the CBA highlights the importance of ensuring that Canadians' expectation of privacy is treated as paramount, for example, through adopting an explicit "necessity" test when collecting, using or disclosing personal information in the public sector. The CBA also recommends that openness and transparency of government institutions in their personal information protection practices be "buttressed by minimum legislative requirements." Data should be collected, used, shared and secured responsibly, with the government institutions having a general duty under the Act to protect personal information with safeguards appropriate to the sensitivity of information.

The CBA also reinforces that the Act should provide greater certainty for Canadians and an easy and comprehensive way for finding out when their personal information is collected, used, shared and disclosed across government institutions by, among other things, imposing a requirement on the government to notify individuals of any such collection, use and disclosure of their personal information.

## **Accessibility Compliance Reporting and Accessible Websites Deadlines Approaching**

By [Barry W. Kwasniewski](#)

In order to meet the current accessibility requirements under the *Accessibility for Ontarians with Disabilities Act* ("AODA"), charities and not-for-profits with 20 or more employees, as well as public-sector organizations, are required to submit accessibility compliance reports pursuant to subsection 14(1) of the AODA. The [requirements and deadlines](#) vary depending on the type and size of the organization, with the deadlines for reporting cycles provided in [Ontario Regulation 191/11, Integrated Accessibility Standards](#).

All designated public sector organizations under the AODA are required to file an accessibility compliance report showing compliance with accessibility standards by December 31, 2019. For charities and not-for-profits with 20 or more employees, the deadline to meet this requirement is December 31, 2020.

Further, charities and not-for-profits with 50 or more employees, as well as all public sector organizations, will have until January 1, 2021 to meet the [accessibility requirements](#) for all public website and web content posted after January 1, 2012. In order to do so, the website and web content must meet the WCAG 2.0 Level AA standard (with some exceptions) that has been internationally accepted. Where online content cannot comply with this standard because of its nature, it may still be posted online, but organizations must be able to provide it in an accessible format when requested.

## **Ontario Nonprofit Network Publishes Report on Sector Survey**

By [Jacqueline M. Demczur](#)

On November 11, 2019, the Ontario Nonprofit Network published [Sector 360° Survey: Taking the pulse of Ontario's Nonprofit Sector](#) (the “Report”), outlining its findings from a survey of 447 non-profits, charities, and non-profit co-operatives examining the impact of the 2019 Ontario Budget and related government policy changes on Ontario’s not-for-profit sector. The 2019 Ontario Budget proposed, among other matters, a material reduction in government funding to the not-for-profit sector, the implications of which were earlier discussed in [Charity & NFP Law Bulletin No. 448](#).

The Report indicates that survey respondents were concerned with the impact of budget cuts on their funding streams. Further, organizations raised concerns about the speed at which provincial decisions are made, along with a lack of information and engagement provided by the provincial government to the sector. In this regard, 30% of respondents had decreased their budgets directly as a result of the 2019 Ontario Budget and related policy changes, while a further 11% were unsure of the impact due to a lack of information available to them from the provincial government. Respondents also indicated that fluctuating budgets impacted not-for-profits’ abilities to plan and give consistent service, leaving them in a state of uncertainty. Additionally, 27.6% of respondents indicated that their sector was subject to restructuring, with “major changes” coming to the childcare, employment and training, and healthcare sectors, and expected changes to the community housing, arts, and sports sectors. These changes also left not-for-profits in a state of uncertainty.

The Report also indicates that different sub-sectors were impacted differently by budget cuts. While not-for-profits in the arts, cultural and tourism sub-sector, social services sub-sector, and education and research sub-sector generally saw decreases in their budgets as a result of the 2019 Ontario Budget and

related government policy changes, 46% of the respondents in the healthcare sector indicated that their budgets remained the same, and a further 26.7% reported an increase in their budget.

Not-for-profits also indicated long-term challenges resulting from the ripple effect of budget cuts. The Report indicates that 50% of respondents did not have three months' reserve funds, suggesting that sustainability for not-for-profits may be challenging, particularly in a volatile environment where government funding has been coming late. Regarding the volatility of the sector, the Report also notes an increase in barriers to developing social enterprises in Ontario "in the wake of the provincial government's decision to walk away from the 2016-2021 Social Enterprise Strategy last spring." However, not-for-profits raised the greatest concern about systems transformations and the impact of these budget cuts on the communities that they serve. Over one third of the respondents indicated that their ability to meet the demands of their communities would decrease in 2020.

Despite the findings, the Report indicates that not-for-profits were "still holding on to their optimism." In this regard, more than half of the respondents indicated that they were "confident about making progress towards their missions." The Report also found that not-for-profits are continuing to become more engaged in advocacy. As a result, the Report recommends better engagement and enhanced partnerships with the government for not-for-profits in relation to delivering programs and services on their behalf. The Report concludes that, despite the obstacles, not-for-profits are resilient and can be flexible, finding creative ways in uncertain times to solve the problems that they face.

## **Imagine Canada Publishes Report on Corporate Community Contributions**

By [Terrance S. Carter](#)

In November 2019, Imagine Canada published [\*Profit, Purpose, and Talent: Trends and Motivations in Corporate Giving & Volunteering\*](#) (the "Report"), a report on corporate community investment. The Report will be of interest to charities and not-for-profits in understanding trends and motivations in corporate giving and volunteering in Canada. The Report summarizes findings from two Imagine Canada surveys of Canadian companies and of the national workforce about corporate community contributions, and discusses the role that prominent corporations and their employees play in philanthropy in Canada.

Of note in the Report, approximately 50% of the surveyed employees indicated that their employers' charitable reputation was a factor in their decision to join the company. They also expressed that they were willing to forego, on average, 12% of their salary to work at a company that was more committed to

providing community support. Additionally, employees at companies with payroll giving programs, workplace giving campaigns, and matching gifts expressed a much higher likelihood of donating to charities.

With regard to the companies surveyed, despite a decline in donations from individuals, 43% of companies indicated that they planned to increase their budgets for community investment. Further, companies that were “highly effective at community investment” believed they had innovative community investment teams, and were much more likely to incorporate their social objectives into their mission or purpose statements, as well as into their broader company strategies. These companies also showed a propensity to focus on optimizing the benefits of their investment, both for their business, as well as for the community, while setting up infrastructure to support community investment. In reviewing the findings from both employers and employees, the Report states that “companies do not have to sacrifice profits to give back to their communities.”

Charities and not-for-profits will be interested in reviewing the Report, which provides a compelling overview of the advantages to corporate community contributions. As indicated in the Report, employees value their employers’ community contributions, which can lead to long-term business advantages for corporations and “inspire generosity” amongst employees.

## **The 26<sup>th</sup> Annual Church & Charity Law Seminar™ November 7, 2019**

The 26<sup>th</sup> Annual Church & Charity Law Seminar™ hosted by Carters Professional Corporation in Mississauga, Ontario, on November 7, 2019, had 928 registered from the charitable and not-for-profit sector, including leaders of charities and churches, as well as accountants and lawyers. Designed to assist churches and charities in understanding developing trends in the law in order to reduce unnecessary exposure to legal liability, the Church & Charity Law™ Seminar has been held annually since 1994. The date for the 27<sup>th</sup> Annual Church and Charity Law Seminar has been set for **Thursday, November 5, 2020**, so save the date.

## **IN THE PRESS**

[Charity & NFP Law Update – October 2019 \(Carters Professional Corporation\)](#) was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.



## **RECENT EVENTS AND PRESENTATIONS**

**26th Annual Church & Charity Law Seminar™** was hosted by Carters Professional Corporation in Greater Toronto Area, Ontario, on Thursday, November 7, 2019.

**Gift Acceptance Policies** was presented by Terrance S. Carter and Theresa L.M. Man at the AFP Congress 2019, held on Tuesday November 26, 2019.

## **UPCOMING EVENTS AND PRESENTATIONS**

[AJAG Professional Development](#) will host a session on December 10, 2019 in Markham, Ontario, entitled Charities and Not-for-Profit – Year-End Wrap Up and More presented by Terrance S. Carter.

## CONTRIBUTORS

Editor: Terrance S. Carter

Assistant Editors: Adriel N. Clayton and Ryan M. Prendergast



**Sepal Bonni**, B.Sc., M.Sc., J.D., Trade-mark Agent - Called to the Ontario Bar in 2013, Ms. Bonni practices in the areas of intellectual property, privacy and information technology law. Prior to joining Carters, Ms. Bonni articulated and practiced with a trade-mark firm in Ottawa. Ms. Bonni represents charities and not-for-profits in all aspects of domestic and foreign trade-mark prosecution before the Canadian Intellectual Property Office, as well as trade-mark portfolio reviews, maintenance and consultations. Ms. Bonni assists clients with privacy matters including the development of policies, counselling clients on cross-border data storage concerns, and providing guidance on compliance issues.



**Terrance S. Carter**, B.A., LL.B, TEP, Trade-mark 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, 2019), 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. He is editor of [www.charitylaw.ca](http://www.charitylaw.ca), [www.churchlaw.ca](http://www.churchlaw.ca) and [www.antiterrorism.ca](http://www.antiterrorism.ca).



**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 articulated 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.



**Luis R. Chacin**, LL.B., M.B.A., LL.M. - Luis was called to the Ontario Bar in June 2018, after completing his articles with Carters. Prior to joining the firm, Luis worked in the financial services industry in Toronto and Montreal for over nine years, including experience in capital markets. He also worked as legal counsel in Venezuela, advising on various areas of law, including pensions, government sponsored development programs, as well as litigation dealing with public service employees. His areas of practice include Corporate and Commercial Law.



**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 charity, anti-terrorism, real estate, corporate and commercial law, and wills and estates, in addition to being the firm's research lawyer and 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.



**Adriel N. Clayton, B.A. (Hons), J.D.** - Called to the Ontario Bar in 2014, Adriel Clayton rejoins the firm to manage Carters' knowledge management and research division, as well as to practice 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*<sup>TM</sup>.



**Barry W. Kwasniewski, B.B.A., LL.B.** – Mr. Kwasniewski joined Carters' Ottawa office in 2008, becoming a partner in 2014, 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 provides legal advice pertaining to insurance coverage matters to charities and not-for-profits.



**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 (CCCCB). 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."



**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 chair of the CBA Charities and Not-for-Profit Law Section and a member 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*. Ms. Oh has written numerous articles on charity and not-for-profit legal issues, including incorporation and risk management for [www.charitylaw.ca](http://www.charitylaw.ca) and the *Charity & NFP Law Bulletin*. Ms. Oh is a regular speaker at the annual *Church & Charity Law Seminar*<sup>TM</sup>, 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](http://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.



**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.



**Urshita Grover, H.B.Sc., J.D.** – Ms. Grover graduated from the University of Toronto, Faculty of Law in 2019 and is a Student-at-Law at Carters. While attending law school, Urshita worked at a technology law firm, Limpert & Associates, assisting on client matters and conducting research in IT law, and also worked as a research intern for a diversity and inclusion firm, Bhasin Consulting Inc. She has volunteered with Pro Bono Students Canada, and was an Executive Member of the U of T Law First Generation Network. Prior to attending law school, Urshita obtained her Honours Bachelor of Science degree from the University of Toronto, with majors in Neuroscience and Psychology.

## 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](mailto: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](#).

**Copyright:** All materials from Carters are copyrighted and all rights are reserved. Please contact us for permission to reproduce any of our materials. All rights reserved.

**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.

tcarter@carters.ca

(Counsel to Fasken)

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

### ASSOCIATES:

Esther Shainblum, B.A., LL.B., LL.M., CRM

eshainblum@carters.ca

Sepal Bonni B.Sc., M.Sc., J.D.

sbonni@carters.ca

Adriel N. Clayton, B.A. (Hons), J.D.

aclayton2@carters.ca

Luis R. Chacin, LL.B., M.B.A., LL.M.

lchacin@carters.ca

### STUDENT-AT-LAW

Urshita Grover, H.B.Sc., J.D.

ugrover@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