

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

FEBRUARY 2021

SECTIONS

Recent Publications and News	
Releases	2
In the Press	15
Recent Events and	
Presentations	15
Upcoming Events and	
Presentations	15
Contributors	16

HIGHLIGHTS

CHARITY AND NFP MATTERS

- ◆ Bill S-222 Proposes to Eliminate the “Own Activities” Requirement for Charities
- ◆ Charities Program 2018 to 2020 Report Shows Drop in Audits as Pandemic Struck
- ◆ Legislation Update
 - ◆ Bill C-256 Could Offer Capital Tax Exemption for Charities, but Includes a Fiscal Cost
 - ◆ Bill S-222, the *Effective and Accountable Charities Act*
 - ◆ Exemptions to *Police Record Checks Reform Act* Reconsidered for Removal
- ◆ Open Letter to Eliminate the “Own Activities” Requirement for Charities
- ◆ FINA Recommends Tax Relief, Funding Flexibility for Charities and NFPs
- ◆ Statistics Canada Releases Survey on Board Diversity
- ◆ New Tort of Internet Harassment Recognized in Ontario
- ◆ Nurse Suspended for Six Years Not Constructively Dismissed, Says OLRB
- ◆ AML/ATF Update
 - ◆ Public Safety Canada Updates List of Suspected Terrorist Groups
- ◆ The Ottawa Region 2021 Charity & Not-For-Profit Law Webinar Materials Now Available

COVID-19 UPDATE

- ◆ Ontario Transitioning to Colour-coded Response Framework
- ◆ Imagine Canada Sector Monitor Reports Ongoing Challenges for Charities During COVID-19

Get on Our Mailing List:

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

RECENT PUBLICATIONS AND NEWS RELEASES**CHARITY AND NFP MATTERS****Bill S-222 Proposes to Eliminate the “Own Activities” Requirement for Charities**

By [Terrance S. Carter](#) and [Theresa L.M. Man](#)

A new bill introduced in the Senate will hopefully provide registered charities in Canada with much needed and long-awaited reform concerning how they can work with organizations that are not registered charities or other types of “qualified donees.” On February 8, 2021, the Honourable Ratna Omidvar, Senator for Ontario, and former co-chair of the Special Senate Committee on the Charitable Sector, tabled [Bill S-222, the *Effective and Accountable Charities Act*](#) (the “Bill”), which received first reading the same day. The Bill proposes significant changes to several provisions in the *Income Tax Act* (“ITA”) governing charities. In a social media posting published on February 14, 2021, Senator Omidvar said her intention for the Bill is to enable Canadian charities “to establish equal partnerships [with] non-charities, while still ensuring accountability.” Laws governing Canadian charities must “catch up with” the rest of the world, Sen. Omidvar added. The Senator’s efforts in this regard are expected to receive broad support from the charitable sector in Canada. As well, a number of charity lawyers in Canada (including the authors of this *Bulletin*) have signed an open letter explaining the need for reform to the ITA and to eliminate the “own activities” requirement.

This *Bulletin* explains the background for the problems that currently exist for registered charities in working with non-charities, because of archaic requirements in the ITA that charities must meet the “own activities” test. These provisions have been interpreted by the CRA to require that a charity must exercise onerous “direction and control” when working through third parties that are neither registered charities nor other types of “qualified donees.” The *Bulletin* also reviews the proposed changes in the draft Bill and the anticipated benefit that it will have on the operation of charities in Canada.

For the balance of this *Bulletin*, please see [Charity & NFP Law Bulletin No. 486](#).

Charities Program 2018 to 2020 Report Shows Drop in Audits as Pandemic Struck

By [Jacqueline M. Demczur](#)

On February 3, 2021, the Charities Directorate of the Canada Revenue Agency (“CRA”) released its latest report on charities, entitled [Report on the Charities Program 2018 to 2020](#) (the “Report”). A drop in the percentage of audits being conducted, improving compliance, and modernizing its programs while reacting to the ongoing impact of COVID-19 are among the information items of interest included in the Report.

The Report is based on information from the Charities Directorate’s activity over the two years from 2018 to 2020, and includes a description of the “initial” impact of the COVID-19 pandemic on its operations. Much of the data in the Report is shown with the help of infographics and covers trends in the charitable sector for the past decade.

Based partially on some data drawn from self-reported T3010s, the Report indicates that there has been an increase since 2014 in the number of private foundations which are registered charities, and a decrease in the number of public foundations. Revenue from government sources amounted to the bulk of charities’ income, with \$183.9 billion between 2016 and 2018, compared with \$16.9 billion and \$8.4 billion from tax-receipted and non-tax-receipted gifts respectively during the same period. Charities reportedly spent an average of 75% of expenditures on charitable activities between 2016 and 2018. Over this same three-year period, 36% of charities reported carrying on activities outside Canada.

In reaction to the COVID-19 pandemic starting in March 2020, the Report notes how the Charities Directorate extended filing deadlines for T3010s, provided its employees with the ability to work remotely, and continued activities relating to the Advisory Committee on the Charitable Sector. The Report also offers information about the Canada Emergency Wage Subsidy (CEWS), which had over 90,000 applications and resulted in \$2.4 billion being paid out in approved funds. Updated facts and figures for the 2020 and 2021 fiscal years are expected in the next report from the Charities Directorate.

The Report advises that the Charities Directorate assessed the percentage of submitted charity applications in 2018 to 2020 as 12% for those with a “high” risk/complexity, 32% for “medium” risk, and 56% for a “low” risk. The percentage of audits carried out by the Charities Directorate has reportedly dropped from comprising 37% of the Charities Directorate’s compliance activities in 2015–2016 to 4% in 2019–20. Application outcomes from 2018 to 2020 averaged 75% registrations, with 17% abandoned applications and only 1% refusals to register. The most common reason for refusal was a “lack of information.”

According to the Report, the Charities Directorate has worked hard to modernize delivery of programs, offering them through the Internet, such as the CRA's My Business Account, and receiving online applications from applicants seeking charitable registration as well as existing charities to be able to file their annual charity information returns (T3010s).

An upgrade to its phone system during the 2018 to 2020 period has reportedly increased the Charities Directorate's capability to manage enquiries, with 10,855 written and 74,339 telephone enquiries being received from 2019 to 2020. The Report also contains additional information on the addition of a new category of qualified donee in 2020, namely Registered Journalism Organizations (RJOs), as well as consultations on political activities.

In its concluding comments, the Report indicates that the Charities Directorate remains "committed to maintaining the trust and confidence of the sector" through continuing to be "a modern, transparent and effective regulator, particularly during these challenging times". The Charities Directorate also indicates that it is focused on taking a "People First approach" in its dealing with the charitable sector "including meaningful dialogue and support to improve service delivery."

The Report's contents are insightful and will be helpful to those in the charities sector. Readers are encouraged to review the Report in detail for an up-to-date summary of the Charities Directorate's operations and initiatives going forward.

Legislation Update

By [Ryan M. Prendergast](#)

Bill C-256 Could Offer Capital Tax Exemption for Charities, but Includes a Fiscal Cost

A private member's bill introduced to Parliament in November could provide additional relief from tax and a new source of revenue for Canadian charities. Mr. Marty Morantz, M.P., tabled [Bill C-256, *An Act to amend the Income Tax Act \(donations involving private corporation shares or real estate\)*](#), in the House of Commons on November 26, 2020. Bill C-256 proposes to amend the ITA so that charities can receive donations of real estate and privately-held shares without being subject to capital gains tax. A cost estimate report published on January 25, 2021, available on the [website of the Parliamentary Budget Officer](#), estimates the fiscal cost of the Bill at \$42 million in 2020–21, rising eventually to \$198.8 million in 2024–25. On the other hand, the financial benefit to charities would be significant, with additional donations "due to behavioural effects of the policy" at \$53.2 million in 2020–21 and \$250.8 million in 2024–25;

total donations that could benefit from the policy would rise from \$212.2 million to over \$1 billion in the same time period.

Bill S-222, the *Effective and Accountable Charities Act*

Promising changes may be on the way concerning how charities can use their resources in conjunction with other organizations that are not qualified donees under the ITA. [Bill S-222, the *Effective and Accountable Charities Act*](#) received first reading in the Senate on February 8, 2021. More information is available in [Charity & NFP Law Bulletin No. 486](#).

Exemptions to *Police Record Checks Reform Act* Reconsidered for Removal

Ontario's Ministry of the Solicitor General is considering whether to narrow or remove certain exemptions to police record checks. Ontario Regulation 347/18: *Exemptions*, filed under the *Police Record Checks Reform Act, 2015* applies temporary exemptions to specific sectors and positions, such as police officers, correctional officers, child care workers and personnel in financial services oversight. A consultation document posted on the [Ontario Regulatory Registry website](#) on February 10, 2021 "seeks feedback from stakeholders on how the proposed changes to the current exemptions may affect different sectors." The temporary exemptions are set to expire on July 1, 2021. Although it is not anticipated that proposed changes to the temporary exemptions in O Reg 347/18 would result in new costs or significant changes in how police record checks are conducted, the Ministry encourages feedback from affected sectors from their perspective.

Open Letter to Eliminate the "Own Activities" Requirement for Charities

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

A number of charity lawyers across Canada have prepared an open letter entitled [Making It Easier to Do Good: Doing Away with the "Own Activities" Requirement](#) (the "Letter"). The Letter, released on February 19, 2021, summarizes key concerns with the "own activities" rules governing charities, and urges "legislative and regulatory reform to better facilitate the work of the charitable sector in Canada." It indicates that the key barrier to the efficient operation of charities is the "own activities" requirement under the ITA, which "imposes artificial constraints on charities' ability to work with third parties that do nothing to further this legitimate objective" of furthering the charity's charitable purposes. To this end, the Letter supports the revision of the rules regarding charitable work through non-qualified donees, both domestically and abroad. Amendments to legislation to eliminate the "own activities" requirement have

also been proposed through draft legislation in Bill S-222. The issues surrounding the current regime and draft legislation are discussed in greater detail in [Charity & NFP Law Bulletin No. 486](#).

FINA Recommends Tax Relief, Funding Flexibility for Charities and NFPs

By [Ryan M. Prendergast](#)

The House of Commons Standing Committee on Finance tabled its [2021 pre-budget consultation report](#) on February 16, 2021 (“the Report”). Titled, “Investing in Tomorrow: Canadian Priorities for Economic Growth and Recovery,” the Report includes 145 recommendations organized into five diverse topics: People; Communities; Business; Fiscal Policy, Regulatory Framework and Trade; and Environment and Climate Change. It takes into account how “deeply affected” Canadians have been by the COVID-19 pandemic. The recommendations “focus on measures to provide ongoing assistance to Canadians during the COVID-19 pandemic and support the recovery of the Canadian economy” and to “contribute to the government’s deliberations for the 2021 federal budget.”

Among the recommendations for Communities, the Report includes three recommendations concerning charities and non-profit organizations:

- **Recommendation 56:** Eliminate the capital gains tax on donations of shares in private corporations or real property to charities.
- **Recommendation 57:** Establish a fund to provide bridge operating grants for up to 12 months to essential community service organizations. Funding should be flexible to allow organizations to maintain operations and respond to emerging needs. This support should be made available for a three to six-month period as organizations recover from the impacts of COVID-19. Applications should outline need or financial duress, and what other programs have been accessed (or are unavailable), such as wage and rent relief. Support could be differentiated by subsector or relevant need – as immediate humanitarian support may be gauged differently than longer-term institutional goals that can be addressed at a later time.
- **Recommendation 58:** Review existing tax measures available to both individual and corporate donors and make appropriate amendments to encourage giving to, and supporting the recovery of, the health charities sector.

The Report also includes an infographic map with numbers for the spread of the pandemic. As of 28 January 2021, there had been 766,103 cases of COVID-19 in Canada, including 262,463 in Ontario, and nearly 20,000 Canadians died as a result.

The Report's inclusion of recommendations concerning charities and non-profit organizations is an encouraging step, and will be of interest to the charitable sector. Charities and not-for-profits will therefore want to review the Report and monitor the federal government's 2021 budget to see if these recommendations are taken into account.

Statistics Canada Releases Survey on Board Diversity

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

Statistics Canada released [Diversity of charity and non-profit boards of directors: Overview of the Canadian non-profit sector](#) on February 11, 2021, a report setting out the results of a crowdsourcing survey conducted from December 4, 2020, to January 18, 2021 (the "Survey"). The Survey had the objective of collecting information on the activities of charities and non-profit organizations ("NPOs") (although it is unclear whether this includes only s. 149(1)(l) NPOs under the ITA, or a broader range of not-for-profits), the individuals they serve and the diversity of those who serve on their boards of directors. The study surveyed 8,835 individuals, 6,170 of whom were directors of charities and NPOs.

The Survey found that over three quarters of participants were involved in charities and NPOs operating at the local or regional level. In contrast, only 3% of participants indicated that their organizations operated internationally. The main activities of organizations pertained to social services (22%), arts and culture (17%), sports and recreation (13%), education and research (12%), or health (9%). The main activities of the organizations varied somewhat based on their geographic level. With regard to population groups served, a majority (72%) reported that their organizations served at least two of the following groups, and 64% served at least three of those groups: youth; persons in poverty or with low income; newcomers or visible minorities; persons with disabilities; Indigenous persons; LGBTQ2+ individuals; and seniors.

In response to questions on board diversity, the survey found women formed the largest share of board members across most organizations, regardless of the populations they serve and their main activities. However, boards reflected lower representation of board members in diversity groups. For example, only 14% of participants were immigrants to Canada; 11% belonged to a visible minority group; 8% identified as LGBTQ2+ individuals; 6% were persons with a disability; and 3% were Indigenous. The representation of board members in diversity groups increased slightly for organizations mainly engaged in international activities (25%), religious activities (19%), and "law, advocacy and political" activities (18%). As well,

organizations with a written policy promoting board diversity were found to be more likely to report slightly higher representation of board members in diversity groups.

The results of the Survey will no doubt be of interest to the sector as a whole, as the Survey suggests the need for greater diversity on boards of directors for charities and NPOs. An important qualification to note about the Survey is that the results were derived from a crowdsourcing initiative rather than a sector-wide survey, and therefore might not necessarily be representative of the sector as a whole.

New Tort of Internet Harassment Recognized in Ontario

By [Esther Shainblum](#) and [Luis R. Chacin](#)

On January 28, 2021, the Ontario Superior Court of Justice released its decision in [Caplan v. Atas](#), recognizing a new common law tort of harassment in internet communications. The ruling emanated from a shocking, decades-long, international campaign of internet harassment and defamation against an “ever widening group of people”.

In the four actions underlying this decision, the defendant, Atas, was found to have carried out “extraordinary campaigns of malicious harassment and defamation” against a vast number of people, including her own lawyers, the lawyers and agents (and their relatives) of a bank that foreclosed on two properties owned by Atas in the early 2000s, as well as a former employer, its successor, owners, managers and employees, and their siblings, children and other family members, adding up to as many as 150 victims. The court found that Atas carried these acts over the internet on a number of sites, including social media, while hiding her identity with false names and pseudonyms, unchecked, for many years, with the intent of causing emotional and psychological harm. The Court determined that the majority of the thousands of postings were seriously defamatory of the plaintiffs, with a few being “merely abusive” and that Atas had posted or caused them to be posted. The Court noted that Atas had already ignored court orders to stop posting online.

The Court also determined that the existing privacy tort of intrusion upon seclusion was not applicable and that the existing tort of intentional infliction of mental suffering was not adequate to address the situation. The Court reviewed various reports and analyses regarding the prevalence and devastating impact of online harassment, which differs from other forms of harassment because it is an “unstoppable intrusion” that the perpetrator can perform from anywhere remotely and the victim has no escape in their own home or private domain. As well, stating that the facts of this case “cry out for a remedy” in the face

of insufficient traditional remedies, and noting that the Court of Appeal in *Merrifield v. Canada (Attorney General)* had left the door open for the tort of harassment to be recognized in another case, the Court held that:

[T]he tort of internet harassment should be recognized in these cases because Atas' online conduct and publications seek not so much to defame the victims but to harass them. Put another way, the intent is to go beyond character assassination: it is intended to harass, harr and molest by repeated and serial publications of defamatory material, not only of primary victims, but to cause those victims further distress by targeting persons they care about, so as to cause fear, anxiety and misery.

Based on American case law, the court proposed the following stringent test for the tort of harassment in internet communications:

where the defendant maliciously or recklessly engages in communications conduct so outrageous in character, duration, and extreme in degree, so as to go beyond all possible bounds of decency and tolerance, with the intent to cause fear, anxiety, emotional upset or to impugn the dignity of the plaintiff, and the plaintiff suffers such harm.

The Court held that the facts of these cases clearly met this stringent test.

As previous court orders and even incarceration had been ineffective to stop the harassment, and as Atas was indigent and no monetary compensation would be possible, the court vested title to the postings in the plaintiffs with ancillary orders enabling them and other victims to take steps to have the content removed. The Court also granted a permanent injunction prohibiting Atas from any internet communications with respect to all plaintiffs and other victims of her defamation and harassment, together with their families, related persons and business associates, to prevent her from shifting her focus to a new set of victims.

It is unclear whether these remedies will be sufficient to undo the harm caused by Atas to her victims and their reputations.

However, this decision is an important step for the common law in Ontario and provides new and creative remedies that may assist victims of internet harassment. This case is also a reminder of the challenges and risks introduced by the internet and the need for the boards of directors of charities and not-for-profits with an online presence to ensure that they have appropriate policies and procedures in place to protect personal information as well as monitor and control the use of information technology by employees and volunteers, both within and outside of the workplace environment. Charities and not-for-profits should

have appropriate social media and information technology use policies in place, as is increasingly becoming the norm in terms of governance. Such policies provide a set of rules and standards to govern how individuals employed by or associated with the organization conduct themselves online and allow the organization to hold them accountable for misconduct.

Nurse Suspended for Six Years Not Constructively Dismissed, Says OLRB

By [Barry W. Kwasniewski](#)

Waiting six years while on unpaid leave from work is too long to claim constructive dismissal, according to the Ontario Labour Relations Board (“OLRB”). In [Basdaye Kissoon v Victorian Order of Nurses \(VON\)](#), the applicant employee alleged constructive dismissal and reprisal against her employer, neither of which were found by the OLRB in its December 7, 2020 decision. The case offers a summary of the principles of constructive dismissal, which is important for employers, including charities and not-for-profits, to know. In a common law civil action, constructive dismissal can result in expensive termination payments in lieu of reasonable notice if employers unilaterally change the terms of the employment contract, resulting in a potential wrongful termination claim by an employee. This *Bulletin* summarizes the facts of the case and the legal analysis applied by the OLRB.

For the balance of this *Bulletin*, please see [Charity & NFP Law Bulletin No. 487](#).

AML/ATF Update

By [Terrance S. Carter](#), [Nancy E. Claridge](#) and [Sean S. Carter](#)

Public Safety Canada Updates List of Suspected Terrorist Groups

Further to an [announcement](#) released by Public Safety Canada on February 3, 2021, the Government of Canada has added 13 new groups to the [list of terrorist entities](#) under the *Criminal Code*. The list, maintained by the Governor in Council on the recommendation of the Minister of Public Safety and Emergency Preparedness pursuant to section 83.05 of the *Criminal Code*, sets out entities that the Government of Canada has reasonable grounds to believe have either knowingly participated in or facilitated a terrorist activity, or have knowingly acted on behalf of, at the direction of, or in association with such an entity.

The 13 new listed entities are: Atomwaffen Division, the Base, the Proud Boys, Russian Imperial Movement; three Al Qaida affiliates including Jama’at Nusrat Al-Islam Wal-Muslimin, Front de

Libération du Macina, and Ansar Dine; and five Daesh affiliates, including Islamic State West Africa Province, Islamic State in the Greater Sahara, Islamic State in Libya, Islamic State East Asia, and Islamic State – Bangladesh; and Hizbul Mujahideen. These additions bring the total listed terrorist entities up to 73.

The Government of Canada is also required to review each listed entity every five years to determine whether they should remain on the list. In this regard, the following seven entities were reviewed, and will remain on the list: Al Qaida in the Arabian Peninsula, Al Qaida in the Indian Subcontinent, Al Shabaab, Islamic State – Khorasan Province, Al-Ashtar Brigades, and Fatemiyoun Division.

The CRA uses listings to support the denial or revocation of charitable status for organizations that maintain connections to listed entities. Charities involved in activities both inside and outside of Canada should therefore have adequate due diligence procedures in place to reduce the risk of unknowingly providing any kind of support to the listed entities.

The Ottawa Region 2021 Charity & Not-For-Profit Law Webinar Materials Now Available

The [Ottawa Region 2021 Charity & Not-For-Profit Law Webinar](#), hosted by Carters Professional Corporation on February 11, 2021, had over 500 in attendance from the charitable and not-for-profit sector. The special speakers this year were The Honourable Ratna Omidvar, C.M., O.Ont., Senator for Ontario and Former Deputy Chair of the Special Senate Committee on the Charitable Sector, as well as Tony Manconi, Director General of the Charities Directorate of the Canada Revenue Agency. Designed to assist charities and not-for-profits in understanding developing trends in the law in order to reduce unnecessary exposure to legal liability, with a focus this year on legal issues that charities and not-for-profits can face when operating virtually, the Charity & Not-For-Profit Law Seminar has been held annually since 2008. All handouts and presentation materials are now available at the links below:

- [Introduction, Agenda and Speaker Details](#)
- [Sponsor Details and Acknowledgements](#)
- [2021 Essential Charity and NFP Law Update](#) presented by Esther S.J. Oh
- [Critical Board Due Diligence During a Pandemic and Beyond](#) presented by Ryan M. Prendergast
- [Key Takeaways from CRA's New Guidances](#) presented by Theresa L.M. Man
- [Do's and Don'ts: Managing Employees Working Remotely](#) presented by Barry W. Kwasniewski
- [How Charities and NFPs Can Prepare for the ONCA](#) presented by Jacqueline M. Demczur
- [Critical Privacy and Security Risks in a Virtual World](#) presented by Esther Shainblum

- [Intellectual Property Challenges in a Virtual World: Tips and Traps](#) presented by Sepal Bonni
- [Income Generation by Charities and NFPs: What's Possible and What's Not](#) presented by Terrance S. Carter
- [The Charities Directorate's Evolving Approach to Regulating the Charitable Sector](#) presented by Tony Manconi

COVID-19 UPDATE

Ontario Transitioning to Colour-coded Response Framework

By [Terrance S. Carter](#) and [Luis R. Chacin](#)

After the provincial emergency declared under section 7.0.1 of the *Emergency Management and Civil Protection Act* (“EMPCA”) ended at the end of February 9, 2021, the provincial government announced in a [news release](#) its plan to transition Ontario’s public health regions out of the shutdown and into a modified [COVID-19 Response Framework: Keeping Ontario Safe and Open](#) (the “Framework”).

In this regard, as of February 22, 2021, the Stay-at-Home order filed as Ontario Regulation 11/21 under the EMCPA was revoked for most public health regions in the province. However, as per a [news release](#) dated February 19, 2021, the shutdown measures and three separate Stay-at-Home orders will continue to apply until Monday, March 8, 2021 unless otherwise extended in the Toronto and Peel Public Health Regions, as well as the North Bay-Parry Sound District. The provincial government is still advising Ontarians to continue to adhere to public health measures, stay home as much as possible, and limit close contact to their household.

As well, the Ontario government filed the latest amendments to regulations under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (“ROA”), namely: Ontario Regulation 82/20: *Rules for Areas in Stage 1*, Ontario Regulation 263/20: *Rules for Areas in Stage 2*, and Ontario Regulation 364/20: *Rules for Areas in Stage 3*. The designation of which health units are in each stage of reopening under the Framework is established in Ontario Regulation 363/20: *Stages of Reopening*. Of note, the modified Framework imposes the following rules for gatherings for purposes of a wedding, a funeral or a religious service, rite or ceremony, as described below.

For public health regions in Stage 1 shutdown and grey zones, organized public events, social gatherings or gatherings for a religious service or ceremony are limited to 10 people, even if held at a private dwelling, and with special rules for gatherings in motor vehicles.

For public health regions in Stage 2 red zone, social gatherings such as wedding receptions are limited to five (5) people if the gathering is held indoors and twenty-five (25) people if the gathering is held outdoors. In the case of gatherings for the purposes of a wedding, a funeral or a religious service, rite or ceremony *itself*, indoor gatherings held in a building or structure other than a private dwelling are limited to thirty percent (30%) of the capacity of the particular room, and outdoor gatherings are limited to 100 people. Both indoor and outdoor gatherings require that all persons attending the gathering comply with public health guidance on physical distancing.

For public health regions in Stage 3 green, yellow, and orange zones, social gatherings such as wedding receptions are limited to fifty (50) people if the gathering is held indoors, and one hundred (100) people if the gathering is held outdoors. However, if the gathering is held in a residential building or any places not operated by a business or organization, the limits are ten (10) people if the gathering is held indoors and twenty-five (25) if the gathering is held outdoors. Similar to Stage 2 public health regions, in the case of gatherings for the purposes of a wedding, a funeral or a religious service, rite or ceremony *itself*, indoor gatherings held in a building or structure other than a private dwelling are limited to thirty percent (30%) of the capacity of the particular room, and outdoor gatherings are limited to 100 people. Both indoor and outdoor gatherings require that all persons attending the gathering comply with public health guidance on physical distancing.

After returning to the colour-coded Framework, public health regions are required to stay in their stage of reopening for at least two weeks or until the government determines that the region should be moved to a different stage of reopening or back to lockdown as an “emergency brake” measure. Charities and not-for-profits should regularly review the rules applicable to the public health regions where they operate and how they apply to their specific situation.

Imagine Canada Sector Monitor Reports Ongoing Challenges for Charities During COVID-19

By [Jennifer M. Leddy](#)

Nearly half of charities in Canada have experienced increasing demand for services during the COVID-19 pandemic, while struggling to find the capacity to meet that demand, according to a new report from Imagine Canada. Over 1,000 organizations provided data for Imagine Canada’s latest [Sector Monitor report](#) (the “Report”), published on February 17, 2021. As the ongoing pandemic dramatically affects how

organizations operate, many charities are finding it difficult to adjust, with fewer paid staff, volunteers and precarious finances.

Among the highlights in the Report, 45% of charitable organizations reported higher demand compared with April 2020, with 34% reporting demand outstripping their organizational capacity. This was most common for charities delivering “human services”, such as education and healthcare. At the same time 31% of charities are reporting fewer paid staff compared to earlier in the pandemic, and 60% reported a decline in volunteers. Half of charities are reporting staff burnout and poor work/life balance.

Revenues declined an average of 43% since the start of the pandemic, with revenue from donations declining the most as government support increased. Event-based fundraising underwent the most widespread decline among charities (67%), followed by major donors (35%) and sale of goods & services (33%). Organizations are drawing on reserve funds, acquiring debt and selling assets in an effort to offset losses, according to the Report.

More than half of charities (53%) with paid staff applied for government support through the Canada Emergency Wage Subsidy (CEWS). Altogether 42% of charities received some form of government financial aid either through CEWS, the Canada Emergency Commercial Rent Assistance (CECRA), or the Canada Emergency Business Account (CEBA). Those that did not apply indicated that they did not believe they would meet the eligibility requirements for the various programs.

Not all charitable organizations are experiencing increased demand, however. Most arts, culture & recreation organizations (67%) have experienced a decrease in demand, and a significant majority (83%) experienced a decline in revenues. Especially hard hit by social distancing measures, they are over twice as likely as other charitable organizations to have temporarily suspended their operations.

If current trends continue, 16% of reporting charities believed they would no longer be able to operate in a year from now. About 30% reported they could operate for at least a year, but are uncertain for how much longer. Most charities are making efforts to change how they operate: 78% reported increased innovation and experimentation; but the short term is more of an issue, with 67% reporting priority work to address immediate challenges rather than long-term capacity.

Imagine Canada hopes that the Report can be used in a variety of ways such as in “advocacy efforts to stories in the media to helping local leaders compare their own situation to that of peers” and in this way “ensure that Canada’s charities continue to be cornerstones of their communities.”

IN THE PRESS

[Charity & NFP Law Update – January 2021 \(Carters Professional Corporation\)](#) was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.

RECENT EVENTS AND PRESENTATIONS

[Reaching for New Not-for-Profit Operating Models in a COVID World](#) was the topic of a panel discussion hosted by the Institute of Corporate Directors Ontario (GTA) Chapter (ICD) on Wednesday, February 3, 2021. Theresa L.M. Man was one of three panellists with Susan Doyle and Robyn McDonald, with Don McCreesh as Moderator, where she spoke on the issue of “Mergers, Amalgamations, and Consolidations.”

[Considering Going Into Business? The Social Enterprise Spectrum for Charities and NPOs](#) was presented by Terrance S. Carter at the CPA Not-for-Profit Forum hosted by CPA Canada on February 9, 2021.

[The 2021 Annual Ottawa Charity & NFP Law Seminar Goes Virtual!](#) was hosted by Carters Professional Corporation on Thursday, February 11, 2021 as a webinar with more than 500 in attendance. The special speakers were **The Honourable Ratna Omidvar**, C.M., O.Ont., Senator for Ontario and Former Deputy Chair of the Special Senate Committee on the Charitable Sector, as well as **Tony Manconi**, Director General of the Charities Directorate of the Canada Revenue Agency.

[Due Diligence Considerations in a Pandemic](#) was presented by Terrance S. Carter at a webinar hosted by The Association of Treasurers of Religious Institutes (ATRI) on Wednesday, February 17, 2021.

UPCOMING EVENTS AND PRESENTATIONS

[OBA Charity and Not-for-Profit Law Section](#) is hosting a webinar on Thursday, March 4, 2021, entitled *Understanding Charities’ and Non-Profits’ Financial Statements and Tax Returns* presented by Terrance S. Carter and Tim Galvin, CPA.

[CSAE Trillium Winter Summit](#) will be held from March 2 to 4, 2021. Theresa L.M. Man will present a session on The New Ontario *Not-for-Profit Corporations Act* (ONCA) and What You Need to Get Ready.

[ILCO \(Institute of Law Clerks of Ontario\)](#) will host a CLE webinar presentation entitled *How Charities and NFPs Can Prepare for the ONCA* presented by Jacqueline M. Demczur on March 10, 2021.

CONTRIBUTORS

Editor: Terrance S. Carter

Assistant Editors: Nancy E. Claridge, Ryan M. Prendergast, and Adriel N. Clayton



[Sepal Bonni](#), B.Sc., M.Sc., J.D., Trademark Agent – Sepal Bonni is a registered trademark agent and practices in all aspects of brand protection. Her trademark practice includes domestic and foreign trademark prosecution, providing registrability opinions, assisting clients with the acquisition, management, protection, and enforcement of their domestic and international trademark portfolios, and representing clients in infringement, opposition, expungement, and domain name dispute proceedings. She also assists clients with trademark licensing, sponsorship, and co-branding agreements Sepal also advises clients on copyright and technology law related issues.



[Terrance S. Carter](#), B.A., LL.B, TEP, Trademark 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, 2020), 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.



[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 Chacin 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 government sponsored development programs, as well as litigation dealing with public service employees. His areas of practice include Business Law, Privacy Law and IT 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 corporate and commercial law, anti-terrorism, charity, real estate, 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. Nancy is recognized as a leading expert by *Lexpert*.



[Adriel N. Clayton](#), B.A. (Hons), J.D. – Called to the Ontario Bar in 2014, Adriel Clayton manages Carters’ knowledge management and research division, and practices 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 *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*TM.



[Barry W. Kwasniewski](#), B.B.A., LL.B. – Mr. Kwasniewski is a partner with the firm and joined Carters’ Ottawa office in 2008 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 been retained by charities, not-for-profits and law firms to provide legal advice pertaining to insurance coverage matters.



[Heidi N. LeBlanc](#), J.D. – Heidi is a litigation associate practicing out of Carters’ Toronto office. Called to the Bar in 2016, Heidi has a broad range of civil and commercial litigation experience, including matters pertaining to breach of contract, construction related disputes, defamation, real estate claims, shareholders’ disputes and directors’/officers’ liability matters, estate disputes, and debt recovery. Her experience also includes litigating employment-related matters, including wrongful dismissal, sexual harassment, and human rights claims. Heidi has represented clients before all levels of court in Ontario, and specialized tribunals, including the Ontario Labour Relations Board and the Human Rights Tribunal of Ontario.



[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.” Ms. Leddy is recognized as a leading expert by *Lexpert*.



[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 past chair of the CBA Charities and Not-for-Profit Law Section, a member of the Technical Issues Working Group of Canada Revenue Agency’s (CRA) Charities Directorate, and a member and former chair 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* and *The Best Lawyers in Canada*. Ms. Oh has written numerous articles on charity and not-for-profit legal issues, including incorporation and risk management. Ms. Oh has written articles for *The Lawyer's Daily*, www.charitylaw.ca and the *Charity & NFP Law Bulletin*. Ms. Oh is a regular speaker at the annual *Church & Charity Law Seminar*[™], 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. 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. Ryan is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*.



[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.



[Martin Wissmath](#), B.A., J.D., Student-at-law – Martin graduated from Osgoode Hall Law School in 2020. While studying at Osgoode, Martin participated in the Parkdale Community Legal Services clinic intensive in the fall of 2019, volunteering in the Immigration Division. Martin also participated in moot and negotiation competitions, along with volunteering as an upper year representative for the Osgoode Labour and Employment Law Society. Prior to law school, Martin obtained a journalism certificate from Langara College in Vancouver after graduating with an interdisciplinary major from the University of British Columbia. He worked as a reporter and photographer at local newspapers in Alberta and B.C.

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 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. (Counsel to Fasken)	tcarter@carters.ca
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
Sepal Bonni B.Sc., M.Sc., J.D.	sbonni@carters.ca

ASSOCIATES:

Esther Shainblum B.A., LL.B., LL.M., CRM	eshainblum@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
Heidi N. LeBlanc J.D.	hleblanc@carters.ca

STUDENT-AT-LAW

Martin Wissmath B.A., J.D.	mwissmath@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