CARTERS
BARRISTERS
SOLICITORS
TRADEMARK AGENTS

CHARITY & NFP LAW UPDATE

OCTOBER 2021

EDITOR: TERRANCE S. CARTER
ASSISTANT EDITORS: NANCY E. CLARIDGE,
RYAN M. PRENDERGAST AND ADRIEL N. CLAYTON

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

OCTOBER 2021

SECTIONS

HIGHLIGHTS

RECENT PUBLICATIONS AND NEWS RELEASES

1. Ontario Moves Forward with Significant Corporate Developments

By Theresa L.M. Man

ONCA Finally Proclaimed Into Force After Decade-Long Delay

As anticipated, the Ontario *Not-for-Profit Corporations Act, 2010* ("ONCA") was proclaimed into force on October 19, 2021. While the ONCA received Royal Assent in 2010, its proclamation was delayed for over ten years. As explained in the *Charity & NPF Law Bulletin No. 501*, *The ONCA Is Finally Coming! Preparing For Transition*, the ONCA introduces sweeping changes for Ontario charities and not-for-profit corporations, including changes to corporate structure and governance, and applies automatically to all non-share capital corporations that were incorporated under Part III of the Ontario *Corporations Act*.

Charities and not-for-profit corporations have an optional three-year "transition process" to amend their governing documents and bring them into compliance with the ONCA. Although it is optional for corporations to undertake a transition process within three years to amend their governing documents to comply with the rules in the ONCA, it is generally prudent for corporations to undertake the transition process in order to avoid uncertainty of their documents.

Along with the proclamation, the government launched the new Ontario Business Registry on the same day, as discussed below. To provide further clarity on corporate applications under the ONCA, the Office of the Public Guardian and Trustee in Ontario has provided a Question and Answer document, also discussed below.

Ontario Launches New Ontario Business Registry

The Ontario Ministry of Government and Consumer Services (the "Ministry") launched the long-anticipated Ontario Business Registry (the "Registry") on October 19, 2021, at the same time as the proclamation of the ONCA. The new Registry provides business owners and not-for-profits direct access to online government services at all times. Through the Registry, registrations and filings previously submitted by mail or fax (which could take up to six weeks to complete) can now be done instantly online. Annual corporate returns can be completed electronically in the Registry, allowing corporations to keep all their important filings in one centralized location. Further, the Registry is integrated with the Canada Revenue Agency (the "CRA"), enabling the identification of a business or not-for-profit corporation by a single business number, further streamlining administrative processes.

Basic information about not-for-profit corporations is available for search through the Registry, including corporate names and numbers, incorporation date, corporation type, status, governing jurisdiction, and registered office address. For not-for-profit corporations that were incorporated prior to the launch of the Registry, this information has been automatically migrated to the Registry. Corporations can access their profiles through the Registry by logging in to ONe-key. The Registry also allows for new not-for-profit corporations to be incorporated online.

As indicated above, annual returns can now be filed online through the Registry. The CRA previously stopped accepting annual returns on behalf of the Ministry as of May 15, 2021, and corporations whose annual returns were due thereafter were exempt until the launch of the Registry. With the launch of the Registry, corporations whose annual returns were due between May 15 and October 18, 2021 did not have to file an annual return for 2021; those whose annual returns are due after October 19, 2021 will be required to file through the Registry.

For further details on services available under the Registry, a full list of services is available online.

Ontario PGT Clarifies Q&As Regarding Corporate Applications Under ONCA

With the proclamation of the ONCA on October 19, 2021, not-for-profits in Ontario need be aware of some new and amended processes. As discussed in the *September 2021 Charity & NFP Law Update*, the Ontario Public Guardian and Trustee ("PGT") circulated a Question and Answer Sheet in response to questions it had received about the ONCA. Since its circulation, the Question and Answer Sheet was amended as of October 8, 2021 to clarify its response to certain questions.

The PGT clarified that it will not be involved in any corporation applications by charities, except when a charitable corporation under the ONCA wishes to change its purposes but does not want to use the after-acquired clause; when the applicant wishes to use the term "Foundation" if the word suggests the corporation is a charity, or the word 'Charity' in the corporate name. As well, the PGT will be involved if it has requested notification of any application for changes with respect to the corporation.

The PGT also clarified that for corporations that have registered as a charity and applied for a change in their articles, the after-acquired clause (*i.e.* a clause requiring that properties of a charity acquired after the updating of the charitable purposes be applied to the new purposes) will be automatically included in the electronic system. Applicants wishing to omit the clause must contact the PGT separately to request a letter allowing the charity to remove the clause.

All of the PGT's review of requests will be paper-based (via mail, courier or email). It will then provide a PDF copy of a letter and, upon inquiry from ServiceOntario, will confirm PGT approval.

Ontario Extends Relief for Members' and Directors' Electronic Meetings to September 2022

Temporary relief to *Corporations Act* ("OCA"), *Co-operative Corporations Act* ("CCA") and ONCA corporations in relation to holding electronic meetings of directors and members in response to the COVID-19 pandemic has been extended to September 30, 2022. In this regard, as reported in the October 2020 *Charity & NFP Law Update*, the Ontario government provided temporary relief to these corporations in relation to holding electronic meetings of directors and members in response to the COVID-19 pandemic. Similar relief was initially provided to ONCA corporations by way of Bill 276, *Supporting Recovery and Competitiveness Act, 2021*, explained in the April 2021 *Charity & NFP Law Update*. The rules in all three statutes were amended to permit electronic meetings of directors and members to be held during the "temporary suspension period", regardless of contrary provisions in a corporation's constating documents.

While the temporary suspension period was already extended to May 31, 2021 and subsequently extended to December 31, 2021, the Ontario government has again provided a further extension to the temporary suspension period until September 30, 2022, through the filing of O Reg 690/21, Extension of Temporary Suspension Period under the OCA, O Reg 691/21 Extension of Temporary Suspension Period under the CCA, and O Reg 693/21, Extension of Temporary Suspension Period under the ONCA. However, as with the previous extension, the timelines for annual general meetings are not extended.

2. CRA News

By Jennifer M. Leddy

CRA Introduces New Way to Confirm Authorized Representatives in My Business Account

As of October 18, 2021, the CRA has introduced a new way to confirm authorized representatives online, including those for charities and not-for-profits, using the CRA's My Business Account. According to the CRA announcement, the new process is intended to help protect organizations' tax information and assist with authorizing new representatives more efficiently and securely. In particular, if the organization is registered for My Business Account and has enabled email notifications in My Business Account, it will be notified by email that someone has requested access to their account as their authorized representative. The organization will then be able to confirm or deny the request online in the authorized representatives

section of their account. If the organization does not confirm or deny the request within ten business days, the request will be denied.

Authorized representatives include individuals, such as accountants, bookkeepers, and lawyers, who are authorized by an organization to manage its tax information, and can view, obtain information about, and update the organization's tax information on file with the CRA. Given the nature of what authorized representatives are permitted to do, the CRA notes that it is important for organizations to know who their authorized representatives are, what information they have access to, and to ensure that the representatives on file with the CRA are current.

Detailed instructions for setting up a My Business Account and confirming new representatives are set out in the CRA announcement.

3. Federal Court Finds CRA Can Compel Taxpayers to Disclose Oral Agreements

By Ryan M. Prendergast

The case of *Canada (National Revenue) v Miller* demonstrates that charities and not-for-profits ("NFPs") should be aware of the CRA's extensive audit powers, including the power to request a taxpayer to disclose the particulars of unwritten business agreements. The case, decided in the Federal Court by Madam Justice Walker on August 19, 2021, came about in the context of the Minister of National Revenue (the "Minister") seeking a compliance order requiring a taxpayer, Mr. David Miller, to provide certain documents, records and information to an authorized officer of the CRA.

Mr. Miller was a businessman who engaged in consulting work, including with a client who was based out of Europe (the "European Firm"). Mr. Miller had an oral contract with the European Firm, but no written contract for services and no written invoices for amounts received from them. In 2016, the CRA began an audit of his personal income tax returns for the years of 2007-2015 and subsequently extended the audit to include the 2016 tax year. Throughout 2017 and 2018, Mr. Miller and the CRA auditor engaged in correspondence regarding requests for documents and information. From the end of 2018 to mid-2020, several demand and response letters were exchanged between the Department of Justice ("DOJ") on behalf of the CRA and Mr. Miller's representatives from a professional audit and tax firm. The CRA viewed Mr. Miller to be unresponsive and directed the DOJ to begin an application in court on behalf of the Minister.

The Minister's application submitted that Mr. Miller failed to produce the documents, records and information contrary to subsection 231.1(1) of the *Income Tax Act* ("ITA") which sets out the auditing powers of an "authorized person." The Minister sought an order under subsection 231.7(1) of the ITA for a judge to order Mr. Miller to provide the Minister with access to the information she sought. Mr. Miller submitted that he had complied with the Minister's request to the best of his ability and that certain documents were unavailable. He further argued that the court should not grant the Minister's application.

The Minister's position was that her power to access a taxpayer's books and records under paragraph 231.1(1)(a) of the ITA is broad and not only permits her to access a taxpayer's books and records, but also permits her to request written information about such books and records. Mr. Miller submitted paragraph 231.1(1)(a) should be interpreted more narrowly as per the Federal Court of Appeal's decision in *Her Majesty the Queen v Cameco Corporation* ("*Cameco*"). *Cameco* held that the Minister did not have authority under paragraph 231.1(1)(a) to require employees of a corporation to attend interviews and to answer questions posed by CRA auditors.

Madam Justice Walker considered the distinction raised in *Cameco* between independent verification versus compelling answers to questions. If the information the Minister sought should be in Mr. Miller's books and records, then the Minister must be able to gain access to that information through relying on paragraph 231.1(1)(a). Therefore, the Minister's requests for contracts and invoices outlining Mr. Miller's provision of services to the European firm was within paragraph 231.1(1)(a), because such information should be documented in a taxpayer's books and records. Mr. Miller's responses were incomplete and equivocal; as a result, the Minister's request for a detailed schedule of compensation was included in the court's compliance order. The Minister's request for details regarding how Mr. Miller became involved with the European Firm was rejected, however, as it was not obviously caught under subsection 231.1(1).

The takeaway from this case for charities and NFPs is that the CRA can compel the production of any information that should be documented in books and records, even if a transaction was originally an oral agreement. In an audit, charities and NFPs should be prepared to make reasonable efforts to accurately respond to requests for documents and information that fall within the scope of subsection 231.1(1).

4. $17 Million Gift to Private Foundation Ineligible for Tax Credit

By Terrance S. Carter and Ryan M. Prendergast

The Tax Court of Canada decision in *Odette (Estate) v the Queen* demonstrates the importance of being fully aware of the particular requirements regarding gifts to private foundations of non-qualifying securities ("NQS" as explained further below). The Tax Court of Canada decision, published on September 28, 2021, dismissed an appeal by the taxpayer from an assessment made under the ITA for the 2012 taxation year which denied the taxpayer a charitable donation tax credit.

The Estate of the Late Edmond G. Odette (the "Taxpayer") was the sole shareholder of Edmette Holdings Ltd. (the "Corporation"). Mr. Odette's wills left the residue of the Taxpayer estate, including all of the shares of the Corporation, to the E & G Odette Foundation (the "Foundation"), a private foundation not at arm's length from the Corporation. The Taxpayer obtained advice about how to transfer the shares of the Corporation to the Foundation and, based on that advice, entered into a series of transactions. First, on December 20, 2013, the Taxpayer transferred the shares to the Foundation as a gift, recognizing it was an NQS. Then, on December 23, 2013, the Foundation disposed of the shares to the Corporation for cancellation by accepting a non-interest bearing promissory note back from the Corporation as payment for the shares. Finally, the Corporation made three cash payments totaling over $17 million dollars to the Foundation between April and August 2014 in satisfaction of the promissory note.

The only issue for the court to consider was whether the Taxpayer was entitled to a charitable donation tax credit for the deemed value of the shares it transferred to the Foundation, as per paragraph 118.1(13)(c) of the ITA dealing with NQS, which states:

> (13) … if at any particular time an individual makes a gift … of a non-qualifying security of the individual …,
>
> (c) if the security is disposed of by the donee within 60 months after the particular time … the individual is deemed to have made a gift to the donee of property at the time of the disposition and the fair market value of that property is deemed to be the lesser of the fair market value of any consideration (other than a non-qualifying security of any person) received by the donee for the disposition and the fair market value of the security at the particular time …

Generally, when NQSs are gifted to a private foundation, then a taxpayer cannot claim a donation tax credit (per paragraph 118.1(13)(a)) unless the security ceases to be an NQS within five years, or unless and until the private foundation disposes of the shares, provided it does so within five years (118.1(13)(c)). In this case, all parties agreed that the private shares of the Corporation were an NQS. The Minister of

National Revenue (the "Minister") argued that when the Foundation disposed of the shares, it did so only for the consideration in the form of the non-interest bearing promissory note. The Minister further argued that Parliament did not intend to grant a donation tax credit at the time the promissory note was received because the charity was not yet enriched and the donor not yet impoverished.

In a textual, contextual and purposive analysis of paragraph 118.1(13)(c), the court focused on what the word "consideration" means, especially in the context of phrases such as "consideration received" and "at the time of the disposition." On the facts, the Foundation disposed of the shares on December 23, 2013 in exchange for a promissory note, but only received the cash payments approximately eight months later. The court noted that the wording in paragraph 118.1(13)(c) indicated that any consideration needed to be received on December 23, 2013, since that was "the time of the disposition." If Parliament had meant to include consideration which came eight months later, then it would have used the phrase "received or receivable," which occurs over 60 times in the ITA. Since the only thing "received" at the time of disposition on December 23, 2013 was a promissory note, the value of consideration was limited to the note, not the funds which were subsequently paid in fulfillment of the note.

In addition, the court found that the promissory note was not acceptable consideration. The words of paragraph 118.1(13)(c), specifically, the phrase "any consideration (other than a non-qualifying security of any person)," meant that consideration used to purchase NQS from a foundation cannot itself take the form of NQS. The promissory note was a note between two non-arm's length parties (the Corporation and the Foundation), and thus was an NQS. Since the promissory note was not acceptable consideration, the Taxpayer was not entitled to the charitable tax credit.

Therefore, the court concluded that the Taxpayer was not eligible for a charitable donation tax credit, despite the significant sum that was received by the Foundation for the NQS. This case serves as an important example of why private foundations and their donors need to be sensitive to the complex rules that apply to them under the ITA, and in particular to proceed very cautiously when considering making gifts of NQS.

5. CRA Considers if NPO Can Add a Secondary Source of Income

By Theresa L.M. Man

The CRA provided its view on whether a non-profit organization ("NPO") can add a secondary source of income, fund a secondary business from a reserve accumulated from excess member contributions, and

provide services to non-members while maintaining their tax exempt status (CRA document 2019-0825751E5 dated February 26, 2021).

Paragraph 149(1)(l) of the ITA defines an NPO to be a club, society, or association that is not a charity, is organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, and does not make available its income for the personal benefit of a member or shareholder (unless the member or shareholder is an association which has as its primary purpose and function the promotion of amateur athletics in Canada).

The CRA was asked whether an NPO can add a secondary business and use the net income from the business to fund its non-profit objectives, where the funding of this secondary business will be from a reserve accumulated from excess member contributions and held for future capital expenditures. The CRA was of the view that an NPO cannot engage in this activity. In this regard, the CRA indicated that the courts have recognized that an NPO can earn a profit, as long as the profit is incidental and arises from activities directly connected to its non-profit objectives. However, an NPO cannot make earning profit as a purpose of the organization, even if the profits are destined to support the not-for-profit purposes of the organization or another organization. This "destination of funds" argument has been rejected by the CRA and the courts. Therefore, an NPO cannot intentionally earn profit from a secondary business and use that profit to fund its non-profit objectives.

As well, the CRA was of the view that having a reserve that is able to fund a secondary business suggests that the organization has retained earnings larger than is necessary to meet its non-profit objectives and therefore the organization may not be operating exclusively for a purpose other than profit. In this regard, the CRA made reference to paragraph 8 of Interpretation Bulletin IT-496R, which indicates that an NPO may earn income in excess of its expenditures, provided that the requirements of the ITA are met. However, if a material part of that excess is accumulated each year and the balance becomes more than the reasonable needs of the organization to carry on its non-profit activities, then the organization will be considered to have a for-profit purpose, particularly where the excess is used for purposes unrelated to an organization's objects. However, a review of all of the circumstances will be necessary (including how and why the surplus was accumulated and the length of time the surplus has been accumulated). The CRA indicated that generally surpluses may not be viewed as reflecting a for-profit motive if the organization is taking reasonable business steps to reduce the surpluses, such as by adjusting the costing of its products or services.

Lastly, the CRA was asked whether an NPO can provide services to non-members that are located outside of the geographical area where the organization currently services its members, where the services provided are the same as those provided to its members. The CRA indicated that an NPO is not prevented from providing services to non-members, provided it otherwise meets all of the requirements of the ITA which is a question of fact. However, if an organization is actively earning income from non-members (by providing them with services) and using the earned income to fund its non-profit objectives, it will be considered to be operating with a profit purpose. As well, making reference to paragraph 7 of Interpretation Bulletin IT-496R, the CRA indicated that where an organization's goods or services are not restricted to members and their guests, or where it is operated in competition with taxable entities carrying on the same trade or business, it is an indication that it is not operated exclusively for non-profit purposes.

6. Federal and Ontario COVID-19 Update

By Terrance S. Carter, Adriel N. Clayton and Martin U. Wissmath

Federal Government Announces New Recovery Programs In Place of CEWS and CERS

Various federal relief measures in support of businesses and organizations, including charities and not-for-profits, have terminated and were not renewed as of October 23, 2021, including the Canada Emergency Wage Subsidy ("CEWS") and Canada Emergency Rent Subsidy ("CERS"). The CEWS provided a wage subsidy to eligible employers expecting a drop in "qualifying revenues", and the CERS provided a commercial rent subsidy with an additional lockdown support top-up for temporarily shut-down organizations; both had been extended until October 23, 2021, as reported in the *August 2021 Charity & NFP Law Update*.

According to a news release by the Department of Finance Canada on October 21, 2021, the federal government proposed new support measures in place of the CEWS and CERS, including the Hardest-Hit Business Recovery Program (the "Hardest-Hit Program"). The Hardest-Hit Program provides rent and wage support, and will be available to organizations that do not qualify for the government's other proposed program – the Tourism and Hospitality Recovery Program. To be eligible, organizations must meet two requirements: (1) they must have had "an average monthly revenue reduction of at least 50 percent over the first 13 qualifying periods" for the CEWS; and (2) they must have a "current-month revenue loss of at least 50 percent."

The maximum subsidy rate under the Hardest-Hit Program is set at 50% from October 24, 2021 to March 12, 2022 (*i.e.* claim periods 22 to 26), with subsidy rates based on current-month revenue losses. Subsidy

rates begin at 10% for organizations experiencing a 50% current-month revenue decline, and will increase on a straight-line basis to a maximum 50% rate for organizations experiencing a revenue decline of 75% or higher. Subsidy rates will then be reduced by half from March 13 to May 7, 2022 (*i.e.* claim periods 27 and 28).

While CERS support itself has ended, the Lockdown Support that previously formed a part of CERS and provided additional rent support for organizations subject to a lockdown pursuant to a public health order, will continue to be made available under the Hardest-Hit Program at the same rate of 25%, and pro-rated to the number of days that a location is affected by lockdown measures. Beyond Lockdown Support, additional support will be available to organizations, regardless of sector, where one or more of their locations is subject to a public health restriction of at least seven days that requires them to cease activities that account for at least 25% of their total revenues during the prior reference period. Support is provided at the same subsidy rates as those under the Tourism and Hospitality Recovery Program.

Amendments and an extension have also been proposed to the Canada Recovery Hiring Program ("CRHP"), also initially discussed in the *August 2021 Charity & NFP Law Update*. The CRHP, which provides eligible employers who have experienced "qualifying revenue declines" with a subsidy based on eligible salary or wages to help hire new workers or increase their current workers' hours or wages. According to the news release, the subsidy rate will be increased to 50% for the period from October 24 to November 20, 2021. Further, the federal government announced its intention to extend the CRHP beyond November 20, 2021 to May 7, 2022.

Ontario Relaxes Public Health Measures and Capacity Limits

Over the course of October 2021, the Government of Ontario has taken various steps to relax provincial public health measures as the province moves closer to reopening and returning to a semblance of "normality". In separate announcements made on October 8, 2021 and October 22, 2021, the Government of Ontario indicated that it was lifting capacity limits for select indoor and outdoor settings where proof of vaccination is required, and set out its gradual approach to lifting public health restrictions across the province which, notably, relaxes restrictions for charities and not-for-profits operating facilities where a wedding, a funeral or a religious service, rite or ceremony take place, among others.

Two amending regulations were filed under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020 (the "Reopening Ontario Act")*. Ontario Regulation 698/21 ("O Reg 698/21"), filed on October 8, 2021, amends Ontario Regulation 364/20, *Rules for Areas at Step 3 and at the Roadmap Exit Step* (the

"Step 3 Regulations"). Ontario Regulation 727/21 ("O Reg 727/21") was filed on October 22, 2021, and further amends the Step 3 Regulations.

- O Reg 698/21 amends the Step 3 Regulations to lift capacity limits and allow 100% capacity in certain indoor settings, such as: meeting and event spaces, including conference and convention centres; areas for spectators in sports and recreational fitness facilities (though this was further modified by O Reg 727/21, discussed below); and concert venues, theatres and cinemas; among other settings.
- Reg 727/21 amends the Step 3 Regulations to remove capacity restrictions for additional areas, including food and drink establishments, facilities used for sports and recreational fitness activities (rather than merely areas for spectators, as set out in O Reg 698/21), as well as casinos, bingo halls and other gaming establishments.

O Reg 727/21 also provides an opt-in mechanism for proof of vaccinations for certain places of business and facilities that are not otherwise subject to vaccine passport requirements, allowing operators to "opt in" and elect to require vaccine passports prior to entry. Those that opt in will not be subject to the generally-required two-metre physical distancing limitations at their facilities, but must post signs at all entrances to inform the public that proof of vaccination is required prior to entry. Of particular note to charities and not-for-profits, the list of businesses and facilities that may opt in includes:

- Facilities where a wedding, a funeral or a religious service, rite or ceremony takes place;
- Outdoor recreational amenities, in respect of indoor clubhouses;
- Museums, galleries, aquariums, zoos, science centres, landmarks, historic sites, botanical gardens and similar attractions, in respect of indoor areas;
- Fairs, rural exhibitions, festivals and similar events, in respect of indoor areas; and
- Marinas, boating clubs and other organizations that maintain docking facilities for members or patrons, in respect of indoor areas.

Enhanced Vaccine Certificates Launched in Ontario

The Government of Ontario's vaccine passport QR code and verification app are now available for patrons and operators of venues subject to vaccine passport requirements. In a news release on October 15, 2021, the Government of Ontario announced that its enhanced vaccine certificate with official QR code and the free verification app, Verify Ontario, were available for download. As indicated in the *September 2021*

Charity & NFP Law Update, a vaccine passport system was commenced in Ontario on September 22, 2021, requiring individuals to provide proof of vaccination prior to entry into certain non-essential venues, some of which may be operated by charities and not-for-profits. These include "indoor areas of meeting and event spaces, including conference centres or convention centres" (although excluding areas rented out for children's camps, childcare and social services), indoor areas of facilities used for sports and recreational fitness activities, and indoor areas of concert venues, theatres and cinemas. While a vaccine receipt and photo identification have been sufficient to permit entry, the newly launched and enhanced digital vaccine receipt, featuring a scannable QR code that can be scanned and verified through Verify Ontario, is now available for use as well.

Together with the launch of the enhanced digital vaccine receipt, Ontario Regulation 710/21 ("O Reg 710/21"), filed on October 15, 2021, amends the Step 3 Regulations to permit organizations to use certain specified electronic applications for the sole purpose of confirming that patrons are either fully vaccinated against COVID-19 or entitled to an exemption. Further, O Reg 710/21 adds an additional exemption for vaccination proof requirements to the Step 3 Regulations. The exemption applies to individuals that provide documentation confirming their participation in a COVID-19 vaccine clinical trial authorized by Health Canada and which is specified in the "Proof of Vaccination Guidance for Businesses and Organizations under the Reopening Ontario Act". Those individuals are now exempt from providing proof of vaccination prior to entry into certain settings.

COVID-19 Vaccines Mandatory for Ontario Long-Term Care Home Caregivers

As of November 15, 2021, all in-home staff, support workers, student placements, and volunteers ("Individuals") at long-term care homes in Ontario will be required to be fully vaccinated against COVID-19, unless a valid exemption applies. *Minister's Directive: Long-term care home COVID-19 immunization policy*, released by the Minister of Long-Term Care on October 1, 2021, mandates that as of that date, licensees of long-term care homes, as defined under the *Long-Term Care Homes Act, 2007* ("Licensees"), must ensure that all Individuals provide proof of having received:

i) the full series of a COVID-19 vaccine authorized by Health Canada, or any combination of such vaccines;

ii) one or two doses of a COVID-19 vaccine not authorized by Health Canada, followed by one dose of a COVID-19 mRNA vaccine authorized by Health Canada; or

iii) three doses of a COVID-19 vaccine not authorized by Health Canada

in order to attend the long-term care home for any period for work, a placement, or to volunteer. Proof must be provided by November 15, 2021, or as of the first day the Individual begins attending the home if they begin attending the home for work, a placement or to volunteer after October 1, 2021.

Proof of vaccination will not be required from individuals who have a written note from a physician or registered nurse in the extended class setting out a valid medical reason that the individual cannot be vaccinated, and the effective time period for the medical exemption. Proof of vaccination must then be provided within thirty days of the expiry of the exemption, as set out in the letter, although a seven-day extension may be granted where unforeseen or extenuating circumstances outside of the control of the Individual have prevented the Individual from receiving their full vaccination in time. Subject to additional restrictions, proof of vaccination will also not be required for support workers attending the home "for emergency or palliative situations, to provide timely medical care, or for the sole purposes of making a delivery."

Licensees must clearly set out the consequences for those who do not provide proof of vaccination or of a medical exemption, including that they cannot attend the home for their work, placement, or to volunteer. Any additional consequences must be in accordance with the Licensee's human resources policies, collective agreements, and any applicable legislation, directives, and policies. Licensees will also be required to make an educational session available to all Individuals with certain information on COVID-19 vaccines, their benefits and possible side effects, and the risks of being unvaccinated.

7. Record of Employment Guidance Updated to Address Vaccination-Related Interruptions

By Barry W. Kwasniewski and Martin U. Wissmath

Employers must issue a record of employment ("ROE") for employees who experience any interruption in their earnings because of the COVID-19 pandemic. Employment and Social Development Canada ("ESDC") updated their "EI Information for employers — COVID-19" webpage (the "ROE Guidance") on October 15, 2021, with additional information about the requirements for ROEs issued when an employee's work is interrupted because they do not comply with a mandatory COVID-19 vaccination policy. This includes employers of charities and not-for-profits that have implemented COVID-19 mandatory vaccination policies.

Any interruption of earnings due to COVID-19 for an employee triggers the ROE requirement deadline. If issuing a paper ROE, it must be issued within five calendar days of the first day of an interruption of

earnings; or the day the employer becomes aware of an interruption of earnings. If issuing electronic ROEs and the pay period is weekly, every two weeks, or twice a month, the employer has five calendar days after the end of the pay period in which the employee's interruption of earnings occurs to issue the electronic ROE. For a monthly pay period or 13 pay periods per year (every four weeks), the employer must issue electronic ROEs on the earlier of:

- **five calendar days after the end of the pay period** in which an employee experiences an interruption of earnings; **or**
- **15 calendar days after the first day of an interruption of earnings.**

Block 16 of the ROE "should indicate the reason for the employee's leave or separation from employment, or the reason why the ROE is being issued", according to the ROE Guidance, which states that comments should not be added "unless absolutely necessary." The ROE Guidance lists alphabetic codes for the COVID-19–related reasons the employee's earnings have been interrupted:

- **Code A (shortage of work)** when the business has decreased operations or closed;
- **Code D (illness or injury)** when the employee is sick or quarantined;
- **Code E (quit) or Code N (leave of absence)** when the employee does not report to work because they refuse to comply with the employer's mandatory COVID-19 vaccination policy
- **Code M (dismissal)** when the employer suspends **or** terminates the employee for not complying with the mandatory COVID-19 vaccination policy

If an employer uses these codes, they may be contacted by ESDC to determine:

- if the employer had adopted and clearly communicated to all employees a mandatory COVID-19 vaccination policy;
- if the employees were informed that failure to comply with the policy would result in loss of employment;
- if the application of the mandatory COVID-19 vaccination policy to the employee was reasonable within the workplace context; or
- if there were any exemptions for refusing to comply with the policy

With these requirements in mind, employers of charities and not-for-profits should consider having COVID-19 vaccination policies in place, which must be reasonable within the workplace context, allow

for legally permitted exemptions, and clearly communicated to all employees with any consequences for breach of requirements, including whether failure to comply with requirements for receiving COVID-19 vaccination could result in suspension, an unpaid leave of absence or termination.

8. CBA and CAGP Release Written Submissions on DQ Consultation

By Terrance S. Carter, Theresa L.M. Man and Jacqueline M. Demczur

Both the Canadian Bar Association Charities and Not-for-Profit Law Section (the "CBA Section") and Canadian Association of Gift Planners ("CAGP") have released written submissions in response to the Department of Finance Canada's ("Finance Canada") public consultation concerning the disbursement quota ("DQ"). The consultation (which was open for submissions between August 6, 2021 and September 30, 2021) arose from an initiative in Budget 2021 in relation to questions about a potential increase in the annual DQ. As explained in *Charity & NFP Law Bulletin No. 498*, the DQ is the minimum amount that a charity must spend on its charitable activities or gifts to qualified donees to ensure that charitable funds are used for charitable purposes and are not accumulated indefinitely.

The CBA Section's submission indicates its belief that "raising the DQ in a low interest environment will be challenging for many charities," and that doing so is not the only solution to addressing concerns about the DQ. Instead, given the lack of data available, the submission calls for a study to be conducted to determine the issues and the appropriate solution. The CBA Section also raises concerns about overcomplicated compliance, which can significantly increase administrative costs for charities. It further states that "[b]efore determining the appropriate 'fix', it is necessary to determine if in fact there is a problem."

The submission also sets out the CBA Section's two main concerns in more detail, being: (1) the low interest environment, which is an issue for charities with endowments subject to capital payment restrictions, and for whom raising the DQ "would require spending capital as well as interest and dividends to meet a higher DQ"; and (2) existing legal obligations concerning certain funds with restrictions on spending (*e.g.* endowment funds) that can be challenging to amend or vary. Further, the CBA Section submission highlights that a higher DQ expenditure can challenge prudent investment and incentivize riskier investments, and suggests that expanding the scope of charitable disbursements that meet the DQ (such as including program related investments) should be considered. It concludes that more data is needed to determine if a DQ problem even exists in Canada and that, rather than determining the DQ percentage, which "constitutes an arbitrary exercise at best and possibly causes damage at worst", it should

instead be determined how increasing the DQ will most effectively help charities manage their resources and serve the public good.

The CAGP's submission states that increasing the DQ rate "will not cure the funding gap experienced by grassroot organizations and community organizations that themselves are not qualified donees," and that raising the DQ rate as the sole mechanism to increase charitable spending and community investment "is unadvisable without due consideration of the unintended impacts" on charities, donors and beneficiaries. Some unintended consequences set out in the CAGP's submission include: (1) depletion of financial assets; (2) forcing charities into spend-down mode; (3) unnecessary administrative burdens on charities; (4) a focus of resources on the "here and now" detracting from long-term sustainable planning; (5) concerns that raising the DQ is a quick "band-aid" solution to a complicated issue; (6) the fact that there are many other data-driven methods to increase spending and investment; as well as (7) potential impediments to charities' autonomy and flexibility to plan for charitable programs, manage their asset bases, optimize resources to delivery charitable programs, and accumulate investable assets for substantial charitable projects.

Given these concerns, the CAGP submission indicates that the need for discussion about "the entire regulatory and policy framework that the charitable sector operates within and how a modernization (of more than the DQ rate) is needed to more efficiently direct charitable resources to the most vulnerable and marginalized persons in society."

The CAGP provides four recommendations: (1) reframing the consultation "on a charitable model that promotes the broadening of social impact by registered charities to a more diverse group of donees, including non-qualified donees that nonetheless carry out programming deemed charitable at law; (2) the CRA assist registered charities with DQ obligation compliance, promote data quality for the sector, as well as transparency and accountability from charities through more complete asset reporting and more fulsome information on investments; (3) that the federal government both mandate and invest in robust, accurate data collection to more meaningfully assist with periodic reviews of the DQ rate; and (4) an expanded CRA policy and administrative position in support of registered charities doing charitable work, including social impact investments, program related investments and mission-related investments.

9. Bill 27 Introduced, Could Ban Non-Compete Clauses in Most Employment Contracts in Ontario

By Barry W. Kwasniewski

Proposed amendments to Ontario's minimum employment standards would prohibit non-compete agreements, with certain exceptions, and require employers to have written "disconnecting from work" policies that free employees from requirements to engage in work-related communications. Ontario's Minister of Labour, Training and Skills Development introduced Bill 27, *Working for Workers Act, 2021* in the Legislative Assembly on October 25, 2021 ("Bill 27"), which passed first reading. Bill 27 proposes to amend the *Employment Standards Act, 2000* ("ESA") among other provincial legislation. An amendment to the *ESA* would add a new Part XV.1 to prohibit employers from entering into employment contracts or other agreements with an employee that are, or that include, a non-compete agreement. Certain exceptions are provided where there is a sale of a business or part of a business and the seller becomes an employee of the purchaser. Bill 27 defines a "non-compete agreement" as

> an agreement, or any part of an agreement, between an employer and an employee that prohibits the employee from engaging in any business, work, occupation, profession, project or other activity that is in competition with the employer's business after the employment relationship between the employee and the employer ends. ("clause de non-concurrence").

Another proposed amendment in Bill 27 would add Part VII.0.1 to the ESA, which would require employers of 25 or more employees to have a written policy with respect to "disconnecting from work", which is defined as "not engaging in work-related communications, including emails, telephone calls, video calls or the sending or reviewing of other messages, so as to be free from the performance of work." New sections 74.1.1 and 74.1.2 in the ESA would prohibit persons from operating a temporary help agency or acting as a recruiter without a licence for that purpose.

Bill 27 would also amend the *Occupational Health and Safety Act* to require the owner of a workplace to provide access to a washroom to persons making deliveries to or from the workplace. Exceptions are provided if providing washroom access "would not be reasonable or practical for reasons relating to the health or safety of any person in the workplace", or if it would not be reasonable or practical "having regard to all the circumstances," or "if the washroom is in, or can only be accessed through, a dwelling."

10. Physicians' Draft Social Media Policy Raises Standards for Protection of Patient Info

By Esther Shainblum and Martin U. Wissmath

The College of Physicians and Surgeons of Ontario ("CPSO") is reviewing its social media guidelines and has developed and posted a draft social media policy containing obligatory rather than advisory language, which would hold physicians to a professional standard when engaging on social media. The CPSO solicited feedback from the public in a general consultation that ended August 27, 2021. Although not yet officially published, the draft social media policy, available on the CPSO general consultation webpage (the "Draft Policy"), includes stronger wording than the current *Social Media — Appropriate Use by Physicians* statement (the "Current Statement") on the CPSO website.

The Draft Policy requirements sets out professional expectations for physicians using social media and, along with the CPSO's other policies and relevant legislation and case law, would guide Ontario physicians as to what is acceptable physician practice or conduct. The policy is framed as reflecting compulsory expectations rather than being advisory in nature. When compared with the Current Statement the word "must" appears 22 times in the Draft Policy but is found only once in the Current Statement.

The Draft Policy defines "social media" comprehensively as including popular platforms, such as Twitter, Facebook, YouTube, Instagram, LinkedIn, as well as blogging sites and other websites. Appropriate social media use requirements are listed in four main areas: Professionalism, Professional Relationships and Boundaries, Privacy and Confidentiality, and Conflicts of Interest. There are 17 listed requirements altogether, including the requirement to comply with the policy.

Under Professionalism, physicians must, among other obligations, conduct themselves in a respectful and professional manner while using social media and must consider the potential impact of their conduct on their own reputation, the reputation of the profession, and the public trust, must not engage in disruptive behaviour (including profane, bullying, insulting or harassing conduct) and must disseminate information that is verifiable and supported by evidence and not misleading or deceptive.

Under Privacy and Confidentiality, the obligations in the Draft Policy would include requiring physicians to comply with the *Personal Health Information Protection Act*, 2004; obtaining documented express and valid consent from the patient or substitute decision maker or de-identifying any patient information when posting content on social media; fulfilling the requirement to obtain express and valid consent by informing patients about the risks of publishing content about them on social media, informing patients

of details about the purposes for which and where content would be published, and that their consent may be withdrawn; and refraining from searching for patient health information online without consent.

Under Professional Relationships and Boundaries physicians must also consider the impact of using social media on the "power imbalance inherent in the physician-patient relationship". As explained in the accompanying document entitled *Advice to the Profession: Social Media*, patients may feel pressured or coerced into accepting a social media invitation from their physician due to the inherent power imbalance in the physician-patient relationship. Further, maintaining appropriate boundaries may mean not connecting with patients on social media.

Under Conflicts of Interest, physicians are required to recognize and appropriately manage areas where their personal or professional interests are in conflict with their professional obligations.

The *Advice to the Profession: Social Media* document helps to further explain and clarify the content of the Draft Policy and provides physicians with some additional information and best practices.

COVID-19 has accelerated a shift to increased online usage, which could expose organizations to greater risks arising from inappropriate online conduct by their employees and volunteers. While the Draft Policy is aimed specifically at Ontario physicians, it serves as a good example for charities and not for profits, which should consider adopting guidelines for social media and privacy that set out their expectations for their employees and volunteers in greater detail. Such expectations should include requirements to maintain privacy and protect personal information, manage conflicts of interest, be respectful and truthful online and protect the reputation of the charity or not for profit.

11. Statistics Canada's Report Shows Growth in the Non-Profit Sector

By Jacqueline M. Demczur

Statistics released by Statistics Canada demonstrate growth in the non-profit sector, both in real gross domestic revenue ("GDP") and employment, reversing earlier declines. On October 4, 2021, Statistics Canada published "Non-Profit Institutions and Volunteering: Economic Contribution, Second Quarter 2021", which presents a more positive picture of the sector compared to the same time last year when widespread shutdowns affected many charities and not-for-profits.

For the purposes of Statistics Canada's report, the definition of the "non-profit sector" adheres to international standards published in the *United Nations Handbook of Satellite Accounts on Non-profit and Related Institutions and Volunteer Work,* with Canada's sector divided into three broad categories. These

are community non-profit institutions, business non-profit institutions, and government non-profit institutions.

Employment in the sector increased 1.2% overall, led by especially strong employment growth in social services. The number of jobs in social services rose 2.3% in the second quarter of 2021, representing a fourth consecutive quarterly increase and following the significant decline from lockdowns and stay-at-home orders in the second quarter of 2020. There was also some growth in health care as employment rose 0.7%, led by a shift in resources to more non-essential health care services. Business and professional associations also saw an increase in jobs by 2.8%, demonstrating a relatively steady increase over the past four quarters.

Real GDP rose 0.7% in the second quarter of 2021, in large part because of the growth in real GDP of non-profits serving businesses which experienced a 2.4% growth. Non-profits serving businesses continue to slowly recover after pandemic-related shutdowns, though they still remain 8.2% lower than the peak level reached in the fourth quarter of 2019. Non-profits serving households and governments reported more modest gains of 0.8% and 0.5% respectively. Non-profits serving households are only 1% lower than the pre-pandemic real GDP level reached in the fourth quarter of 2019, while non-profits serving governments have experienced increases for the past 18 consecutive quarters.

Overall, the non-profit sector contributed 8.3% of Canada's economy-wide nominal GDP in the second quarter, just slightly below its 8.4% contribution earlier this year. Charites and not-for-profits should take note of the growth in the sector and the trends which indicate more sector stability following the challenges of 2020.

12. AML/ATF Update

By Terrance S. Carter, Nancy E. Claridge and Sean S. Carter

FATF Downgrades Canada as Less Compliant in Regulating NPOs Vulnerable to Terrorist Financing

The Financial Action Task Force ("FATF") published a report titled "Anti-money laundering and counter-terrorist financing measures: Canada" (the "2021 Report") on October 1, 2021, the fifth mutual evaluation of Canada that the FATF has conducted concerning its compliance with the FATF Recommendations concerning anti-money laundering and anti-terrorist financing ("AML/ATF") measures. The previous FATF report (the "2016 Report") was released on September 15, 2016, as reported in *Anti-Terrorism and Charity Law Alert No. 47*. In the 2016 Report, Canada fared well in general, but was non-compliant in

five recommendations. In the 2021 Report, Canada demonstrated improvement in many areas, but remained non-compliant with Recommendation 25, which calls for transparency and beneficial ownership in legal arrangements. Most importantly for charities and not-for-profits, Canada was downgraded from compliant to partially compliant with regard to Recommendation 8, which requires the application of focused and proportionate measures to protect non-profit organizations ("NPOs") from terrorist financing abuse. This *Alert* examines the issues involved in Recommendation 8 and provides a brief overview along with other changes in the 2021 Report.

For the balance of this *Alert*, please see *AML/ATF and Charity Law Alert No. 50*.

FATF Makes Statement Regarding NPOs in Afghanistan

As a result of the Taliban takeover of Afghanistan, the Financial Action Task Force ("FATF") has issued a statement highlighting the importance of ensuring that non-profit organizations ("NPOs") continue to provide vital humanitarian assistance in the region. The statement, issued on October 21, 2021, reiterates the "utmost importance" of ensuring that NPOs provide humanitarian assistance "without delay, disruption or discouragement." At the same time, the FATF emphasizes the need for authorities to "protect NPOs from being misused for terrorist financing." The FATF will closely monitor the situation in Afghanistan and consider options to help promote security, safety and the integrity of the global financial system.

Canadian charities and not-for-profits operating in Afghanistan either on their own or through an intermediary need to be aware of SOR/99-444, *Regulations Implementing the United Nations Resolutions on Taliban, ISIL (Da'esh) and Al-Qaida* (the "Regulations"), which generally prohibits providing any property, financial services, or related services to the Taliban, ISIL (Da'esh) and Al-Qaida (all three of which are listed terrorist entities under the *Criminal Code*), unless they are granted a certificate under section 10 of the Regulations. As such, the statement by the FATF encouraging humanitarian assistance in Afghanistan needs to be read subject to applicable Canadian law.

IN THE PRESS

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

Report on Charities & NFP Sector written by Terrance S. Carter and Esther S.J. Oh in May 2021, was featured in the OBA Charity & Not-for-Profit Law Section Insider on October 15, 2021.

Federal Budget 2021: Impact on Charities and Not-For-Profits written by Terrance S. Carter, Theresa L.M. Man, Ryan M. Prendergast, Esther Shainblum, Luis R. Chacin and Sean S. Carter in May 2021, was featured in the OBA Charity & Not-for-Profit Law Section Insider on October 15, 2021.

Ontario's *Not-for-Profit Corporations Act*: Prepare for Transition written by Theresa L.M. Man, was featured in the Lawyer's Daily on October 27, 2021

UPCOMING EVENTS AND PRESENTATIONS

The 28th Annual Church & Charity Law Webinar™ will be held on **Thursday, November 4, 2021**, hosted by Carters Professional Corporation. Registration and Details are available online.

Volunteer Ottawa will host a webinar that has been rescheduled to Thursday, November 18, 2021. Esther Shainblum will present on the topic of Legal Check-up: Duties and Liabilities of Directors and Officers of Charities and Not-For-Profits.

OBA Charity & Not-for-Profit Law Section will host a webinar entitled Understanding the New Ontario *Not-for-Profit Corporations Act* on November 25 and December 2, 2021. Ryan M. Prendergast will present on the topic of Membership Issues, and Theresa L.M. Man will co-chair the two-day series, as well as present on the topic of By-Laws.

Moving Forward with the ONCA: Understanding Key Provisions and Practical Tips will be held on **Wednesday, December 8, 2021**, hosted by Carters Professional Corporation. This complimentary webinar will cover a wide range of topics with regard to the new Ontario *Not-for-Profit Corporations Act*. Registration and Details are available online.

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, 2021), 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 past 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 articled with and been an associate with Fasken (Toronto office) for three years. He is ranked as a leading expert by *Best Lawyers in Canada*. 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.

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 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 *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™*.

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 (CCCB). 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 a member and former 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. – Called to the Ontario Bar in 2021, Martin joined Carters after finishing his articling year with the firm. In addition to his legal practice, he assists the firm's knowledge management and research division, providing in-depth support for informative publications and client files, covering a range of legal issues in charity and not-for-profit law. His practice focuses on the developing fields of social enterprise and social finance, as well as corporate and information technology law. Martin provides clients with legal advice and services for their social-purpose business needs, including for-profit and not-for-profit organizations, online or off-line risk and compliance issues.

Lynne Westerhof, B.A., J.D., Student-at-law – Lynne graduated from the University of Toronto, Faculty of Law in June 2021. During law school she was a participant in the Donald G. H. Bowman National Tax Moot, President of the U of T chapter of the Christian Legal Fellowship, and a Division Leader and Caseworker in family law at Downtown Legal Services. Lynne worked as a summer student for Social Capital Partners where she researched the legal context of employee ownership trusts and did additional research for a tax professor about non-profit social enterprises. Prior to law school, Lynne received a Bachelor of Arts with a major in English from the University of British Columbia.

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.

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
Heidi N. LeBlanc J.D.	hleblanc@carters.ca
Martin U. Wissmath B.A., J.D.	mwissmath@carters.ca

STUDENT-AT-LAW

Lynne Westerhof, B.A., J.D.	lwesterhof@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