

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

JUNE 2022

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Carters Fall Charity & Not-for-Profit Law Webinar™

SAVE THE DATE – Thursday, November 10, 2022

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RECENT PUBLICATIONS AND NEWS RELEASES

1. Legislation Update

By [Terrance S. Carter](#)

Bill C-19, *Budget Implementation Act 2022, No. 1*

After its introduction on April 28, 2022 following Budget 2022, federal [Bill C-19, *Budget Implementation Act, 2022, No. 1*](#) completed Third Reading and received Royal Assent on June 23, 2022. Among its many provisions, Bill C-19 changes how charities can make gifts provide resources to non-qualified donees. The Bill itself has undergone various changes, including changes made in response to concerns expressed by the charitable sector. For full details on Bill C-19 and its impact on charities, please see [Charity & NFP Law Bulletin No. 513](#).

Bills C-26 and C-27 Propose New Federal Privacy Legislation

Two new privacy-focused bills were introduced to the House of Commons in June 2022. [Bill C-26, *Critical Cyber Systems Protection Act*](#) was introduced and completed First Reading on June 14, 2022, and [Bill C-27, *Digital Charter Implementation Act, 2022*](#) was introduced and completed First Reading on June 16, 2022.

Generally speaking, Bill C-26 enacts the *Critical Cyber Systems Protection Act* to protect “critical cyber systems of services and systems that are vital to national security or public safety”, among other things. Bill C-27 re-introduces the *Digital Charter Implementation Act*, which was previously proposed in 2020 by way of Bill C-11, *Digital Charter Implementation Act, 2020*, but died on the Order Paper.

For further details on Bills C-26 and C-27, please see the Privacy Law Update, below.

Quebec Bill 96, *An Act respecting French, the official and common language of Québec*

Quebec’s *Charter of the French Language* received a significant overhaul when Bill 96, *An Act respecting French, the official and common language of Québec* was assented to on June 1, 2022. Bill 96 promotes and strengthens the use of the French language in Quebec and introduces strict rules regarding the use of non-French language signs in the province, as well as setting out when the French language must be used by Quebecois businesses and organizations from an employment perspective.

For further details on Bill 96, please see *Quebec Bill 96 Overhauls French Language Requirements*, below.

2. Bill C-19 is Amended to Simplify Funding of Non-Qualified Donees

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

Significant amendments have been made to [Bill C-19, Budget Implementation Act, 2022, No. 1](#) (“Bill C-19”) after the charitable sector expressed serious reservations regarding the original content of the Bill. Bill C-19 was tabled on April 28, 2022, and, as explained in greater detail in [Charity & NFP Law Bulletin No. 511](#), many in the charitable sector were concerned that it “perpetuate[d] the colonial relationship between charities and groups without charitable status” and increased the administrative burden for most Canadian charities. After Bill C-19 completed Second Reading on May 10, 2022, it was studied by the Standing Committee on Finance, which heard from numerous stakeholders in the charitable sector. Several amendments to Bill C-19 were then adopted when the House of Commons passed Bill C-19 on its Third Reading on June 9, 2022. Bill C-19 was subsequently passed by the Senate without further changes to these amendments and received Royal Assent on June 23, 2022.

For the balance of this *Bulletin*, please see [Charity & NFP Law Bulletin No. 513](#)

3. CRA News

By [Ryan M. Prendergast](#)

Proposed Amendments to *Excise Tax Act* and GST/HST Exemptions for COVID-19 Rapid Tests

The Canada Revenue Agency (CRA) has published “[News 111 Excise and GST/HST News – No. 111](#)” (“News 111”), which reiterates some of the proposed amendments to the *Excise Tax Act* first mentioned in Budget 2022. As described in [Charity & NFP Law Bulletin No. 510](#) and restated in News 111, Budget 2022 proposes to expand the eligibility for the 83% hospital GST/HST rebate to cover charities and not-for-profits (NFPs) that deliver health care services when there is the active involvement of, or recommendations of, either a physician or a nurse practitioner, regardless of geographic location. Previously this rebate was restricted to charities and NFPs that delivered health care services with active involvement of or recommendation of a physician, though in geographically remote communities this could also include the active involvement of a nurse practitioner. These expanded measures in Budget 2022 would generally apply to rebate claim periods ending after April 7, 2022.

News 111 also provides that while supplies of rapid COVID-19 test kits are generally zero-rated, several exemptions for supplies by charities and other public sector bodies could apply. For example, supplies of rapid COVID-19 test kits may be exempt from GST/HST when sold by a charity or non-profit organization

if the test kit is sold for an amount that does not exceed its direct cost, when sold by a charity or non-profit organization when 90% or more of the sales of such test kits made by the supplier are free of charge, and when the supply of donated rapid COVID-19 test kits is by a registered charity if the supply is not zero-rated.

New Landing Page on CRA Website for Federal/Provincial/Territorial Charity Regulators

The CRA has added a [page](#) to their Charities and giving website which provides information about the Federal/Provincial/Territorial Network of Charity Regulators (FPT network). The FPT network was established in 2004 and provides a forum to improve the intergovernmental regulation of charities. It is made up of officials from federal, provincial, and territorial governments, generally representing government areas responsible for the charitable sector.

The FPT Network has several goals, including:

- identifying emerging issues that affect charities across jurisdictions;
- developing coordinated regulation between federal, provincial, and territorial governments;
- reducing the administrative burden on charities; and
- understanding and communicating the needs, challenges, and strengths of the Charities Directorate's regulatory approach.

4. Corporate Update

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

Saskatchewan Enacts *Non-profit Corporations Act, 2021* and Consequential Amendments

Saskatchewan's new not-for-profit legislation, [Bill 75, *The Non-profit Corporations Act, 2021*](#) (the "New Act") and [Bill 76, *The Non-profit Corporations Consequential Amendments Act, 2021*](#) (the "Amending Act") received Royal Assent on May 18, 2022 after it was introduced for First Reading on December 7, 2021. As reported in the [January 2022 Charity & NFP Law Update](#), the New Act and Amending Act will, respectively, replace Saskatchewan's current *Non-profit Corporations Act, 1995* and make consequential amendments to other legislation in the province.

The New Act is modelled after Saskatchewan's current for-profit corporate legislation, *The Business Corporations Act, 2021*, and modernizes provisions to reflect current practices, replace outdated rules and

language, reduce red tape, and create efficiencies for organizations by emphasizing the use of modern technologies.

Of note, the New Act updates provisions for boards of trade and chambers of commerce; removes certain notice and filing requirements with the registrar; permits corporate names to be in Cree, Dene, or other prescribed Indigenous languages; expressly permits the use of electronic technologies, such as sending financial statements electronically and holding electronic meetings; removes the current requirement that at least 25% of directors be Canadian residents; and removes the registrar's ability to appoint non-accountants to conduct audits or reviews, while allowing for increased dollar thresholds for mandatory audits or review requirements.

The Amending Act makes consequential amendments to other legislation, including *The Business Corporations Act, 2021*, *The Business Names Registration Act*, and *The Charitable Fund-raising Businesses Act*, among others. Broadly speaking, these amendments are housekeeping in nature.

The New Act will come into force by order of the Lieutenant Governor in Council, and the Amending Act will be brought into force together with the New Act. As such, the current *Non-profit Corporations Act, 1995* remains in force in Saskatchewan, and will not be repealed until the New Act is brought into force.

5. Court Finds that Donors are not Trust Beneficiaries in Sale of Charity's Property

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

The Ontario Superior Court of Justice has confirmed that donating time and money to a charity for the upkeep of a park does not create a trust relationship, nor does it entitle the donors to be beneficiaries of the property held in trust. In the case of [Mee et al. v. Y.M.C.A. Properties Inc., et al.](#), several individuals and a newly incorporated organization "The Friends of Geneva Park" (the "Applicants") brought an application a few days before the sale of the Geneva Park property, an ecologically sensitive area located on the traditional territory of the Anishinaabe people, the Chippewas of Rama First Nation ("Geneva Park") by Y.M.C.A. Properties Incorporated ("YMCA") was scheduled to close. The Applicants brought their application pursuant to section 10 of the *Charities Accounting Act* and sought, among other things, (1) an interim injunction restraining the sale from closing and (2) a declaration that YMCA Simcoe/Muskoka ("YSM") held Geneva Park in trust for the members and community of Geneva Park (including the Applicants) as beneficial owners. The court ultimately dismissed the application.

Geneva Park was a property in Orillia, Ontario, held by YMCA in trust for YSM. Both YMCA and YSM are registered charitable organizations. Several of the buildings (which included a number of cottages and cabins) in Geneva Park were rented to the public and there was a tradition of family camping and not-for-profit conferences being held on the Geneva Park property. Over the years, many families who camped at Geneva Park, including the Applicants, donated millions of dollars to the YMCA for the building and upkeep of the Geneva Park property and to support YSM's family camp and leadership programs.

In January 2021, YSM announced that it intended to begin the process of selling Geneva Park due to financial pressures resulting from the impacts of the COVID-19 pandemic. In selling Geneva Park, YSM engaged a company with experience in working with not-for-profits which would assist with continuing the legacy of the property, as much as possible and proceed with the sale in a transparent and inclusive manner. The Applicants remained in communication with YSM and submitted an expression of interest in September 2021 and two revised expressions of interest in February 2022, in which there were no statements suggesting the Applicants were asserting a beneficial ownership or trust relationship in relation to Geneva Park. However, in communications from March 2022, when it became clear that the YMCA was likely pursuing a sale to an anonymous private buyer, correspondence from the Applicants first referenced a "charitable trust". On April 4, 2022, YSM advised the Applicants that Geneva Park was being sold with a scheduled closing on April 29, 2022.

In reviewing its jurisdiction to consider the application, the court carried out an analysis of whether sections 6 or 10 of the *Charities Accounting Act* ("CAA") would apply. The court found that section 6 of the CAA (which permits any member of the public to complain about the manner in which funds were solicited, procured or disposed of funds received from the public) did not apply. The court stated that charities are entitled to a presumption that they are complying with the law and found there was no evidence that the YMCA/YSM had solicited funds improperly because donated funds were used for the purposes intended: the upkeep of Geneva Park.

The court found that section 10 (which entitles any member of the public to file an application to the court where there is an alleged breach of trust) did not apply because there was no evidence that the charitable property was being misused. Instead, the court found that based on the evidence it would have been irresponsible for YMCA/YSM to continue to try to maintain the upkeep of Geneva Park given the substantial cost of operations, and the deficits that had been incurred over the years. Therefore, YMCA/YSM had dealt with the property responsibly by putting it up for sale.

In addition to arguments under the CAA, the Applicant also argued that a trust had been created in their favour. A trust is created when three “certainties” are present: certainty of intention (when there is a clear intent by the owner of property to create a trust), certainty of subject matter (it is clear what property is held in trust) and certainty of object (there are ascertainable beneficiaries of the trust). However, the court unequivocally dismissed the argument that a trust had been created, because there was no evidence demonstrating an intention by YSM to hold Geneva Park in trust for the Applicants or anyone:

There is absolutely no evidence in this case that YSM has held the Property in trust for the Applicants, or frankly for anyone. All of the evidence provided, which this court has carefully considered, would demonstrate the opposite. [...]

The Applicants argue that the donations and contributions by the Geneva Park family camp community have been given to the YCMA and the YSM on the basis that they were holding the property in trust for the said community. This cannot possibly be so. There is nothing in the communication that indicates or even hints at this conclusion. The fact that [the Applicants] advocated in relation to the sale and made an expression of interest in the property seems to contradict this proposition.

The Applicants urged the court to conclude that their gifts to the YMCA were subject to conditions subsequent and precedent such that the donations should be conditional on the continued operation of Geneva Park. With the sale of Geneva Park, the donations, in the form of real property, should revert back to the Applicants. However, the courts quoted *Griffith v Davidson*, which states that “when a gift is not expressed to be conditional at the time it is given, the fact that the donor comes to regret the gift based upon an unexpected turn of events cannot somehow cause an otherwise absolute gift to morph into a conditional one.”

The court rejected the Applicants’ request for an interlocutory injunction halting the sale of the property because the Applicants did not demonstrate that they met the requirements of three-part test from *RJR-MacDonald* as follows: (1) there a serious issue to be tried; (2) the Applicants would suffer irreparable harm if their injunction was refused; and (3) the balance of convenience favoured granting an injunction. The court found that the Applicants failed on all three grounds.

In its concluding comments, the court took note of how the COVID-19 pandemic “has had a significant impact on many” and that as charitable organizations, YMCA and YSM were required to look at the big picture and determine whether continued ownership of Geneva Park was a viable one for their purpose and mission. To draw a conclusion “that donating time and money to a charity could result in a trust relationship” would be “an absurd result” and “an irrational precedent” for charities law. Therefore, the

court dismissed the application. This case confirms a basic principle, that providing donations and support to a charity does not provide entitlement or rights to the donors, even where the donor disagrees with the direction adopted by the charity.

6. Court Finds County's Breach of Trust 'Reprehensible'

By [Jacqueline M. Demczur](#)

The Ontario Superior Court of Justice has stated that a breach of trust by a public body is reprehensible and awarded significant costs to the party bringing the matter before the court. In making its decision on this matter, the court concluded that the improper use of funds held in trust by a public body such as a county is so serious that “there can be few issues that are more starkly in the public interest.” The court’s reasoning is outlined in its May 13, 2022 costs endorsement, *County of Bruce v Office of Public Guardian and Trustee*, 2022 ONSC 2905.

As described in the [Feb 2022 Charity & NFP Law Update](#), the court’s earlier decision outlined how the County of Bruce (“County”) had received a restricted gift from an individual’s estate to be used “for the archives building for the storage and display of the archives of the county.” However, the County instead used the majority of the funds received from this restricted gift to purchase property adjacent to the County’s museum with no clear intent to use the property for the archives building. The court found that the County’s property purchase amounted to a breach of a restricted purpose charitable trust.

In the follow-up costs decision, the court found that the County’s behaviour and its delays to produce relevant records demonstrated that “the County ‘acted unreasonably and in its own self-interest’.” Further, the court emphasized that “[a] breach of trust by a public body is reprehensible, scandalous, and outrageous.” As a result, the court ordered the County to pay \$140,000 in actual costs to the other parties.

Charities and other qualified donees are reminded that non-compliance with the terms of a restricted charitable purpose trust is a serious issue in the eyes of the court and that – when necessary – they should obtain legal advice to assist in complying with the terms of any of its restricted trusts.

7. Alberta Church, Pastor Guilty of Obstruction for Refusing COVID Health Inspections

By [Jennifer M. Leddy](#)

You can’t block a public health inspector on duty from entering your church because they give off a “bad vibe.” That’s what Judge S.R. Creagh (the “Judge”) decided in a Provincial Court of Alberta decision, [R](#)

[*v Church in the Vine of Edmonton*](#), published May 13, 2022. The Judge found the Church in the Vine of Edmonton (the “Church”) guilty of obstruction after the co-pastor refused to allow a public health inspector (the “Inspector”) to enter and ensure compliance with COVID public health orders. Tracy Fortin (“Ms. Fortin”), wife of the pastor and also a leader for the Church, contravened section 71 of Alberta’s [*Public Health Act*](#) by not letting the Inspector in to investigate complaints that the Church failed to comply with Orders of the Chief Medical Officer (the “Orders”). Because Ms. Fortin committed the offence in the conduct of her duties as a church leader, the Judge found the Church was responsible and also guilty of obstruction.

The Orders required that all places of worship must:

1. Limit the number of individuals at a worship service to 15% of the of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction,
2. Require all individuals in a building that was a public place to be masked unless exempt, and
3. [Physical distanced] as required.

Ms. Fortin admitted that she refused to allow the inspector to enter on three occasions: March 7, March 14, and June 6, 2021. She testified that she “saw her role to be a protector of the persons in the Church” and “only sincere worshipers were permitted into the Church.” When Ms. Fortin and her team saw someone they didn’t recognize trying to gain entry, they questioned whether the stranger was there to worship. “If so, she would let them in,” the Judge described. “If not, or if she believed the person was there to disturb the worshippers, the person would be denied entry.” Those who did not answer or “gave off a bad vibe” were also not permitted to enter. The Inspector was thrice so denied, because Ms. Fortin considered her presence “disruptive.” Parishioners were also instructed to notify Ms. Fortin if any “authorities” approached the door of the Church.

In their defence, the Church argued that their property is private, and the Orders did not apply because the Church is not a public place. The Judge disagreed, finding that “places of assembly” listed in the definition of a public place in section 1(1)(ii) of the *Alberta Health Act* includes places of worship, such as churches, synagogues, and mosques. Ms. Fortin was therefore guilty of obstructing an inspector in the course of her duties. As Ms. Fortin was herself conducting duties as a leader of the Church at the time that she committed the offence, “acting within the scope of the area of work assigned to her”, the Church was therefore liable for her actions, the Judge ruled.

8. Alberta Releases Interpretation Bulletin on Donations of Life Insurance

By [Ryan M. Prendergast](#)

The Alberta Superintendent of Insurance has clarified its stance on charitable donations of life insurance in Alberta through [Interpretation Bulletin 04-2022, Charitable Donations of Life Insurance](#) (the “Bulletin”), published on May 27, 2022. Insurance industry regulators have, for some time, expressed some concern over donations of life insurance. The British Columbia Financial Institutions Commission, now the BC Financial Services Authority (the “BCFSA”), for example, took the position in November 2019 that charities soliciting or accepting donations of life insurance policies from BC residents was considered “trafficking” in contravention of BC’s *Insurance Act*. As discussed in the [May 2020 Charity & NFP Law Update](#), however, the BCFSA clarified that *bona fide* charities were not prohibited from soliciting donations of life insurance policies or benefits.

In Alberta, the *Insurance Act* prohibits trafficking or trading in life insurance policies to prevent third parties from taking advantage of vulnerable individuals, and that only licensed life insurance companies are permitted to buy, sell, or transfer the benefits under life insurance policies. However, the Bulletin sets out the Alberta Superintendent of Insurance’s position that “in certain specified circumstances, the donation of life insurance policies to bona fide charities is not trafficking in life insurance.”

The Bulletin outlines three acceptable methods for donating life insurance to a *bona fide* charity under the *Insurance Act*, including:

- i) Where a life insured takes out a new policy in the name of a bona fide charity and receives a tax receipt for the premiums paid;
- ii) Where a life insured names a bona fide charity as the beneficiary of an existing policy, the charity receives the benefits at time of death, and the estate receives a tax receipt; and
- iii) Where a life insured transfers ownership of an existing policy to a bona fide charity and receives a tax receipt for the cash value of the policy.

Where a charity meets the section 149.1 definition for “charity” under the *Income Tax Act*, donations made in accordance with the above-noted methods would not be considered trafficking. Similar to BC, this includes include solicitation by *bona fide* charities of donations of life insurance policies or benefits.

The Bulletin states that it “supports legitimate charitable giving in compliance with the law”, and that the Superintendent’s office may investigate any conduct, acts or practices that do not support this same interpretation. It is therefore important that insurance companies, as well as donors and charities soliciting

or gifting life insurance policies in Alberta, review and understand the Bulletin in order to comply with the *Insurance Act*.

9. Employment Update

By [Barry W. Kwasniewski](#) and [Martin U. Wissmath](#)

Air Canada Executive Wins 24 Months' Damages for Wrongful Dismissal

A former Air Canada senior executive was awarded over \$400,000 in damages in the Ontario Superior Court of Justice after he sued the airline for wrongful dismissal. In addition to pay in lieu of notice, Justice A.P. Ramsay (Ramsay J) also ordered Air Canada to pay the plaintiff, Roland Ruel, further damages arising from bonus plans he would have received during the 24-month reasonable notice period, including a potential bonus as part of a COVID-19 compensation program, as well as post-retirement travel privileges for reaching 25 years of service. Published April 4, 2022, *Ruel v Air Canada* summarizes the legal principles for common law reasonable notice in Ontario. The case is important for employers of charities and not-for-profit organizations to understand how the court calculates wrongful dismissal damages and interprets language, or the lack thereof, in employment contracts or policies concerning termination of employees, especially where those contracts and policies purport to limit an employee's common law rights.

For the balance of this *Bulletin*, please see [Charity & NFP Law Bulletin No. 514](#).

10. Privacy Law Update

By [Esther Shainblum](#) and [Martin U. Wissmath](#)

Federal Government Tables 2 Bills to Enhance Cyber-security and Reform Privacy Laws

In recent weeks, the federal government introduced two new pieces of legislation that deal with privacy and cyber security issues.

1. On June 14, 2022, the federal government introduced Bill C-26, [An Act Respecting cyber security, amending the Telecommunications Act and making consequential amendments to other Acts](#), which passed first reading in the House of Commons on the same date. Bill C-26 would enact the *Critical Cyber Systems Protection Act (CCSPA)*, which would require designated operators that operate “vital systems” or “vital services” to establish, maintain and regularly review a cyber security program in respect of their critical cyber systems, identify and manage cyber security risks, protect their critical cyber systems from being

compromised and detect and minimize the impact of any cyber security incidents affecting their critical cyber systems (section 9).

A “critical cyber system” is defined under section 2 of the *CCSPA* as a “cyber system that, if its confidentiality, integrity or availability were compromised, could affect the continuity or security of a vital service or vital system.” Schedule 1 of the *CCSPA* lists the following six “vital services and vital systems”:

1. Telecommunications services
2. Interprovincial or international pipeline and power line systems
3. Nuclear energy systems
4. Transportation systems that are within the legislative authority of Parliament
5. Banking systems
6. Clearing and settlement systems.

Under section 6(1) the federal government can amend Schedule 1 by adding any service or system within its legislative authority determined to be vital to national security or public safety.

Section 7 of the *CCSPA* would allow the federal government to designate a “class of operators” that operate a work or carry on an undertaking or business that is within the legislative authority of Parliament – in respect of a vital service or vital system” to be set out in Schedule 2 to *CCPSA*. There are no designated operators currently listed in Schedule 2.

Under section 8, a designated operator that owns, controls or operates a critical cyber system is required to comply with the requirements of the *CCPSA*. These obligations include various record-keeping requirements as well as the obligation to immediately report a cyber security incident to the [Communications Security Establishment](#), and to “the appropriate regulator”. The regulators have various investigative and enforcement powers, including issuing notices of violation and imposing administrative monetary penalties of up to \$1 million in the case of an individual or \$15 million in any other case. The following six regulators are listed in the *CCSPA*: the Superintendent of Financial Institutions; the Minister of Industry; the Bank of Canada; the Canadian Nuclear Safety Commission; the Canadian Energy Regulator; and the Minister of Transport.

Although Bill C-26 does not pertain directly and specifically to the charitable sector, it forms an important part of the federal government’s privacy and cyber-security strategy. Charities and not-for-profits, as well as other Canadians, should therefore be aware of this development.

2. On June 16, 2022 the Minister of Innovation, Science and Industry introduced Bill C-27, the [Digital Charter Implementation Act, 2022](#) , which passed first reading in the House of Commons on that date. Bill C-27 is fundamentally similar to Bill C-11, the *Digital Charter Implementation Act, 2020*, which was introduced on November 17, 2020 but died on the order paper with the 2021 federal election. Like Bill C-11, Bill-C27 is designed to update Canada’s federal private sector privacy legislation, but contains certain new aspects that were not included in Bill-C11. Like Bill C-11, Bill C-27 would enact the *Consumer Privacy Protection Act (CPPA)* and the *Personal Information and Data Protection Tribunal Act (PIDPTA)*, both of which are very similar to what was introduced under Bill C-11. However, Bill C-27 would also enact the new *Artificial Intelligence and Data Act (AIDA)*, introducing new rules to regulate the development and deployment of artificial intelligence systems (“AI”). There are some new aspects to the *CPPA*, including new provisions relating to personal information of minors, expanded powers of the Office of the Privacy Commissioner and a new “legitimate interest” exception to the requirement for consent to the collection, use and disclosure of personal information.

In terms of its application to charities and not for profits, section 6(1) of the *CPPA* provides that it applies to organizations in respect of personal information that they collect, use or disclose in the course of “commercial activities”. “Commercial activities” is defined in section 2(1) as “any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, *including the selling, bartering or leasing of donor, membership or other fundraising lists*” (emphasis added). This definition is different from the definition in Bill C-11, which, among other differences, did not include the reference to the sale, barter or lease of membership and fundraising lists. Therefore, unlike Bill C-11, Bill C-27 does appear to apply to charities and not-for-profits to the extent that they engage in the sale, barter or lease of membership and fundraising lists. However, on balance, the bulk of the *CPPA* would appear to not apply to charities and not-for-profits, whose activities are not typically of a commercial character.

This situation is similar to that under the current *Personal Information Protection and Electronic Documents Act* (“*PIPEDA*”), which also applies to organizations that are engaged in commercial activities. However, under *PIPEDA*, in situations in which they are not subject to the legislation itself, charities and not for profits are able to refer to the ten fair information principles listed in Schedule 1 to *PIPEDA* as best practices and guidelines for them to follow in handling personal information.

The CPPA would repeal much of PIPEDA, including Schedule 1 and its ten fair information principles, leaving charities and not-for-profits without a framework for their handling of personal information.

We will provide further updates as Bill C-27 makes its way through the legislative process.

11. Quebec Bill 96 Overhauls French Language Requirements

By [Sepal Bonni](#) and [Barry W. Kwasniewski](#)

Sweeping changes to Quebec's language laws, including its *Charter of the French Language* ("Charter"), have been introduced through [Bill 96, an Act respecting French, the official and common language of Québec](#). Bill 96 was assented to on June 1, 2022 after its introduction more than a year ago on May 13, 2021. Broadly speaking, Bill 96 promotes and strengthens the use of the French language in Quebec, and affects organizations carrying on business in the province.

The Bill also imposes increased penalties for non-compliance from \$3,000 to \$30,000 for legal persons and from \$700 to \$7,000 for natural persons. In addition, the Bill provides that should an offence continue for more than one day, each day constitutes a separate offence. Fines will be doubled for a second offence and tripled for a subsequent offence. It will therefore be important that charities and not-for-profits in Quebec be aware of the Bill 96 and its impact on their operations.

Impact on Trademarks

As reported in the [June 2021 Charity & NFP Law Update](#), Bill 96 significantly impacts organizations, including charities and not-for-profits, that operate in Québec.

Currently in Québec, "recognized trademarks" (which include unregistered trademarks) are exempt from translation requirements and can therefore be displayed exclusively in a non-French language, provided that a French version of the trademark is not registered with the Canadian Intellectual Property Office.

Bill 96 now makes this exemption much more onerous for organizations with non-French trademarks. Firstly, non-French trademarks will only be permitted if the non-French trademark is registered with the Canadian Intellectual Property Office, and a French version of the trademark has not been registered. Therefore, unregistered trademarks will no longer benefit from the translation exemption noted above. Further, if the non-French registered trademark includes generic or descriptive terms, these terms must appear in French with visibility. If these conditions are not met, the non-French trademark must be accompanied by a "markedly predominant" French translation of the trademark.

As provisions under Bill 96 come into force on a staggered basis, the trademark-related requirements mentioned above are set to come into force on June 1, 2025. As a result, given that it currently takes three years to register a trademark in Canada, charities and not-for-profits using non-French trademarks in Québec must act quickly to register the non-French marks. If not, the organization must modify its public signage and advertising to include a “markedly predominant” French version of the trademark.

Impact on Employment

Bill 96 will also impact workplaces, including those of charities and not-for-profits operating in Quebec. While the Charter already requires employers to provide communications to employees in French, Bill 96 now explicitly requires communication in French when providing employment contracts (unless all parties expressly consent to the use of another language, other than in the cases of contracts of adhesion); offers of transfer; written communications with staff and employees (unless the staff or employee has expressly requested that communication be made in another language); employment application forms; other documents concerning conditions of employment; and training documents for employees.

When a job opening is posted in a language other than French, both the French and English versions of the posting must be disseminated simultaneously and by the same means of dissemination. The post must also reach a targeted audience of comparable size. Where employers require general knowledge or a specific level of knowledge of a language other than French, reasons justifying the language requirement must also be indicated in the job posting.

Bill 96 also prohibits employers from sanctioning employees (a) who demand that language rights of the workplace be respected; (b) to deter the employee from exercising workplace language rights; (c) for not having knowledge of a language other than French where the employee’s work duties do not require knowledge of another language; (d) for participation in a “francization committee” or subcommittee; and (e) that have communicated information, in good faith, to the Office or otherwise cooperated with an investigation after a Charter breach.

These employment requirements are effective as of June 1, 2022.

12. ATF/AML Update

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

Urgent Recommendation that Federal Government Allow Humanitarian Efforts in Afghanistan

A report from the House of Commons's Special Committee on Afghanistan, "[Honouring Canada's Legacy in Afghanistan: Responding to the Humanitarian Crisis and Helping People Reach Safety](#)" released in June 2022 (the "Report") recommends that Canada take immediate action to provide clarity and assurance so that Canadian organizations can deliver humanitarian assistance to Afghanistan without fear of prosecution under Canada's anti-terrorism laws. Following the return to power of the Taliban in Afghanistan in August 2021, several crises ensued, including a dire need for humanitarian aid. A report on Afghanistan was commissioned by the House of Commons on December 8, 2021 and subsequently released in June 2022.

The Report is extensive, with 37 recommendations for the federal government and 117 pages of content. It notes that having a designated terrorist entity (the Taliban) controlling an entire state apparatus "is [virtually] an unprecedented situation." The Canadian humanitarian organizations who testified to the Special Committee "urgently called for the Government of Canada to provide clarity and assurances in relation to Canada's sanctions and anti-terrorism financing law and regulations" noting that without such actions, they could not operate in Afghanistan. These organizations explained that Canada's actions were "out of step" with international practices and that what exemptions to legislation might be available to them involved lengthy processes, did not specifically concern humanitarian actions, and would not mitigate risk to charities under legislation such as the *Criminal Code*.

Many of these humanitarian organizations had also been provided with interpretations from Global Affairs Canada indicating that they were prohibited from using any Canadian funding to directly or indirectly pay ordinary and incidental taxes linked to humanitarian work, such as taxes on rent or salaries. However, without the ability to pay taxes, the humanitarian operations of these organizations would be impeded and face increased risks. Even funding directed from Canada to the United Nations system (such as UNICEF), which enjoys distinct privileges and immunities, could only be used for expenses outside of Afghanistan.

Following its review, the Special Committee expressed its concerns that "many months have passed since the Taliban takeover in Afghanistan, [and] the needs of the population are known to be dire." Therefore, it made three recommendations:

Recommendation 9

That the Government of Canada act immediately to implement United Nations Security Council Resolution 2615 [which acknowledges the humanitarian crisis in Afghanistan and decides that provision of humanitarian assistance to Afghanistan does not violate past UN resolutions that affirmed freezing the assets of the Taliban and associated entities].

Recommendation 10

That the Government of Canada act immediately to ensure that registered Canadian organizations have the clarity and assurances needed—such as carve-outs or exemptions—to deliver humanitarian assistance and meet basic needs in Afghanistan without fear of prosecution for violating Canada’s anti-terrorism laws.

Recommendation 11

That the Government of Canada review the anti-terrorism financing provisions under the *Criminal Code* and urgently take any legislative steps necessary to ensure those provisions do not unduly restrict legitimate humanitarian action that complies with international humanitarian principles and law.

Readers are encouraged to read the Report in its entirety which also covers other areas of concern, such as refugee resettlement efforts. In light of the dire humanitarian needs in Afghanistan, it is hoped that the Government of Canada will act quickly on the recommendations in the Report.

Paper from UN Special Rapporteur Raises Concerns about Misuse of AML/ATF Legislation

The United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has released a [position paper](#) which expresses deep concern that countering the financing of terrorism (“CFT”) measures are being misused and misapplied in contravention of human rights [Note that CFT and AML/ATF are terms that may be used interchangeably]. The position paper, “The Human Rights and Rule of Law Implications of Countering the Financing of Terrorism Measures” (the “Paper”), published June 2022, considers CFT legislation at a broad, international level with some examples provided from different countries.

While Canada and its AML/ATF legislation is not referenced directly, the Paper provides several relevant observations. In particular, the Paper cautions against “vague, imprecise or overbroad formulations of the definition of terrorist financing, which may be expansively and arbitrarily applied to criminalize and penalize protected, non-violent conduct and groups such as ... humanitarians”. This is a real issue in Canada because, as reported in the immediately preceding note, Canadian charities are concerned about their legal liability under Canada’s *Criminal Code* if they pursue humanitarian activities in a country such as Afghanistan. Broad AML/ATF criminal provisions are concerning because the Paper also documents

instances where such “criminal proceedings and apparatuses have been misused as a convenient tool to target and silence civil society actors, human rights defenders, and others critical of the State.”

The Paper is an excellent resource for individuals wishing to learn more about the broader concerns at an international level about AML/ATF legislation and how it may be balanced with human rights and humanitarian obligations. It is especially relevant following the release of the Special Committee on Afghanistan’s report, as described above, which highlights some of the concerns with Canada’s AML/ATF legislation.

FATF Holds Plenary, Commits to Updating NPO Best Practices

The Financial Action Task Force (FATF) – the global money laundering and terrorist financing watchdog – held a [plenary](#) from June 14-17, 2022 which, among other things, included an agreement to start new work to update the FATF best practices paper on combating the abuse of non-profit organizations (NPOs) in relation to terrorist financing. Currently, FATF’s Recommendation #8 directs countries to “review the adequacy of laws and regulations that relate to non-profit organizations which the country has identified as being vulnerable to terrorist financing abuse.” Recommendation 8 was last updated in 2016. However, as described in greater detail in the [Nov 2021 Charity & NFP Law Update](#), a high-level synopsis from the FATF published in October 2021 highlighted the negative consequences the FATF Standards can have on NPOs, such as de-risking, financial exclusion, undue targeting of NPOs and the curtailment of human rights. Updated best practices for regulating NPOs with AML/ATF risks could help address some of these negative consequences.

Bill C-19 Introduces Changes to Canada’s Sanctions Laws

Bill C-19 received Royal Assent on June 23, 2022, introducing changes to Canada’s sanctions laws. The amendments are seen as a response to Russia’s invasion of Ukraine and Canada’s stated commitment to take steps to confiscate or forfeit the assets of persons sanctioned in connection with the invasion. The changes include a broadening of the definition of property under the *Special Economic Measures Act*. In addition, paragraph 4(2)(a) of that Act is amended so that the Governor in Council may make orders or regulations restricting or prohibiting:

- (a) any dealing by any person in Canada or Canadian outside Canada in any property, wherever situated, that is owned — or that is held or controlled, directly or indirectly — by that foreign state, any person in that foreign state, or a national of that foreign state who does not ordinarily reside in Canada;

Because a very broad range of property, including, potentially, humanitarian aid, could be caught by this provision which can apply to any property held indirectly by any person in a foreign state, it is important that the amended legislation also includes the ability for the Governor in Council to authorize certain classes of activities and transactions by way of permit or general permit under subsections 4(4) and (5).

13. OBA's AMS – John Hodgson Award

Theresa L.M. Man is the 2022 recipient of the Ontario Bar Association's [AMS - John Hodgson Award](#) for excellence in charity and not-for-profit law. Theresa has been a key player in the Charity and Not-for-Profit sector for over 21 years and has been the past chair of both the CBA and the OBA Charity and Not-for-Profit Law Sections. As a partner at Carters, Theresa has practiced extensively and exclusively in charity and not-for-profit law. A presentation of the Award will be made at the OBA Executive Meeting to be held later in the year.

14. Update on Carters Webinars/Seminars

Save the Date – Thursday, November 10, 2022, the Annual *Church & Charity Law*TM Seminar/Webinar becomes the **Carters Fall Charity & Not-for-Profit Law Webinar**. Our Fall webinar will include matters of interest to charities, not-for-profits, as well as faith-based organizations.

Save the Date – Thursday, March 2, 2023, the Ottawa *Charity & Not-for-Profit Law* Seminar/Webinar becomes the **Carters Winter Charity & Not-for-Profit Law Webinar**, and will contain different topics from those in the Fall webinar. Our Winter webinar will also include matters of interest to charities, not-for-profits, as well as faith-based organizations.

15. Carters is Pleased to Welcome Lynne Westerhof as a New Associate

Carters is pleased to welcome Lynne Westerhof, B.A., J.D., as an associate. Lynne joins Carters after completing her articles with the firm and being called to the Ontario Bar in June 2022. Lynne is a charity and not-for-profit law associate whose practice will focus on tax law, charitable status applications, corporate governance matters, legal risk management, and counter-terrorism financing law as it applies to the provision of humanitarian aid. In addition to her work assisting charities and not-for-profits, Lynne will assist with Carter's knowledge management, research, and publications division.

IN THE PRESS

[Charity & NFP Law Update – May 2022 \(Carters Professional Corporation\)](#) was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.

[Charity Law Reform: Charitable Purpose Trusts](#) written by Terrance S. Carter was featured in the Philanthropist Journal as the second in a series of articles.

[Crowdfunded Donations to Result in Information being Reported to Federal Government](#) written by Terrance S. Carter, Nancy E. Claridge and Sean S. Carter was featured in the OBA Charity & Not-for-Profit Law Section Insider on June 4, 2022.

RECENT EVENTS AND PRESENTATIONS

[Foreign/Non-Resident Donors](#) was presented by Theresa L.M. Man on June 14, 2022, at the CAGP 28th National Conference in Halifax, NS.

[Impact Investing by Charities: The New Frontier in Philanthropy](#) was presented by Terrance S. Carter on June 15, 2022, at the CAGP 28th National Conference in Halifax, NS.

UPCOMING EVENTS AND PRESENTATIONS

[2022 CSAE Trillium Annual Summer Summit](#) hosted by the Canadian Society of Association Executives (CSAE) will be held on Thursday, July 14, 2022. Terrance S. Carter will speak on the topic of Top Ten Risk Management Tips for Charities and NFPs.

Save the Date - Carters Fall Charity & Not-for-Profit Law Webinar hosted by Carters Professional Corporation on Thursday, November 10, 2022. Details will be posted soon at www.carters.ca

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[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. 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*.



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[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.



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ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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