

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

MARCH 2022

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RECENT PUBLICATIONS AND NEWS RELEASES

1. **Bill 88: Digital Platform Workers Rights, Electronic Monitoring Policies**

By [Barry W. Kwasniewski](#)

A policy for monitoring employees' electronic devices may be required of employers if a new bill is passed by the Ontario provincial legislature. Bill 88, the [Working for Workers Act, 2022](#) ("Bill 88"), passed second reading on March 23, 2022 and was referred to the Standing Committee on Social Policy. Bill 88 proposes amendments to Ontario's *Employment Standards Act, 2000 (ESA)* that would require employers with 25 or more employees as of January 1st of a given year to have a written policy on electronic monitoring of employees in place by March 1st of that same year. Charities and not-for-profits would also be required to have these policies in place. Digital platform workers would have their right to a minimum wage added to the *ESA*, reservists in military skills training with the Canadian Armed Forces would be entitled to an *ESA* job-protected leave of absence from their regular jobs during training, and the *Occupational Health and Safety Act (OHSA)* would require employers to provide naloxone kits for workers at risk of an opioid overdose at the workplace, among other provisions of Bill 88.

Workplace electronic monitoring policies would be added to a new Part XI.1 of the *ESA*. These policies would need to contain the following information:

1. Whether the employer electronically monitors employees and if so,
 - i. a description of how and in what circumstances the employer may electronically monitor employees, and
 - ii. the purposes for which information obtained through electronic monitoring may be used by the employer.
2. The date the policy was prepared and the date any changes were made to the policy.
3. Such other information as may be prescribed [in a regulation filed under the *ESA*].

Bill 88 would enact the *Digital Platform Workers' Rights Act, 2022* to amend the *ESA* and provide digital platform workers with basic rights to information, minimum wage, a recurring pay period and pay day, notice of removal from an operator's digital platform, the right to resolve workplace disputes and freedom from reprisal. Digital platform work is defined to mean "the provision of for payment ride share, delivery,

courier or other prescribed services by workers who are offered work assignments by an operator through the use of a digital platform”.

2. Legislation Update

By [Terrance S. Carter](#)

Bill S-216, *Effective and Accountable Charities Act*

As reported in the [January 2022 Charity & NFP Law Update](#), [Bill S-216, *Effective and Accountable Charities Act*](#), which proposes amendments to the *Income Tax Act* (“ITA”), completed Third Reading in the Senate on December 9, 2021. As of February 3, 2022, Bill S-216 had also completed first reading in the House of Commons, and is now awaiting Second Reading, which is expected to occur in early May 2022.

As has been previously reported, Bill S-216 proposes changes to several provisions in the ITA governing charities to eliminate the fictitious “own activities” test in the ITA and the related Canada Revenue Agency (“CRA”) “direction and control” regime that prohibits charities from making grants to non-qualified donees for charitable purposes, and replaces it with a proposed new regime of “resource accountability.”

Further background information about Bill S-216 is available in the [February 2022 Charity & NFP Law Update](#) and the [November 2021 Charity & NFP Law Update](#), with additional details on the predecessor Bill S-222 in [Charity & NFP Law Bulletin No. 486](#) and [Charity & NFP Law Bulletin No. 488](#). For a report about a recent open letter by 42 charity lawyers in support of Bill S-216, [click here](#).

Bill 51, *Provincial Day of Service Act, 2022*

September 11 each year has been proclaimed the Provincial Day of Service in Ontario pursuant to [Bill 51, *Provincial Day of Service Act, 2022*](#), which received Royal Assent on March 3, 2022. The Provincial Day of Service honours those who lost their lives during the September 11, 2001 terrorist attacks, the “acts of courage, sacrifice and kindness that were made on and following that day”, as well as military, law enforcement and intelligence personnel.

Ontarians are encouraged to “pause, remember and to be inspired to show the same kind of compassion to strangers in need, by engaging on that day in charitable activities, fundraisers, good deeds and community service for worthy causes” on the Provincial Day of Service.

Bill 88, *Working for Workers Act, 2022*

An omnibus bill proposing a new *Digital Platform Workers' Rights Act, 2022*, along with amendments to the *Employment Standards Act, 2000* and the *Occupational Health and Safety Act*, among other amendments, has been tabled in Ontario. [Bill 88, *Working for Workers Act, 2022*](#) was introduced for First Reading on February 28, 2022 and most recently was carried on division at Second Reading and referred to the Standing Committee on Social Policy on March 23, 2022.

Bill 88 proposes a general minimum wage for “digital platform workers” and to require certain employers to establish and share policies with employees about electronic device monitoring among other things. For further details on Bill 88, please see [Bill 88 Could Provide Digital Platform Workers Rights, Require Electronic Monitoring Policies](#).

3. Corporate Update

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

Amendments to CNCA and CNCR Coming Into Force August 21, 2022

Certain amendments to the *Canada Not-for-Profit Corporations Act* (“CNCA”) and *Canada Not-for-Profit Corporations Regulations* will be brought into force on August 31, 2022. In this regard, Corporations Canada [announced](#) that certain provisions under Bill 25, entitled [An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act](#) will be brought into force on August 31, 2022. As explained in the [May 2018 Charity & NFP Law Update](#), Bill 25 received Royal Assent on May 1, 2018, and includes various technical amendments affecting corporate governance under the CNCA.

On March 3, 2022, [Order in Council P.C. 2022-200](#) fixed August 31, 2022, as the day on which amendments to the following sections in the CNCA will be brought into force pursuant to Bill 25: section 238 concerning custody of dissolved corporations’ documents and records; subsections 279(1) and (2) concerning inspection and making copies and extracts of certain corporate documents; and subsection 283(1) concerning the obligation of the Director to keep documents received and accepted pursuant to the CNCA.

Associated amendments to the Canada Not-for-Profit Regulations will also come into force on August 31, 2022. As reported in the [May 2021 Charity & NFP Law Update](#), these amendments were published as the Regulations Amending Certain Regulations Administered by the Department of Industry and were

expected to be brought into force on July 1, 2021, but were delayed. These amendments to the Regulations would enable certain provisions under Bill 25 to become operational (including amendments to the time periods for which the Director must keep and produce certain corporate documents; as well as technical regulatory amendments to the Regulations, such as fixing time periods, changes to the name granting rules, and fixing typographical errors). The amending Regulations have now again been published in the [Canada Gazette](#) with the new August 31, 2022 in-force date.

Directors' Information for Federal Corporations Available in Corporations Canada's API Store

Corporations Canada [announced](#) on March 2, 2022 that director information for federal corporations (including not-for-profit corporations) is now available on the [API Store](#). This includes information for directors of corporations created under various federal statutes (including the CNCA) as well as other corporations regulated by Corporations Canada (such as special act corporations).

The API Store is the Government of Canada's one-stop shop for Application Programming Interfaces (APIs). The API Store sells subscriptions for APIs which are, very broadly speaking, software platforms that computer programmers use in developing applications that allow for information exchange between the application and an external data provider. A dataset of information about directors for federal corporations (available through Corporations Canada's [federal corporation search](#)) is now available through the "[Federal Corporation API](#)". The API therefore now allows corporations that subscribe to a plan to have this information from Corporations Canada available on their own websites or other applications.

4. CRA & Tax News

By [Jennifer M. Leddy](#)

CRA Reminder about Confirming a Representative

The CRA published a [reminder](#) to individuals and organizations that they can authorize representatives through a digital process. The reminder, published on February 24, 2022, sets out common examples of who a representative may be, such as an accountant, lawyer, or family member. Once a representative has been authorized, they may be able to view, get information about and update some or all of a person's tax information.

Generally, the steps to confirm a new representative using the CRA's online process are as follows:

1. Make sure you have an online account with the CRA.

2. Have your representative sign in to Represent a Client to submit a new authorization request.
3. Sign in to your online account and either confirm or deny the pending authorization request within ten business days.

Revenu Québec Publishes Guide for Charities Completing Information Return

Revenu Québec has published an updated guide for 2021 to help registered charities, registered national arts service organizations, registered museums, registered cultural or communications organizations and recognized political education organizations that carry on activities in Québec complete the *Information Return for Registered Charities and Other Donees* (TP-985.22-V). The Guide, [*Donees Required to File an Information Return*](#), sets out general information and explanations regarding tax reporting for charities and similar organizations. It then provides further information about charities involved in limited partnerships, valuing gifts and issuing official receipts, and the circumstances in which Revenu Québec may impose sanctions or special taxes on organizations that have not fulfilled their obligations. The final two parts of the Guide provide instructions for completing the information return and associated schedules.

Registered charities or similar organizations that carry on activities in Québec may find this guide to be helpful in completing Form TP-985.22-V, especially with regards to obligations that are unique to Québec. For example, gifts of a public work of art or a building for cultural purposes require the Ministère de la Culture et des Communications to determine the fair market value of the work of art or building, unless the proposed gift is cultural property.

CRA Publishes Report on Charities Program in 2020-2021 Fiscal Year

On March 10, 2022, the CRA published its [*Report on the Charities Program 2020 to 2021*](#) (the “Report”), an annual report which highlights the activities of the CRA Charities Directorate for the period between April 1, 2020 and March 31, 2021. The Report provides valuable insight into the charitable sector and the activities of the Charities Directorate during an unprecedented time of global pandemic. Charities should read the report for a full recounting of the statistics pertaining to the charitable sector as well as the Charities Directorate’s activities. Charities are also encouraged to take note of the CRA’s goals for the current fiscal year which demonstrate a greater focus on improved data collection.

The first part of the Report provides an overview of the charitable sector by the numbers and some of the effects of COVID-19. In 2020, there were over 85,000 charities registered with the CRA, with the majority (almost 75,000) being charitable organizations and the remainder either private or public foundations. The data in the Report relating to the amount of assets, revenue and expenditures for charitable organizations

and foundations is from 2019, so it does not fully capture the effects of the pandemic. However, other information shows that as of March 31, 2021, charities had received \$3 billion and \$39 million from the Canada Emergency Wage Subsidy and the Canada Emergency Rent Subsidy respectively.

The Report also sets out some of the activities of the Charities Directorate between 2020 and 2021. For example, representatives of the CRA were involved with the Advisory Committee on the Charitable Sector, which released Reports [#1](#), [#2](#) and [#3](#) during 2021. In addition, the Minister of National Revenue, Hon. Diane Lebouthillier, tabled the government response to the report of the Special Senate Committee on the Charitable Sector in which the government agreed to either support, refer for study, or further consider 37 of the 42 recommendations from the Senate's report. Thirdly, the Charities Directorate developed and published the registered journalism organizations application and associated guidance. And finally, the Charities Directorate provided significant input into the Financial Action Task Force's ("FATF") [review](#) of Canada's technical compliance with the FATF recommendations.

In the 2020 to 2021 fiscal year, the Charities Directorate received 1800 applications for registration as a charity. The Report outlines that 91% of these were submitted online. In the same fiscal year, the CRA registered 79% of applications for charitable status. 20% of applications were abandoned or withdrawn, while only 1% of applications resulted in a refusal to register. Common reasons for refusal to register were non-charitable activities, private benevolence, acting as a conduit, indirect protection of the environment, and providing resources to non-qualified donees. Overall, there was a decrease from 2017-2018 in the need to file an amendment prior to registration, with this happening in about 35% of applications in 2020-2021, down from 49% in 2017-2018.

The last section of the Report looks ahead to the Charities Directorate's plans for the 2021 to 2022 fiscal year. The directorate anticipates that it will continue to administer emergency measures and recovery benefits, and to address and assess the impact of charities-related measures announced in Budget 2021 and the recommendations of the Advisory Committee on the Charitable Sector. As of January 2022, the Directorate will begin work to improve T3010 completeness, timeliness, and accuracy and will consider ways to increase charity data integrity.

5. Charity Lawyers Sign Second Open Letter in Support of Bill S-216 in Reforming the ITA

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

42 charity lawyers have signed a second open letter advocating for legislative and regulatory reform to the *Income Tax Act* by removing the “own activities” requirement and corresponding “direction and control” regime that applies to registered charities through the adoption of Bill S-216. As reported in the [February 2021 Charity & NFP Law Update](#), the first open letter, dated February 19, 2021, contained the signatures of 37 charity lawyers and highlighted concerns regarding the “key barrier” of the own activities test which “imposes artificial constraints on charities’ ability to work with third parties” and creates a top down, paternalistic approach to charitable work. The first letter mentioned that Bill S-222, *Effective and Accountable Charities Act*, which had been tabled days earlier, proposed changes that were “precisely the type of reform that is urged here.” Following the federal election in September 2021, Bill S-222 was reintroduced in November 2021 as Bill S-216, *Effective and Accountable Charities Act*.

This second letter, dated March 28, 2022, proposes that “the legitimate need for accountability and transparency over the use of charitable dollars” could be more effectively and efficiently met with an expenditure responsibility framework, similar to regimes in the US and UK. To that end, the signatories indicated their “full support” for the adoption of Bill S-216, *Effective and Accountable Charities Act*. This second letter contains the signatures of the original 37 signatories, as well as a number of additional signatures from other charity lawyers.

The full text of the open letter dated March 28, 2022 and the earlier open letter dated February 21, 2021 can be found [here](#).

6. FCA Dismisses Charity’s Appeal for Postponement of One-Year Recepting Suspension

By [Ryan M. Prendergast](#)

The Federal Court of Appeal dismissed an appeal by Human Concern International (HCI) from a decision of the Tax Court of Canada, in which HCI was asking for a postponement of its one-year suspension of receipting privileges. In the March 2, 2022 decision of [Human Concern International v Canada](#), the Federal Court of Appeal issued a brief, 11-paragraph decision dismissing the appeal and upholding the Tax Court of Canada’s original decision.

The CRA initiated an audit of HCI in 2014 for the two fiscal years from April 1, 2011 to March 31, 2013. Following the audit, the CRA sent a letter to HCI proposing to revoke its charitable registration. HCI

responded to the audit findings in 2018. Three years passed, with the CRA ultimately deciding to impose a penalty and suspend HCI's ability to issue charitable receipts for one year, after concluding that HCI was involved in making false charitable tax receipts.

In response, HCI filed a notice of objection with the CRA regarding the conclusions drawn in the audit and applied to the Tax Court of Canada for a postponement of the suspension pursuant to subsection 188.2(4) of the *Income Tax Act*. According to subsection 188.2(5) of the Act, the Tax Court of Canada may only grant an application for postponement where "it would be just and equitable to do so." The court applied the principles set out in *RJR-Macdonald Inc. v. Canada* and found that HCI failed to establish that irreparable harm would result if their application were not granted or that the balance of convenience favoured granting the application. As a result, the court dismissed HCI's application.

HCI then appealed to the Federal Court of Appeal. The court briefly commented that there was a threshold question of whether it actually had any jurisdiction to hear the appeal since section 27 of the *Federal Courts Act* does not provide it with authority to hear appeals from certain types of interlocutory proceedings. However, the court made no determination on the matter since it dismissed the appeal on other grounds, namely that HCI had "not raised any error that would warrant this Court's intervention."

This case, while brief, highlights that one of the most important stages in challenging the results of a CRA audit is to robustly respond to the CRA's initial audit findings. Charities may face an uphill battle in requesting a court, either through the Tax Court of Canada or the Federal Court of Appeal depending upon the penalties or sanctions imposed, to postpone the application of a penalty, given the high threshold of proving that it would be "just and equitable." While registered charities have rights to file a notice of objection from decisions of the CRA with respect to an audit, they may find themselves in a situation where the ability to issue receipts has been suspended or they are facing a large monetary penalty. As such, charities should ensure to respond to all of the CRA's audit findings upon receipt of the CRA's audit report.

7. Disbursement Quota Reform: Stabilizing a Three-Legged Stool

Terrance S. Carter authored an article entitled "Disbursement Quota Reform: Stabilizing a Three-Legged Stool" concerning disbursement quota ("DQ") reform for the Canadian Tax Foundation, published in its March 2022 edition of *Perspectives on Tax Law & Policy*. A few selected excerpts, as well as a link to the full article can be found below:

In the April 2021 federal budget, the government announced a public consultation on a proposal to potentially increase the minimum amount that charities must spend each year on charitable activities or gifts to “qualified donees.” This minimum amount, known as the “disbursement quota” (DQ), is currently calculated at 3.5 percent of the value of the charity’s assets that are not used directly in its charitable activities or administration.

[...]

The DQ consultation ended in December 2021. It generated considerable interest in the charitable sector, with some submissions ... calling for a 5 percent increase or higher in the DQ, and other submissions ... recommending a more measured and holistic approach.

Some participants in this debate may not have fully considered what charities need to do to meet their DQ obligation. In this regard, it is instructive to conceptualize the DQ as a three-legged stool. A charity’s compliance with its DQ obligation rests on three crucial components: (1) accurately calculating its DQ each year, (2) funding its annual DQ obligation from its resources, and (3) meeting the DQ obligation by spending at least the minimum amount each year either on charitable activities or gifts to qualified donees.

Just as a three-legged stool’s balance would be affected by a change in the length of one leg, so too would a proposed change to any single aspect of the DQ potentially affect the other two components. All three of these interdependent components must be carefully considered before changes are made to any one of them.

The full article may be accessed [here](#).

8. Non-Profit Society Liable for Damages After Failing to Respond to Civil Claim

By [Jacqueline M. Demczur](#) and [Esther S.J. Oh](#)

A decision from the Supreme Court of British Columbia, [Port Alberni Shelter Society v Literacy Alberni Society](#), confirms that the board of directors for a not-for-profit society cannot absolve itself from responsibility by claiming that defending a lawsuit was the responsibility of the organization’s executive director. The judgment, delivered on February 15, 2022, involved two not-for-profit societies, their boards and executive directors, and defamation claims which ultimately resulted in hundreds of thousands of dollars being awarded in damages against one of the not-for-profits and its executive director.

The Port Alberni Shelter Society (“PASS”) is a not-for-profit society with charitable status that provides emergency housing and long-term housing, and the Literacy Alberni Society (“LAS”) is a not-for-profit society with charitable status which provides educational and literacy resources to the Port Alberni

community. Through his position as the Executive Director of LAS, Mr. Hughes “with the expressed support of the Literacy Alberni Society” engaged in a defamatory campaign against PASS, Mr. Douglas, the Community Engagement and Special Project Coordinator of PASS, and Mr. Hewitt, the Executive Director of PASS, (collectively, the “Plaintiffs”). Mr. Hughes asserted that the Plaintiffs mismanaged public funds in the operation of PASS, enriched themselves with public funds through corruption, and created homelessness, among other accusations.

After sending a cease and desist letter which received no response, the Plaintiffs filed a notice of civil claim on November 23, 2020 against Mr. Hughes and LAS, although neither responded. A default judgment order was awarded to the Plaintiffs on April 19, 2021 which the Plaintiffs emailed to Mr. Hughes and LAS but, again, received no response. The matter came before the courts again in July 2021 for an assessment of damages. Mr. Hughes briefly attended court for the damages assessment, although the presiding judge, Justice Matthews, noted that she was uncertain whether Mr. Hughes was representing LAS when he attended in court. Ultimately, Justice Matthews awarded damages against Mr. Hughes and LAS on a joint and several basis for approximately \$330,000. In addition, Mr. Hughes was found personally liable for punitive damages in the amount of \$15,000, for which LAS was vicariously liable. In her comments, Justice Matthews noted, the seriousness of LAS’s decision to not defend the claim.

[162] ...Literacy Alberni chose not to defend the claim in the context of very serious defamation claims based on the conduct of its Executive Director who related his role as the executive director of Literacy Alberni to the defamatory conduct and sent some of the communications from his Literacy Alberni email address that included his name and his title in the body of the message. The chair of the Literacy Alberni board of directors endorsed Mr. Hughes’ campaign by commenting on the petition in a manner that indicated support.

[163] The Literacy Alberni Society did not respond to the cease and desist letter and took no steps to distance itself from its Executive Director with regards to the Campaign.

[164] Given the overlap between the communities that PASS and the Literacy Alberni Society serve and that they both interact with some of the same governmental and non-governmental organizations, the Literacy Alberni Society has decided, or allowed itself to participate in the campaign through its Executive Director.

[165] Literacy Alberni Society is vicariously liable for the acts of Mr. Hughes. Literacy Alberni Society is jointly and severally liable for all of the damages except punitive damages.

Following this decision, LAS sought an order from the court that the default judgment order and the damages assessment order be set aside against it and that it be granted leave to file a response to the civil claim “on the basis that allowing the orders to stand [would] constitute a miscarriage of justice.” LAS pled that the board of directors relied on Mr. Hughes, as executive director of the organization, to respond to the court claim, admitting that, in hindsight, their trust in him was “misplaced.”

However, the court noted that “LAS concedes that it was aware of the issuance of the cease and desist letter and were properly served with the plaintiff’s notice of civil claim.” LAS also conceded that it received notice that a default judgment had been taken against it. The chair of the board of LAS said that after receiving the cease and desist letter, he spoke with Mr. Hughes and received an assurance that Mr. Hughes would retain a lawyer and LAS would not be implicated. However, the court noted that “[t]here is no evidence that LAS’ board of directors instructed Mr. Hughes to retain counsel to enter a defence on LAS’ behalf at any time.” Further, there was no evidence of follow up actions taken by the board to confirm whether Mr. Hughes was, in fact, dealing with the matter.

The court did “have some sympathy for the fact that LAS’ board is comprised of volunteers seeking to assist in the governance of a non-profit society” but the court indicated that this does not “eliminate the duty of members of the board to take steps to ensure that LAS’ interests are protected.” The court states that the LAS’ board’s failure to file a response to the plaintiff’s notice of civil claim and defend the LAS’ interests constituted a willful failure in that regard. As the court found no basis to assert that it would be a miscarriage of justice to allow the default judgement order and the damages assessment order to stand against LAS, the court dismissed LAS’ application to have those orders set aside.

This case serves as a reminder that the board of directors of registered charities or not-for-profits are obligated to manage or supervise their management. While the board can delegate certain day to day responsibilities to senior management and staff, they are ultimately responsible for the actions (or inactions) of the charity or not-for-profit, including failing to defend the lawsuits in which the charity is a named party.

9. Employee’s Secret Recordings of Employer Cause for Dismissal, BC Supreme Court Rules

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

Secretly recording an employer can be just cause for termination, and could even provide just cause retroactively if the secret recordings are discovered after an employee has been terminated. The British

Columbia Supreme Court ruled that the plaintiff employee in [*Shalagin v Mercer Celgar Limited Partnership*](#) breached not only the defendant employer's code of conduct and confidentiality policies by making surreptitious workplace recordings, but also his own professional obligations, and the requirements of the employment relationship itself, in a January 25, 2022 judgment. Judge Ward K. Branch's reasoning about the significance of mutual trust and ethical conduct between an employee and employer in this case are important for charities and not-for-profits in Canada to consider in managing their own workplace relationships with employees. This *Bulletin* describes the key background facts and overall legal analysis from the judgment.

For the balance of this *Bulletin*, please see [Charity & NFP Law Bulletin No. 509](#).

10. Privacy Law Update

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

Halton District School Board Should Do Better to Protect Student Privacy: IPC Report

Ontario's Information and Privacy Commissioner (IPC) published eight recommendations for the Halton District School Board (the "HDSB") to improve its compliance with provincial privacy laws. In [*Halton District School Board \(Re\)*](#), an IPC report published on February 7, 2022 (the "Report"), identified a number of deficiencies in HDSB's handling of the personal information of elementary students and some areas in which it failed to comply with the *Municipal Freedom of Information and Protection of Privacy Act* (the "Act"). The parents of two children attending elementary schools anonymously complained that HDSB's use of third-party applications (the "Apps") as part of the "G Suite Marketplace" software platform was in contravention of the Act, including failing to track the personal information collected by third parties through the Apps, posting of personal information without knowledge or consent and allowing third party advertising to students.

The IPC found that personal information of students as defined under section 2(1) of the Act included their names, student numbers, grade level, location, date of birth, photos and schoolwork. The IPC found that the system put in place by HDSB to determine whether a digital educational tool was permitted to collect students' personal information satisfied HDSB's obligation to ensure that it collects, directly or through its agents, only the personal information necessary for the provision of educational services, and that the collection of personal information permitted under its system was authorized under the Act. However, the IPC found that the notice of collection posted by HDSB did not refer readers to a specific

person with title, address and telephone number as required by the Act and therefore did not align with the Act.

The IPC also found that the usage agreements between HDSB and the third party vendors were not all adequate and should be reviewed and revised to, without limitation: explicitly prohibit vendor use of students' personal information for marketing or advertising purposes; include a clause requiring the third parties to provide notice to HDSB of any disclosures of personal information made in compliance with applicable law; ensuring that vendor obligations regarding personal information will continue to apply if the vendor's business name, structure or ownership changes; requiring and confirming deletion of personal information by vendors and requiring vendors to audit the privacy and security of student information at HDSB's request.

Due to the anonymous nature of the complaint, the IPC was not able to make findings on specific allegations made by the complainants. The Report provides good guidance for charities and not-for-profits regarding the practices they should adhere to when engaging third party vendors that may collect and use personal information of children and other stakeholders.

11. ATF/AML Update

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

Report by The International Committee of the Red Cross

The International Committee of the Red Cross (ICRC) published [volume 103](#) of its *International Review of the Red Cross* (the "Journal") that focusses on the interrelated topics of counterterrorism and international humanitarian law. The 772-page journal, released on February 23, 2022, features interviews with UN special rapporteurs and State officials (including Elissa Golberg, Assistant Deputy Minister at Global Affairs Canada), as well as articles on several themes, such as the impact of sanctions and other counterterrorism measures on the humanitarian space; legal and policy debates about sanctions and other counterterrorism measures; and financial access, de-risking and the role of the banking sector.

The problem that the Journal addresses is that despite the legitimacy of States adopting approaches to counter terrorism, "efforts to cut off all sources of direct and indirect support to terrorists and terrorist organizations have quickly – and predictably – generated a new set of humanitarian challenges." Counter terrorism measures "have often been overly broad" resulting in a real and substantial harm to humanitarian efforts and preventable civilian suffering.

The Journal recognizes that measures, such as Resolution 2615, adopted by the UN Security Council in December 2021 (and reported on in Carters' [January 2022 Charity & NFP Law Update](#)) are an important step towards bringing counterterrorism efforts back into balance with States' other international commitments. The resolution was adopted with a view to ensuring the provision of humanitarian assistance and other activities to support basic human needs in Afghanistan, and clarified that such activities would not violate earlier resolutions regarding limiting contact and support of the Taliban. Resolution 2615, which received unanimous support, "marked an important step in ensuring that counterterrorism and sanctions measures do not harm or undermine vital humanitarian work."

However, there are still several other areas of concern that need to be addressed. In its review of the interaction between international counterterrorism law and international humanitarian law, the Journal notes that the criminal law aspects of counterterrorism measures may be concerning "when those measures are written so broadly as to criminalize as terrorist activities those that are otherwise lawful under [International Humanitarian Law]." Canada is identified as one of the countries where "the current wide definition (and application) of complicity, association with, and support to terrorism offences" exposes humanitarian and impartial medical assistance to suspicion and threats, with specific reference made to subsection 83.03(b) and section 83.19 of the *Criminal Code*.

Overall, the Journal explores several interesting ideas about how to bring back a balance to counterterrorism measures and humanitarian activities. Charities and not-for-profits, especially those that engage in international humanitarian work, may wish to further review the ICRC's extensive Journal in light of its engagement on several timely topics affecting both Canadian and international organizations.

FATF Discusses Beneficial Ownership, Unintended Consequences to NPOs, in its Sixth Plenary

The Financial Action Task Force ("FATF") held its sixth [Plenary](#) from March 2-4, 2022 at which international delegates addressed several strategic initiatives for the organization moving forward. Notably, the FATF adopted amendments to [Recommendation 24](#) and its Interpretive Note, which require countries to ensure that "competent authorities have access to adequate, accurate and up-to-date information on the true owners of companies." A true owner, also referred to as a beneficial owner, is the person who ultimately enjoys the benefit of ownership of property, even if the title to the property is in the name of a different person, for example, a shell corporation.

The FATF has also completed its work "to identify and analyse unintended consequences of the FATF Recommendations," especially regarding how to prevent the application of these measures leading to de-

risking, financial exclusion and undue targeting of non-profit organizations (NPOs). As reported on in [November 2021 Charity & NFP Law Update](#), the FATF had published an earlier synopsis of a “stock-take” which set out how some countries may incorrectly implement FATF Recommendations resulting in undue targeting of NPOs. The substantive work regarding how FATF can mitigate these unintended consequences of its Recommendations without diminishing the effectiveness of global AML/ATF measures has been referred to FATF Working Groups.

12. COVID-19 Update

By [Adriel N. Clayton](#) and [Martin U. Wissmath](#)

Ontario Takes Further Steps Towards Reopening

As the province of Ontario moves through its reopening milestones, it has transitioned from Step 3 of its Roadmap to Reopen plan to the final Roadmap Exit Step as of February 25, 2022. Many public health and workplace safety measures have been lifted, according to a [statement](#) from Ontario’s Chief Medical Officer of Health made on March 9, 2022. Further to this, capacity limits for indoor and outdoor gatherings, including weddings, funerals and religious services, rites and ceremonies, as well as their associated social gatherings, have been removed.

The mandatory mask mandate has also been lifted as of March 21, 2022, with certain limited exceptions, including in health care settings, long-term care homes and congregate care settings. In this regard, hospitals, long-term care homes, retirement homes, healthcare clinics, service agencies (as defined under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*), and homeless shelters, among other organizations, must continue to ensure that every person who is not subject to an exemption wears a mask or face covering that covers their mouth, nose and chin while in the indoor area of the premises. A comprehensive list of organizations that must continue to enforce indoor masking requirements is set out in subsection 2(4.1) of Schedule 4 of [O Reg 364/20, Rules for Areas at Step 3 and at the Roadmap Exit Step](#).

IN THE PRESS

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

[Disbursement Quota Reform: Stabilizing a Three-Legged Stool](#) written by Terrance S. Carter, was included in the Canadian Tax Foundation Perspectives on Tax Law & Policy in March 2022.

[Ontario Workers Have the Right To ‘Disconnect from Work’ As Well As Other Rights Under ESA](#) (Charity Law Bulletin No. 506) written by Barry W. Kwasniewski and Martin U. Wissmath, was mentioned as part of the New Legal Update section of the CSAE Trillium Monthly E-News “The FORUM” on February 16, 2022.

UPCOMING EVENTS AND PRESENTATIONS

[CBA Charity Law Online Symposium](#) will be hosted by the CBA on Thursday, May 5, 2022. Terrance S. Carter and Theresa L.M. Man will be speaking during the morning session on the topic: Bill S-216: End of the ‘Own Activities’ Requirement?

The Canadian Association of Gift Planners is hosting the [CAGP 28th National Conference](#) from June 14 to 16, 2022 in Halifax, NS. Theresa L.M. Man will speak on the topic of Foreign/Non-Resident Donors on Tuesday, June 14, 2022. Terrance S. Carter on the topic of Impact Investing by Charities: The New Frontier in Philanthropy on Wednesday, June 15, 2022.

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