

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

AUGUST 2023

SECTIONS

Publications & News Releases	2
In the Press	24
Upcoming Events & Presentations	25
Legal Team	26

HIGHLIGHTS

1. Still Waiting for Clarity from the Government on New Trust Reporting Rules for Charities
2. Proposed Legislation on Alternative Minimum Tax (AMT) Changes will Impact Charities
3. Corporate Update
4. Legislation Update
5. Court Considers Oppression Claims Against Individual NFP Directors & Senior Management
6. CRA Views: Certain First Nations Health Organizations are Public Bodies Exempt from Tax
7. Federal Court Denies Charity's Requests for Production of Documents
8. Conduct of Not-for-Profit Corporation Found to be Oppressive Against its Members
9. Employment Update
10. Privacy Update
11. IP Update
12. AML/ATF Update
13. Changes Proposed to Accounting Standards for Non-Profit Organizations
14. Best Lawyers in Canada Rankings

[Carters Annual Charity & Not-for-Profit Law Webinar™](#)

Thursday, November 9, 2023

Hosted by Carters Professional Corporation

[Brochure](#) and [Online Registration](#) available at www.carters.ca

Get on the Carters Mailing List:

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

PUBLICATIONS & NEWS RELEASES

1. Still Waiting for Clarity from the Government on New Trust Reporting Rules for Charities

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

In our [Charity & NPF Law Bulletin No. 522](#) (“*Bulletin No. 522*”) dated June 29, 2023, we pointed out serious concerns relating to the new trust reporting obligations for internal express trusts held by charities based on communications we had had with senior officials at the Department of Finance (“Finance”) and the Charities Directorate at the Canada Revenue Agency (“CRA”). These same concerns were also reflected in an article by Tim Cestnick in [The Globe and Mail](#) on July 6, 2023.

In our *Bulletin No. 522*, we expressed the hope that the CRA would provide clarity on how these new trust reporting rules would apply to internal express trusts of charities. Since then, there have been some individuals in the charitable sector who have reported that they understand that Finance and the CRA may be looking to provide a solution to the new trust reporting rules for charities, either through an administrative exemption of some kind or possibly through an amendment to the *Income Tax Act* (“ITA”).

On this latter point, it should be noted that there was no amendment to this effect included in the [Legislative Proposals Relating to the Income Tax Act and the Income Tax Regulations \(Technical Amendments\)](#) released on August 4, 2023. In this regard, the ITA is proposed to be amended to expand the list of entities in subsection 159(1.2) that are exempt from the trust reporting rules to include a trust formed on the continuation of the Canadian Wheat Board. It was unfortunate that Finance did not take that opportunity to also exempt internal express trusts of charities from the new trust reporting rules.

On August 23, 2023, our firm inquired of senior officials at Finance and the CRA whether an announcement from either Finance or the CRA on express trust reporting requirements by charities was expected to be made and, if so, when. In response, we were advised by a senior official at the CRA that “the Charities Directorate has no updates to provide at this time.” To date, we have not heard back from anyone at Finance in response to our inquiry.

It would of course be a welcome development if the CRA and/or Finance were to announce that there will be an administrative exemption or a legislative amendment to the ITA forthcoming to exempt internal express trusts held by charities from the new requirement to file T3s. However, given that it is almost September 1st, the clock is starting to run down.

As a result, charities and their professional advisors in the coming months may have to commence the necessary due diligence if they are going to be able to prepare T3s for express trusts that the charities hold after December 30, 2023 and then file T3s within 90 days thereafter (*i.e.*, by March 30, 2024, since 2024 is a leap year). Charities that fail to file the required new trust returns could face serious penalties for each express trust, being the greater of \$2,500 or 5% of the value of the trust property in general terms (please see *Bulletin No. 522* for the details of these penalties).

As explained in *Bulletin No. 522*, considerable preparation time would be required by affected charities to ensure compliance with the new trust reporting requirements, including understanding the details and application of the new rules to them, reviewing their records to determine what express trusts mean, determining whether any of the internal trust funds held by them are in fact “express trusts”, ascertaining whether they have all the necessary information for all identified “express trusts” required to be set out in the new T3s, and considering what to do if they do not have the said information.

However, against this more ominous backdrop, it is hoped that Finance and the CRA will soon announce that a solution is in the works to exempt charities from the new trust reporting requirements that will circumvent the unnecessary and unwanted administrative burden of charities having to complete and file pointless T3s. If an announcement in this regard was to occur, it would be great win for the charitable sector and would also reflect very well on both Finance and the CRA for having thoughtfully listened to the legitimate concerns that have been raised by the charitable sector over the past number months.

2. Proposed Legislation on Alternative Minimum Tax (AMT) Changes will Impact Charities

By [Theresa L.M. Man](#) and [Jacqueline M. Demczur](#)

The Department of Finance released [Legislative Proposals Relating to the Income Tax Act and the Income Tax Regulations \(Budget 2023 and other proposals\)](#) on August 4, 2023, to move forward with proposed changes to the alternative minimum tax (“AMT”) for high-income individuals, as well as certain estates and trusts. These proposed AMT changes are of note to the charitable sector as they may negatively impact the making of future transformational gifts to charities by high net worth donors. If enacted, these AMT changes will be effective for taxation years that begin after 2023.

Under the *Income Tax Act* (Canada) (“ITA”), taxpayers are required to calculate their tax liability under the “regular” method and under the AMT. If a taxpayer has claimed preferential tax deductions resulting in a lower tax liability under the regular method, then they will have to pay the higher AMT. This is a way of ensuring that every individual pays at least a minimum amount of tax.

Currently, the AMT applies a flat 15% tax rate on an adjusted taxable income in excess of a \$40,000 exemption. Under the new proposed rules, the \$40,000 income exemption will be raised to \$173,000, which will be indexed to inflation, and the tax rate of 15% will increase to 20.5%. These changes will increase the income level required for taxpayers to be subject to the AMT but also cause those who are subject to the AMT to pay more taxes.

As well, currently, there are significant tax benefits on donations of publicly listed securities to charities under the ITA. Specifically, there is no taxable capital gain on these shares when they are donated to charities with the donor being entitled to a donation tax credit for the full value of the gifted shares. These benefits apply to tax liability both under the “regular” method and the AMT.

However, under the new proposed AMT rules, the scope of what will be included in the AMT will be expanded. While the proposed new AMT rules are exceedingly technical and complicated, they include the following key provisions that are particularly of note to the charitable sector: (1) the basic minimum non-refundable tax credits will be reduced by half (which include donation tax credits); (2) the capital gains on gifts of capital property to charities will be included at a 100% rate (instead of currently 100% of the charitable tax credit arising from such donations being able to be used to reduce the donors’ taxable income); and (3) capital gains on gifts of publicly listed securities will be included at a 30% rate (instead of currently such donations being tax free).

The proposed changes also include exempting graduated rate estates from the AMT. It is also important to note that corporations are not subject to the AMT.

If these proposed changes to the AMT are enacted, then these new rules will significantly reduce the tax benefits to donors who are subject to the AMT when they donate publicly listed securities and capital property to charities. Donors may have to pursue alternate tax planning methods, which could negatively impact the resources available to charities to carry on their important work in Canada and around the world.

For those interested in providing comments on the proposed new AMT changes, the Government of Canada is accepting feedback until September 8, 2023. Submissions can be made by emailing Consultation-Legislation@fin.gc.ca.

3. Corporate Update

By [Theresa L.M. Man](#) and [Adriel N. Clayton](#)

Corporations Canada to Integrate NUANS Name Reports into Online Filing Centre

In an effort to improve client services, Corporations Canada [announced](#) on July 14, 2023 that it will be integrating the NUANS name search report with its Online Filing Centre (“OFC”) in the fall of 2023. Going forward, organizations incorporated under the *Canada Not-for-profit Corporations Act* that need to obtain a NUANS name search report for incorporation and corporate name preapproval services will need to purchase the report through the OFC.

Organizations that have bought a NUANS name search report within 90 days prior to the system update will be able to rely on the report only until the update takes effect. Following the system update, they will need to use the new process, and name search reports purchased before the update will not be accepted. However, a specific date for the system update has not yet been set.

Corporations Canada Commencing Dissolution for Failure to File Annual Returns

Not-for-profit corporations under the *Canada Not-for-profit Corporations Act* that have failed to file their annual returns for three years may be subject to administrative dissolution. Corporations Canada [announced](#) on June 14, 2023, that it would begin the dissolution process for these corporations starting in July 2023.

In this regard, Corporations Canada will first send a Notice of Intent to Dissolve to those corporations in default of filing annual returns. Corporations will then have 120 days from the date of the notice to file the required annual returns. Certificates of Dissolution will be issued to those corporations that fail to do so by the deadline.

Corporations Canada’s announcement warns that dissolution can have serious legal repercussions, including that dissolved corporations cannot conduct activities, may not be eligible for bank loans, and will have their charitable status revoked. It is therefore important that corporations stay on top of their filing obligations in order to avoid potential dissolution.

Identity Verification Now Mandatory for Corporations Canada’s Online Services

Corporations Canada [announced](#) on June 28, 2023, that identity verification is now mandatory in order to access a majority of Corporations Canada’s online services. Identity can be verified on the ISED Account profile, after signing in through the OFC, and only needs to be done once. This additional step adds a layer of security and protection to personal and corporate information.

Ontario Proposes Amendments to Simplify Continuance for Share Capital Social Clubs

Share capital social clubs (“social clubs”) under the Ontario *Corporations Act* have [until October 19, 2026](#) to continue under the Ontario *Not-for-Profit Corporations Act, 2010*, the *Co-operative Corporations Act*, or the *Business Corporations Act*. To assist with continuance of social clubs, the Government of Ontario released a [draft bill](#) proposing amendments to the *Corporations Act* to simplify voting requirements to authorize the continuance. A public consultation on the draft bill was held between July 26, 2023 and August 9, 2023.

Currently, to approve continuing under these legislations, each class of shareholder of a club must vote separately by class. Depending on the shareholding class structure, the process to notify shareholders and facilitate voting for all classes may be complex and time-consuming. As well, a failed vote for continuance could lead to a forced dissolution of the club. In response to these concerns, the proposed amendments would remove the requirement that each class of shareholder vote separately as a class and clarify that only a social club’s shareholders entitled to vote may vote to authorize the continuance.

The proposed changes, if passed, are intended to reduce the risk of dissolution of social clubs, so that they can continue to operate and serve their members and communities, as well as reduce burden on social clubs by simplifying the voting process. This would also align the *Corporations Act* with continuance provisions in other Ontario business law legislation.

Amendments to Ontario *Co-operative Corporations Act* Regulations

Sections 21 and 22 of [Ontario Regulation 178: General](#) (“Regulation 178”) under the *Co-operative Corporations Act* (the “*Co-op Act*”) will be revoked as of October 1, 2023, pursuant to [Ontario Regulation 192/23](#), which was filed on July 20, 2023.

Section 21 of Regulation 178 currently provides that a notice or other document cannot be sent electronically by a co-operative to a member or director pursuant to clause 172(1)(b) of the *Co-op Act* where the co-operative is a non-profit housing co-operative. Similarly, section 22 of Regulation 178 currently provides that a notice or other document cannot be sent electronically by a member or director of a co-operative to the co-operative pursuant to clause 172(2.1)(b) of the *Co-op Act* where the co-operative is a non-profit housing co-operative. The revocation of these sections is expected to better facilitate electronic delivery of notices under the *Co-op Act*.

Further Amendments to BC Societies Act in Force

Certain amendments to the British Columbia *Societies Act* were brought into force on July 7, 2023, pursuant to [Order in Council No. 419](#). As most recently discussed in the [May 2023 Charity & NFP Law Update](#), changes were made to the *Societies Act* by way of the *Societies Amendment Act, 2021*, to make the *Societies Act* more accessible and consistent and to address uncertainties and omissions in the Act.

Order in Council No. 419, which was approved and ordered on July 7, 2023, ordered that sections 9, 31, 32, 36 to 45, 47, 48, 50, 52, 62, 70, 74, 85 to 87, 108 and 109 of the *Societies Amendment Act, 2021*, be brought into force, amending the *Societies Act*.

4. Legislation Update

By [Terrance S. Carter](#) and [Adriel N. Clayton](#)

Department of Finance Introduces 2023 Draft Budget Implementation Legislation

The Department of Finance released draft budget implementation legislation for the 2023 Federal Budget on August 4, 2023, [Legislative Proposals Relating to the Income Tax Act and the Income Tax Regulations \(Budget 2023 and other proposals\)](#). The draft legislation proposes amendments to the alternative minimum tax (“AMT”) for high-income individuals under the *Income Tax Act*, amongst other changes. The proposed changes to the AMT may impact gifts to charities by high net worth donors for taxation years that start after 2023. For further details on the proposed revisions to the AMT which will affect charities, please see [Proposed Legislation on Alternative Minimum Tax \(AMT\) Changes will Impact Charities](#).

The Government of Canada is holding a public consultation to obtain feedback on the proposed budget implementation legislation until September 8, 2023. Comments can be sent to Consultation-Legislation@fin.gc.ca.

Federal Government Holds Pre-Budget and AML/ATF Consultations

In the long lead-up to the 2024 Federal Budget, Canadians were invited to submit comments and suggestions in response to the House of Finance Committee’s [pre-budget consultations](#). The pre-budget consultations were open for public comment to “convey their priorities for the government’s forthcoming budget”, and were held between June 16, 2023 and August 4, 2023.

As well, the Government of Canada held a consultation regarding various measures introduced in the 2023 Federal Budget. One consultation in particular focused on [strengthening Canada's anti-money laundering and anti-terrorist financing regime](#). Feedback was sought regarding measures to:

- Enhance operational results regarding detection and disruption of money laundering and terrorist financing activities;
- Address risks and vulnerabilities, such as those posed by new financial technologies, as well as those related to national and economic security;
- Strengthen and modernize the AML/ATF legislative and regulatory framework;
- Uphold Canada's international commitments to implement measures against money laundering and terrorist financing; and,
- Respond to findings of domestic reviews, such as the Commission of Inquiry into Money Laundering in British Columbia (also known as the Cullen Commission).

The consultation ran from June 6, 2023 to August 1, 2023. Several sections of the Canadian Bar Association, including the Charities and Not-for-Profit Law section, prepared a [submission](#) in response to this consultation. For further details, please see [AML/ATF Update](#), below

5. Court Considers Oppression Claims Against Individual NFP Directors & Senior Management

By [Ryan M. Prendergast](#)

The Superior Court of Justice of Ontario has provided insight into situations in which members may bring an oppression remedy against the directors and senior management of a federal not-for-profit corporation. Under section 253 of the *Canada Not-for-Profit Corporations Act* (“CNCA”), oppressive behavior may include the exercise of the powers of the directors or officers of a corporation that unfairly disregards the interests of any shareholder, creditor, director, officer or member of the corporation. If the court is satisfied that such actions have occurred, the court may make an order to rectify such oppressive behaviour.

In the context of the case of [ACTRA Performers' Rights Society v Re:Sound](#), decided on June 14, 2023, the ACTRA Performers' Rights Society (the “Plaintiff” and a federal not-for-profit corporation) brought an oppression claim against Re:Sound, another federal not-for-profit corporation of which the Plaintiff was a member. The Plaintiff also brought an oppression claim against three of Re:Sound's directors and its senior management (the “Individual Defendants”), alleging (among other things) that Re:Sound was

not fulfilling its mandate to implement, advocate for, and properly enforce tariffs set by the Copyright Board of Canada for performers and makers of sound recordings. The Individual Defendants brought a motion before the court asking that the claims against them be struck and to have the action against themselves dismissed.

The court considered whether there was no reasonable prospect of the Plaintiff's claim succeeding at trial, assuming that all of the facts pleaded by the Plaintiff were true. To do so, the court looked at the Plaintiff's statement of claim and considered whether the required elements of an oppression claim against officers and directors of a corporation were present, relying on the test from the Supreme Court of Canada's decision in *Wilson v Alharayeri* ("*Wilson*") which requires that:

- a) the alleged oppressive conduct can be attributed to the individual because they exercised or failed to exercise their powers so as to effect the oppressive conduct; and
- b) the imposition of an order against the individual director or officer (personal liability) is a fair way of dealing with the situation because:
 - i. they obtained a personal benefit from their conduct,
 - ii. they increased their control of the corporation by their oppressive conduct,
 - iii. they breached a personal duty they have as directors,
 - iv. they misused a corporate power, and/or
 - v. a remedy against the corporation would prejudice other security holders.

With regard to the claims against the three Individual Defendants who were directors of Re:Sound, the plaintiff alleged that these directors (who were all senior employees of major record labels in Canada) preferred the interests of their employers over the best interests of Re:Sound. The five Individual Defendants who were the senior management of Re:Sound were alleged by the Plaintiff to have adopted a new fee policy that furthered their own agenda to expand Re:Sound's core mandate by providing lower fees to competitors of the members of Re:Sound and to have funded an IT system that would provide better service to these competitors rather than one that would facilitate the activities of the members of Re:Sound.

The Individual Defendants argued that they could not be held personally responsible for things that happened before they had any involvement with Re:Sound. Further, they argued that there were no specific claims attributable to an Individual Defendant of particular acts or omissions that resulted in oppression.

However, the court indicated that at the current stage of the matter, it only needed to be satisfied that the oppression claim against the Individual Defendants was not doomed to fail. The court concluded that the allegations that the Individual Defendants were motivated by external interests that caused them to move Re:Sound away from its core mandate were sufficient to demonstrate that the factors from the test in *Wilson* were present.

Because the court found that the Plaintiff's claims about oppression were sufficiently pleaded, it dismissed the Individual Defendants' motion to strike claims against them. The court recognized that directors and officers of a corporation can be considerably inconvenienced and have significant costs when claims are made against them personally, so it went to some trouble to carefully scrutinize the claims made against the Individual Defendants. Nevertheless, the court ultimately concluded that the Individual Defendants did not need to have initiated or to have been the masterminds behind the alleged oppressive conduct to be implicated in it.

This case serves as an important reminder to directors and officers of not-for-profit corporations under the CNCA that they can be personally named in an oppression claim brought by a member of the corporation. Further, directors and officers may need to take steps to defend themselves in court, especially in situations similar to this case where the court refused to grant a motion to strike claims against the Individual Defendants. The case is also a reminder to members and certain other stakeholders of not-for-profit corporations of the remedies available under the CNCA when the leadership of a corporation strays from their duty to pursue the purpose of the corporation.

6. CRA Views: Certain First Nations Health Organizations are Public Bodies Exempt from Tax

By [Terrance S. Carter](#) and [Lynne M. Westerhof](#)

Subsection 149(1) of the *Income Tax Act* sets out a list of different entities that are exempt from paying tax on taxable income, including registered charities, non-profit organizations, municipalities in Canada, as well as a municipal or public body performing a function of government in Canada. In CRA View 2019-082276117, published December 13, 2022, the CRA was asked whether two incorporated First Nations health organizations would qualify for the exemption from tax listed in paragraph 149(1)(c) of the ITA by virtue of being municipal or public bodies performing a function of government in Canada.

The CRA set out its longstanding view that in order for a corporation to be a public body, it must meet the following requirements:

- both the corporation's existence and authority must be from a piece of legislation that also assigns the corporation specific duties;
- the federal, provincial or territorial government or the public that the corporation is serving should have some significant control over the actions and operations of the corporation; and
- the corporation should be accountable to either that government or the public.

Further, the CRA cited the case of *Lawyers' Professional Indemnity Company v HMQ* ("Lawpro") which set out the following three-part test for determining whether an organization (in that case, the Law Society of Ontario) was a public body:

- there must be a duty to the public;
- there must be a significant degree of government control; and
- any profit earned must be for the benefit of the public and not for private benefit.

In applying both its longstanding view and the test from *Lawpro*, the CRA concluded that the First Nations health organization that operated as a board of health (identified only as "Board of Health") was a public body because it was created under a special provincial statute, governed by a locally elected board of directors, had a duty to the public as the main provider of health and social services in a particular community, and was under a significant degree of government control.

The second of the two First Nations health organizations was a tribal health body (identified only as "Tribal Health") and was not created by a special statute, but was established to administer a health transfer agreement entered into between a Tribal Council and the Federal Government. Further, its members included members of particular First Nations and its directors were appointed by elected officials of those First Nations. Tribal Health had a duty to provide health care services, and all profits earned were for the public benefit. Finally, Tribal health was under a significant degree of government control. Therefore, it too was found to be a public body, suggesting that there is some flexibility in the CRA's analysis of a public body, as Tribal Health was not created by a piece of legislation, contrary to the CRA's longstanding view on the matter.

After determining that the Board of Health and Tribal Health were both public bodies, the CRA considered whether they also performed a function of government in Canada, as required to qualify under the exception listed at 149(1)(c) of the ITA. The Board of Health was funded by the government as an exclusive provider of health, medical and social services on certain reserves – services that would

otherwise be provided by the province. Therefore, the CRA found that it was performing a function of government. Similarly, Tribal Health was funded by the government and provided health services such as dental care, Indian residential school support, and teen suicide prevention among others – services that would otherwise be provided by the government. Therefore, Tribal Health was also found to be performing a function of government.

The CRA View provides insight into when certain First Nations organizations will be found to be tax exempt under paragraph 149(1)(c) of the ITA, and suggests that the CRA may not require that each factor from its own longstanding view be met in order for a corporation to be eligible for the exemption. As well, the CRA View provides some clarity as to what performing a function of government may entail – in this case, the provision of health services that would otherwise be provided by a province clearly meets the description of performing a function of government. If an entity qualifies under paragraph 149(1)(c), it may also be eligible to apply for registration with the Minister of National Revenue as a “qualified donee” under subsection 149.1(1) of the ITA, which would allow the entity to issue donation tax receipts and receive gifts from other qualified donees, including registered charities.

7. Federal Court Denies Charity’s Requests for Production of Documents

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

In the Federal Court of Appeal (the “Court”) decision of [Ron W. Cameron Charitable Foundation v. Canada \(National Revenue\)](#), a registered charity was issued a notice of intention to revoke (“NIR”) charitable status by the Minister of Revenue (“Minister”) for failure to devote resources to charitable purposes. Details regarding the events leading to the issuance of the NIR were not provided in the decision. The NIR was confirmed by the Appeals Branch of the Canada Revenue Agency (“CRA”) on February 10, 2023 (“Confirmation”).

The Appellant, *Ron W. Cameron Charitable Foundation* (“Appellant”) requested in its Notice of Appeal that the Minister provide it with certain materials following the procedure contemplated by Rules 317 and 318 of the Federal Courts Rules, which state that a party may request additional materials relevant to an application from an administrative decision maker, and that the court can order the production of these materials. In this regard, the Appellant requested a certified copy of all materials produced by, referenced, consulted or relied upon in any way by one or more representatives of the Government of Canada in any step involved in the drafting and issuance of the NIR and the Confirmation.

The Minister responded by providing a Certified Tribunal Record (“CTR”), but objected to providing any other documents.

The CTR was signed by Holly Brant, Manager, Charities Section, Appeals Branch for the CRA and stated that the documents were true copies. The CTR was accompanied by an affidavit sworn by Ms. Brant stating that the CRT contained all of the relevant materials.

Following directions made by Locke J.A. at an earlier hearing on May 24, 2023, the Appellant asked the Court to order the Minister to provide other materials sought in the Notice of Appeal.

While the Appellant argued that Ms. Brant was not the decision maker and did not have personal knowledge of the contents of the affidavit, the Court disagreed, given Ms. Brant’s position as Manager at the Appeals Branch and since she had signed the Confirmation on behalf of the Minister.

Several other requests for certain documents were put forward by the Appellant. The Court denied these on the basis that the Appellant had failed to produce evidence to support those claims. A brief summary of the other claims is provided below.

Firstly, the Appellant requested all correspondence and materials related to any “Gender-based Analysis Plus” (“GBA Plus”) performed by the CRA in relation to the NIR and the Confirmation. The Appellant claimed that the alleged inactivity of the charity resulted from the medical disability of one of the past directors and that disclosure of the GBA Plus is relevant to determining whether or not 1) discrimination based on disability or 2) a breach of procedural fairness may have occurred. The Court denied this request as the Court found the Appellant had produced no evidence of the former director’s disability and no information concerning any accommodation the former director might have required from CRA. In addition, the Appellant did not indicate how a GBA Plus analysis was relevant to the Minister’s decision to revoke charitable status.

Secondly, the Appellant claimed that the overwhelming motivation of the audit leading to the NIR was the involvement of an alleged ineligible individual who was on the charity’s board. The Court noted this ineligible individual had already resigned as a director and that the NIR acknowledged the resignation resolved the issue. The Court also noted that the Confirmation does not refer to an ineligible individual and while the Appellant requested CRA’s documents related to this ineligible individual, there was no evidence that any such documents exist.

Thirdly, the Appellant requested “a list of all charitable foundations that were inactive within the last 10 years, indicating which of them had their status revoked as a result”. The Appellant alleged in its Notice

of Appeal that the NIR and the Confirmation invent an “arbitrary activity threshold” and requested this list in an effort to prove that there were other inactive foundations that did not have their charitable status revoked. On this issue the Court referred to case law indicating that the Court would not order production of documents, “where there is no evidence of their existence,” as was the case with the above mentioned list.

Fourthly, the Appellant asked the Court to order the production of “official versions” of information hosted on the CRA website. The Court denied this request, stating that Rule 317 is a “limited purpose tool” and “does not serve the same purpose as discovery in an action”.

The Appellant had claimed in the Notice of Appeal that the individuals who signed the NIR and the Confirmation (being the Director General and a Manager at the CRA, Charities Directorate) did not have delegated legal authority to issue them. On this issue, the Court stated that, “The appellant has adduced no evidence to support this allegation and on this basis alone, the request fails.” The Court went on to recognize the Minister’s evidence that subsection 220(2.01) of the *Income Tax Act* and section 8 of the *Canada Revenue Agency Act*, and other publicly available information “indicate the contrary.”

This case serves as a clear indication that the Federal Court of Appeal will not permit a fishing expedition when a charity requests production of documents under Rule 317 in the context of an administrative appeal. The case also affirms a straightforward principle that Courts will not order the production of documents where there is no evidence of their existence or where there is no basis to do so.

8. Conduct of Not-for-Profit Corporation Found to be Oppressive Against its Members

By [Esther Shainblum](#)

On June 19, 2023, the Supreme Court of Newfoundland and Labrador released its reasons for judgment in the case of [Benoit v. Federation of Newfoundland Indians Inc.](#)

The Federation of Newfoundland Indians Inc. (the “FNI”) was a non-profit corporation established to achieve status recognition for the Mi’kmaq of Newfoundland under the *Indian Act*. The FNI entered into a 2008 agreement with the Government of Canada (“Canada”) to establish the Qalipu Mi’kmaq First Nation Band (the “QMFNB”) as a non-reserve status band for the Mi’kmaq of Newfoundland (the “Settlement Agreement”).

In 2009, the FNI decided to restructure itself as a “skeletal” organization and to make changes to its membership. At its Annual General Assembly (“AGA”) of October 24, 2009, FNI’s voting members

passed a special resolution (“Special Resolution”) to amend FNI’s corporate articles and to approve new by-laws (“New By-laws”) that terminated the membership of thousands of FNI members, including the plaintiffs. The FNI’s only remaining members were its band council (the “New Members”). However, the FNI had failed to circulate the Special Resolution to its members 21 days prior to the AGA, in contravention of its operating by-laws.

Due to an unexpectedly high number of applications for membership in the QMFNB, the FNI’s New Members approved a supplemental agreement (“Supplemental Agreement”) that, among other things, permitted reassessment of previously approved applications for membership in the QMFNB.

The plaintiffs had all been members of FNI and had been accepted as founding members of the QMFNB under the original Settlement Agreement. As a result of the reassessment under the Supplemental Agreement, the plaintiffs lost their status as members of QMFNB, as well as their section 6(1)(b) status under the *Indian Act*. They brought a claim against the defendants, asserting that the actions taken by the FNI and Canada constituted oppression under section 371 of the *Corporations Act*.

Oppression claims are assessed on a case-by-case basis using a two-pronged analysis; firstly, the “reasonable expectations” of the parties and secondly, if the breach of these expectations amounts to “oppression”, “unfair prejudice” or “unfair disregard”.

On the first prong of the test, the Court found that it was reasonable for the plaintiffs to expect the FNI to comply with its by-laws, including the notice requirements, to provide notice of termination of membership, to pass special resolutions in compliance with the by-laws and to adopt amendments to the by-laws in accordance with FNI’s by laws.

The Court held that, due to the failure to provide proper notice of the Special Resolution in accordance with FNI’s by-laws, the Special Resolution passed in 2009 was invalid and *ultra vires* and the New By-laws had not been adopted with proper corporate authority. By failing to provide notice of termination of membership, and by failing to permit discussion of the Special Resolution and the New By-laws by the membership, the FNI did not comply with its existing by-laws when amending them. As stated by the Court:

The Special Resolution (through the Replacement By-Laws), purported to effect a mass termination of the membership of the majority of the members of the FNI. It was a fundamental change to the membership of the FNI. Compliance with the by-law requirements respecting termination of membership was of the utmost importance. The FNI did not comply with its Original By-Laws respecting termination of membership. The FNI never provided notice of termination, or the opportunity for appeal. This, in itself, renders the Special Resolution *ultra vires*.

The Court also stated that it would be reasonable for the plaintiffs to expect that the FNI would conduct its affairs consistent with preserving their section 6(1)(b) status under the *Indian Act* and to expect that the FNI would protect their rights. The FNI had an obligation to ensure that any change to the Settlement Agreement would not be prejudicial to the interests of FNI members and yet it knowingly put the status of thousands of members at risk.

Therefore, on the first prong of the test for whether there has been oppression, the Court found that the Plaintiffs' reasonable expectations had been violated by the FNI's conduct.

On the second prong of the test, whether the FNI's conduct was oppressive, unfairly prejudicial or whether FNI unfairly disregarded the plaintiffs' interests, the Court confirmed that FNI's conduct, as outlined above, was unfair, "burdensome, harsh and wrongful" and that the FNI knowingly risked the plaintiffs' loss of their section 6(1)(b) status.

Ultimately, the FNI was found to have acted unfairly and to have caused prejudicial consequences to the plaintiffs. The plaintiffs were therefore entitled to a remedy in oppression against the FNI.

The Court reinstated the FNI's original articles of continuance and original by-laws, ordered its corporate records to be rectified to show the plaintiffs as members and ordered the FNI to take all steps in its power to seek to obtain Canada's consent to reconsider and reassess the plaintiffs' eligibility, with a view to attaining reinstatement of the plaintiffs' section 6(1)(b) status. The Court also indicated that an order for compensation of the plaintiffs may be assessed subsequently.

The Court rejected the plaintiffs' claim against Canada.

This case demonstrates the need for charities and not-for-profits to scrupulously adhere to their corporate articles and by laws when making any changes to their governing documents, membership or corporate structure that could have prejudicial consequences to members. Failure to do so can lead to oppression claims being made against the charity or not for profit.

9. Employment Update

By [Martin U. Wissmath](#) and [Cameron A. Axford](#)

Fixed-term Independent Contractor Has Duty to Mitigate on Termination

When an independent contractor's fixed-term contract is terminated early, the contractor may be entitled to damages for breach of contract, but may also be required to take steps to mitigate the damages suffered.

Until recently, there was no clear direction from Ontario courts regarding an independent contractor's duty, or lack of duty, to mitigate damages when a fixed term contract for their services is terminated.

Now, there is some direction on this important employment law issue found in a June 14, 2023 decision, [*Monterosso v. Metro Freightliner Hamilton Inc.*](#) ("*Monterosso*"). In this case, the Court of Appeal (the "Court") found that independent contractors may have a duty to mitigate their damages when terminated, although an employer may still be found liable for damages when ending a fixed-term contract early if there is no early termination clause, or an inadequate termination provision. The court found the employer (the Appellant) in the *Monterosso* appeal failed to provide sufficient evidence to support an argument that the independent contractor (the Respondent) had failed to mitigate.

The parties entered a contract for the Respondent to provide services for a period of six years. Less than a year into the contract, the Appellant terminated the contract without cause. The Respondent brought an action against the Appellant, seeking payment for the 65 remaining months of the contract. The trial judge found that, as there was no termination provision, the Respondent was entitled to the full amount remaining, which totalled \$552,500 plus HST.

On appeal, the Appellants argued there had been communications via an email that demonstrated the Respondent had seen and accepted an alleged new contract provision providing for the Respondent to be paid up until the Respondent ceased to provide active work service.

The Court found the email too ambiguous to rely on, while the contract clearly contained an "entire agreement clause", which is normally included in contracts to prevent the kind of argument that the Appellant had tried to make: that the contract was altered by some other communication after the fact. Furthermore, the Appellant had failed to provide adequate evidence, and did not call the drafter of the contract, the company human resources manager, as a witness.

However, the court agreed with the Appellant that the trial judge was incorrect in stating the Respondent was not required to mitigate his damages. While employees under fixed term contracts in Ontario do not have a general duty to mitigate damages upon termination, the Court has never conclusively established if independent contractors are entitled to the same treatment.

Seeking to answer that question, the Court looked to the fundamentals of contract law. A duty to mitigate is required when a contract is breached. The Court saw no reason to stray from that principle in situations between employers and independent contractors. Such a relationship affords no special considerations, as the parties presumably enter into the agreement on relatively equal footing. The dependence, exclusivity

and control that is indicative of an employment relationship with an employer and employee is not found with an independent contractor, so the parties do not have the same obligations to each other beyond the contractual provisions.

Despite this finding, the Appellant was unsuccessful in proving that the Respondent had failed in his duty to mitigate damages. The trial judge's ruling was upheld on this basis. *Monterosso* is significant because it confirms the Court's position regarding termination of fixed-term independent contractors. Charities and not-for-profits should be aware of this ruling as it could impact their obligations if they need to hire an independent contractor, or terminate a fixed-term contract. Legal advice should always be sought before drafting or entering contracts for work services, whether for employees or independent contractors.

10. Privacy Update

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

Ongoing Privacy Office Investigation into ChatGPT Important for Charities and NFPs

The Office of the Privacy Commissioner of Canada (OPC) [announced](#) on April 4, 2023 that it has launched an investigation into ChatGPT, an AI-powered chatbot developed by OpenAI (the "investigation"). While the results of the investigation are still forthcoming, this investigation signals an intent on the part of the OPC to step into the arena given the rapid proliferation of artificial intelligence (AI) and its potential impact on individual privacy rights.

In the OPC's announcement, Privacy Commissioner Philippe Dufresne expresses a strong commitment to understanding and addressing the privacy concerns arising from AI technology. The announcement emphasizes the importance of staying ahead of "fast-moving technological advances" while safeguarding individuals' rights to privacy.

The OPC investigation stems from a specific complaint alleging the mishandling of personal information by OpenAI, particularly the collection and use of data without proper consent. The OPC has not provided any details regarding the specific details of the complaint at this time due to the ongoing investigation.

It should be noted that the OPC investigation is being undertaken while House of Commons is currently considering in Committee Bill C-27, the *Digital Charter Implementation Act, 2022*, which completed Second Reading on April 24, 2023. If passed, Bill C-27 would replace *PIPEDA* as the federal legislation governing private-sector privacy law, and would also enact the *Artificial Intelligence and Data Act*, which is intended to create the framework for the responsible regulation of AI in Canada. It is not clear whether

the OPC investigation into ChatGPT could or is intended to influence the direction of future privacy regulation and legislation surrounding AI and data protection.

All organizations, including not-for-profit and charitable organizations, will be impacted by the ongoing proliferation and deployment of AI, and the investigation is a signal of the increasing regulatory focus on the ethical and responsible use of AI technologies that is to be expected in the coming months and years.

The OPC investigation underscores the need for charities and not-for-profits to keep current with emerging technological trends and their implications for privacy and data protection. Staying informed and adopting transparent and responsible data practices will help charities and not for profits to gain and maintain the trust of stakeholders while navigating the dynamic digital landscape.

11. IP Update

By [Sepal Bonni](#)

Need to Review Trademark Portfolios Now to Avoid Significant Fee Increase

On January 1, 2024, the Canadian Intellectual Property Office (“CIPO”) will increase most of its trademark fees by 25%, in addition to its annual fee adjustment. For many services, including the filing of a new trademark application, this amounts to a 30% increase in fees. For example, the fee to file a new trademark application in one class will be increasing from \$347.35 to \$458.00 and each additional class in the application from \$105.26 to \$139.00. The fee to renew a trademark registration in one class will be increasing from \$421.02 to \$555.00 and each additional class in the registration from \$131.58 to \$173.00.

The increases come after more than two years of consultation with stakeholders, clients, and the public. To read the final regulations in their entirety, see the [Canada Gazette, Part II, Volume 157, Number 13](#). According to CIPO, the goal of the increase is to provide greater revenue to CIPO, which will assist in “supporting Canada's Intellectual Property (IP) Strategy, meeting growing demand, fulfilling trade and treaty obligations, providing internationally comparable services and addressing the critical capacity and technological investments needed to provide improved services to CIPO's clients.”

In anticipation of the upcoming fee increase, charities and not-for-profits need to be proactive in reviewing their trademark portfolios for any filings and renewals that can be done before the end of the year to benefit from the current lower costs. This could result in a significant savings, particularly for most charities and not-for-profits that they have multi-class applications and registrations.

12. AML/ATF Update

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

Practical Guide for Charities and Humanitarian Organizations to Bill C-41 and the Provision of Aid

Following the Taliban's return to power in Afghanistan in August 2021, Canadian not-for-profits were prohibited from providing aid to the people in Afghanistan due to restrictions under Canada's overly broad anti-terrorist legislation. In response — and as previously reported in *AML/ATF and Charity Law Alerts No. 51 & 52* — the federal government has adopted Bill C-41 to amend the anti-terrorist financing provisions in section 83.03 of the *Criminal Code* so that Canadian organizations may provide humanitarian aid and other assistance to those in need. While previous alerts have focussed on some of the issues and challenges posed by both the draft version of Bill C-41 (which was subsequently amended) and the final version adopted, this alert is intended to provide charities and not-for-profits with a practical overview of the processes anticipated by Bill C-41.

To read the balance of this *Bulletin*, please see [AML/ATF and Charity Law Alert No. 53](#).

Submission from Canadian Bar Association Proposes Improvements for Canada's AML/ATF Regime

Several sections of the Canadian Bar Association ("CBA"), including the Charities and Not-for-Profit Law section, have prepared a [submission](#) in response to the Government of Canada's consultation regarding some of the measures introduced in the 2023 Federal Budget. Specifically, one of the focusses of the consultation was on how to improve Canada's Anti-Money Laundering and Anti-Terrorist Financing ("AML/ATF") regime (the consultation is described in greater detail in the [June 2023 Charity & NFP Law Update](#)).

In its August 2023 submission, the CBA addressed several questions, including: "How could the government improve outreach and engagement with the non-profit sector on AML/ATF matters?". The CBA's response to this question highlighted that Canada's National Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada last updated in March 2023) "focus[es] excessively on organizations connected to racialized communities, such as the Muslim community." As a result, a disproportionate number of Muslim charities have been audited and had their charitable status revoked. Additionally, the CBA response highlighted the need for productive engagement between the CRA and the charitable and not-for-profit sector, as well as the need for legislation to go further to allow for charities and not-for-profits to operate effectively without running afoul of Canada's "overreaching AML/ATF legislation."

Regulations under the *United Nations Act* Amended to Allow Humanitarian Aid to Afghanistan

Recent regulations have resulted in amended regulations under the *United Nations Act* which previously prevented Canadian charities, NGOs and other organizations from providing humanitarian aid in Afghanistan. [Regulations Amending Certain Regulations Made Under the United Nations Act: SOR/2023-134](#) (the “Amending Regulation”) was registered on June 19, 2023 and amends Regulations Implementing the United Nations Resolutions on Taliban, ISIL (Da’esh) and Al-Qaida: SOR/99-444 (the “UN Regulation”).

Section 2 of the UN Regulation, among other things, prohibits any person in Canada or any Canadian outside of Canada from making available any property to a person associated with the Taliban or for the benefit of a person associated with the Taliban, ISIL (Da’esh) or Al-Qaida. However, the Amending Regulation has added a new section 2.1 to the UN Regulation with two exceptions stating when the prohibitions listed in Section 2 will not apply:

1. **Humanitarian Assistance in Afghanistan** – Section 2 does not prohibit the provision of funds or goods and services that are necessary to ensure the timely delivery of humanitarian assistance or that are in support of basic human needs in Afghanistan if the provider of such funds, goods or services is one of the following types of entities:
 - a. the United Nations (and its programs, other entities and related organizations);
 - b. international organizations;
 - c. humanitarian organizations with observer status from the UN General Assembly and their members;
 - d. bilaterally or multilaterally funded NGOs that are participating in any UN humanitarian response plan, refugee response plan, or other UN appeals for assistance or in groups of humanitarian organizations coordinated by the UN Office for the Coordination of Humanitarian Affairs (including implementing partners of those NGOs among others);
 - e. any other person authorized for this purpose by a UN committee established by the Security Council; or
 - f. any other international organization that provides humanitarian assistance or supports basic human needs in Afghanistan that is recognized by Canada.

2. **Humanitarian Assistance in Other States** – Section 2 does not prohibit the provision of funds or goods and services that are necessary to ensure the timely delivery of humanitarian assistance or that are in support of basic human needs in foreign states other than Afghanistan if the provider of such funds, goods or services is one of the following types of entities:
- a. the United Nations (and its programs, other entities and related organizations);
 - b. international organizations;
 - c. humanitarian organizations with observer status from the UN General Assembly and their members;
 - d. bilaterally or multilaterally funded NGOs that are participating in any UN humanitarian response plan, refugee response plan, or other UN appeals for assistance or in groups of humanitarian organizations coordinated by the UN Office for the Coordination of Humanitarian Affairs (including implementing partners of those NGOs among others); or
 - e. any other person authorized for this purpose by a UN committee established by the Security Council.

Notably, the second exception may cease to have effect regarding the provision of funds, goods or services to a person associated with ISIL (Da’esh) or Al-Qaida on the later of the following two dates:

- December 9, 2024, or
- the day that paragraph 1 of Resolution 2664 (2022) (adopted by the UN Security Council) or any replacement provisions cease to have effect.

13. Changes Proposed to Accounting Standards for Non-Profit Organizations

By [Jacqueline M. Demczur](#)

The Accounting Standards Board (“AcSB”) of the Chartered Professional Accountants of Ontario, the regulator for chartered professional accountants in the province, released an [exposure draft](#) in March 2023 (“Exposure Draft”). This Exposure Draft proposes amending Section 4400, Financial Statement Presentation by Not-for-Profit Organizations, of the Accounting Standards for Non-Profit Organizations, as well as introducing a new Section 4411 to replace Section 4410, Contributions – Revenue Recognition and Section 4420, Contributions Receivable.

The AcSB has indicated that the Exposure Draft’s proposals are intended to improve financial reporting by not-for-profit organizations (“NFPs”) by creating a guidance that will result in financial statements that are less complex and more comparable for those who are using financial statements, as well as to provide specific guidance on special types of contributions, including contributed materials and services, capital asset contributions, and endowments.

If approved, the proposals in the Exposure Draft will result in a change in accounting for many NFPs in several ways, including the following:

- NFPs will be required to defer the recognition of revenue for restricted contributions until the external restriction(s) associated with the contributions are met, provided the contribution is measurable and collection is reasonably assured. Depending on the accounting method used by a NFP, this could result in a change to timing for revenue recognition of certain contributions.
- NFPs will be required to defer and amortize capital asset contributions over the useful life of the related asset and recognize endowment contributions as direct increases in net assets. This will be a change for NFPs currently using the restricted fund method.
- In many cases pledges will no longer be recognized until the cash is received. This is because the proposed recognition criteria, which include the requirement of reasonable assurance of collection, must be applied to each individual pledge.

The proposed changes to Section 4400 involve extra presentation and disclosure obligations for NFPs. Organizations using fund accounting would need to provide both comparative period data and details about the criteria for selecting the displayed funds. Additionally, NFPs would have to disclose information about their obligations concerning restricted contributions, encompassing endowment contributions, along with specifications about the assets they consider available to fulfill those obligations.

The proposed Section 4411 introduces additional presentation and disclosure requirements. Notably, a NFP will be required to disclose how it manages its endowments, including fair value monitoring and agreement compliance, reveal quantitative information if endowment fair value falls short of donor-mandated levels, and provide qualitative insights about unreported contributed materials and services and their role in the NFP's future goals.

The proposals, if approved, will come into effect on January 1, 2026. The AcSB will consider the proposals, along comments from the public, consultation with stakeholders, and “field testing” of the

changes. Comments on the Exposure Draft can be submitted to the AcSB until September 30, 2023, with the AcSB being particularly interested in feedback on the proposals related to restricted contributions.

14. Best Lawyers in Canada Rankings

Six lawyers of Carters Professional Corporation have been ranked as leaders in their practice areas by [*The Best Lawyers in Canada*](#) for 2024. [Theresa L.M. Man](#), [Jacqueline M. Demczur](#), [Esther S.J. Oh](#), [Ryan M. Prendergast](#), and [Terrance S. Carter](#) have been ranked as leaders in the area of Charity and Non-Profit Law. [Sean S. Carter](#) has been ranked as a leader in the area of Corporate and Commercial Litigation. In addition, [Theresa L.M. Man](#) has been named "Lawyer of the Year" in the practice area of Charity and Non-Profit Law.

IN THE PRESS

[Charity & NFP Law Update – June 2023 \(Carters Professional Corporation\)](#) was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.

[New Canadian Tax Changes Create Unmanageable Burden for Charities](#) was an article featured in the Globe and Mail (Ontario Edition) on July 6, 2023. Tim Cestnick referenced [Charity Law Bulletin No. 522](#) written by Terrance S. Carter, Theresa L.M. Man, Jacqueline M. Demczur and Lynne M. Westerhof.

AFP Canada e-wire featured [Charity Law Bulletin No. 522](#) in their July newsletter.

CBA Charities & NFP Law Section featured the following articles in their newsletter:

[A Step in The Right Direction](#), published on August 21, 2023, authored by Terrance S. Carter, Nancy E. Claridge, Sean S. Carter and Lynne M. Westerhof, explaining amendments to Bill C-41 improve distribution of humanitarian aid but many issues remain.

[Clarity Needed](#) published on August 21, 2023, authored by Terrance S. Carter, Theresa L.M. Man, Jacqueline M. Demczur and Lynne M. Westerhof, explaining changes to trust reporting rules will seriously affect charities.

[Corporate Update for British Columbia Societies](#) published on July 20, 2023, authored by Theresa L.M. Man giving an update on changes that came into force in May 2023.

[Cities Acting as Conduit](#) published on July 10, 2023, authored by Ryan M. Prendergast regarding CRA releases view on directed gifts to municipalities.

[Legislative Updates Affecting Charities](#) published on July 10, 2023, authored by Terrance S. Carter and Adriel N. Clayton, giving a review of Bill S-211 on forced labour and child labour and of Ontario's Bill 91.

UPCOMING EVENTS & PRESENTATIONS

[Ontario Museums Association Fall Workshop Series](#) will be held on September 21, 2023. Terrance S. Carter will be presenting on the topic of Duties & Liabilities of Directors and Officers of Charities & NFPs.

[Christian Legal Fellowship National Conference](#) will be held in Mississauga from September 29 to 30, 2023. Terrance S. Carter will be presenting on the topic of Essential Update on Charity Law on Friday September 29.

[Association of Treasurers of Religious Institutes](#) will host the ATRI 2023 Conference in Montreal, QC. Terrance S. Carter will be presenting on Saturday, September 30, 2023, on the topic of The CRA's New Regime of Qualifying Disbursements.

[Carters Annual Charity & Not-for-Profit Law Webinar](#) hosted by Carters Professional Corporation on Thursday, **November 9, 2023**. [Brochure](#) and [Online Registration](#) available at www.carters.ca

LEGAL TEAM

Editor: Terrance S. Carter

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



[Cameron A. Axford](#), B.A. (Hons), J.D. - Cameron is an associate whose practice focuses on Carter's knowledge management, research, and publications division. He articulated with Carters from 2022 to 2023 and joined the firm as an associate following his call to the Ontario Bar in June 2023. Cameron graduated from the University of Western Ontario in 2022 with a Juris Doctor, where he was involved with Pro Bono Students Canada and participated in the BLG/Cavalluzzo Labour Law Moot. Prior to law school, Cameron studied journalism at the University of Toronto, receiving an Honours BA with High Distinction. He has worked for a major Canadian daily newspaper as a writer.



[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, 2022), 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 former member of CRA Advisory Committee on the Charitable Sector, and is a Past Chair of the Canadian Bar Association and Ontario Bar Association Charities and Not-for-Profit Law Sections.



[Sean S. Carter](#), B.A., LL.B. – Sean Carter is a partner with Carters and the head of the litigation practice group at Carters. Sean has broad experience in civil litigation and joined Carters in 2012 after having articulated with and been an associate with Fasken (Toronto office) for three years. He is ranked as a leading expert by *The 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*TM.



[Barry W. Kwasniewski](#), B.B.A., LL.B. – Mr. Kwasniewski is a partner with the firm and joined Carters' Ottawa office in 2008 to practice in the areas of employment law, charity related litigation, and risk management. After practicing for many years as a litigation lawyer in Ottawa, Barry's focus is now on providing advice to charities and not-for-profits with respect to their employment and legal risk management issues. Barry has developed an expertise in insurance law, and has been retained by charities, not-for-profits and law firms to provide legal advice pertaining to insurance coverage matters.



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



[Jennifer M. Leddy](#), B.A., LL.B. – Ms. Leddy joined Carters' Ottawa office in 2009, becoming a partner in 2014, to practice charity and not-for-profit law following a career in both private practice and public policy. Ms. Leddy practiced with the Toronto office of Lang Michener prior to joining the staff of the Canadian Conference of Catholic Bishops (CCCCB). In 2005, she returned to private practice until she went to the Charities Directorate of the Canada Revenue Agency in 2008 as part of a one year Interchange program, to work on the proposed "Guidelines on the Meaning of Advancement of Religion as a Charitable Purpose."



[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, is ranked by *Lexpert*, *Best Lawyers in Canada*, and *Chambers and Partners*, and received the 2022 OBA AMS/John Hodgson Award of Excellence in Charity and Not-For-Profit Law. She is a co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* published by Thomson Reuters. She is a former member of the Technical Issues Working Group of the CRA Charities Directorate, a member and former chair of the CBA Charities and Not-for-Profit Law Section and 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.carters.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.carters.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. She has been ranked by *Chambers and Partners*. 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 U. 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 employment law, privacy law, corporate and information technology law, as well as the developing fields of social enterprise and social finance. 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. – Lynne is a charity and not-for-profit law associate whose practice focusses 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. She articulated with Carters from 2021 to 2022 and joined the firm as an associate following her call to the Ontario Bar in June 2022. In addition to her work assisting charities and not-for-profits, Lynne assists with Carter's knowledge management, research, and publications division.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

Links not Working: If the above links do not work from your mail program, simply copy the link text and paste it into the address field of your internet browser.

Get on Our E-Mailing List: If you would like to be added to our electronic mailing list and receive regular updates when new materials are added to our site, click [here](#) or send an email to info@carters.ca with “Subscribe” in the subject line. Feel free to forward this email to anyone (internal or external to your organization) who might be interested.

Privacy: We at Carters know how important your privacy is to you. Our relationship with you is founded on trust and we are committed to maintaining that trust. Personal information is collected solely for the purposes of: establishing and maintaining client lists; representing our clients; and to establish and maintain mailing lists for the distribution of publications as an information service. Your personal information will never be sold to or shared with another party or organization. For more information, please refer to our [Privacy Policy](#).

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

Disclaimer: This is a summary of current legal issues provided as an information service by Carters Professional Corporation. It is current only as of the date of the summary and does not reflect subsequent changes in the law. The summary is distributed with the understanding that it does not constitute legal advice or establish the solicitor/client relationship by way of any information contained herein. The contents are intended for general information purposes only and under no circumstances can be relied upon for legal decision-making. Readers are advised to consult with a qualified lawyer and obtain a written opinion concerning the specifics of their particular situation.

**CARTERS PROFESSIONAL CORPORATION
SOCIÉTÉ PROFESSIONNELLE CARTERS**

PARTNERS:

Terrance S. Carter B.A., LL.B.

tcarter@carters.ca

(Counsel to Fasken)

Jane Burke-Robertson B.Soc.Sci., LL.B. (1960-2013)

Theresa L.M. Man B.Sc., M.Mus., LL.B., LL.M.

tman@carters.ca

Jacqueline M. Demczur B.A., LL.B.

jdemczur@carters.ca

Esther S.J. Oh B.A., LL.B.

estheroh@carters.ca

Nancy E. Claridge B.A., M.A., LL.B.

nclaridge@carters.ca

Jennifer M. Leddy B.A., LL.B.

jleddy@carters.ca

Barry W. Kwasniewski B.B.A., LL.B.

bwk@carters.ca

Sean S. Carter B.A., LL.B.

scarter@carters.ca

Ryan M. Prendergast B.A., LL.B.

rmp@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

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

lwesterhof@carters.ca

Martin U. Wissmath B.A., J.D.

mwissmath@carters.ca

Cameron A. Axford, B.A. (Hons.), J.D.

caxford@carters.ca

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

Toronto Office

67 Yonge Street, Suite 1402

Toronto, Ontario, Canada

M5E 1J8

Tel: (416) 594-1616

Fax: (416) 594-1209