

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

MARCH 2023

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PUBLICATIONS & NEWS RELEASES

1. Humanitarian Aid Authorization Proposed in Bill C-41

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

When the Taliban returned to power in Afghanistan in August 2021, several crises ensued, including a dire need for humanitarian aid in the region. Unfortunately, Canadian non-governmental organisations (“NGOs”) ran into difficulty in providing aid to the people in Afghanistan due to Canada’s overly broad anti-terrorist financing legislation. These issues were highlighted in a report from the House of Common’s Special Committee on Afghanistan, “Honouring Canada’s Legacy in Afghanistan: Responding to the Humanitarian Crisis and Helping People Reach Safety” released in June 2022, as well as in the Standing Senate Committee on Human Rights report, “Interim Report on Canada’s Restrictions on Humanitarian Aid to Afghanistan” released December 14, 2022. Specifically, these reports identified that the federal government needs to act quickly so that registered Canadian humanitarian organizations “have the clarity and assurances needed – such as carve-outs or exemptions – to deliver humanitarian assistance” and should “introduce legislation to create an explicit humanitarian exemption to section 83.03(b) of the Criminal Code”. In response, the Minister of Public Safety introduced Bill C-41 “An Act to amend the Criminal Code and to make consequential amendments to other Acts” in the House of Commons on March 9, 2023. The changes introduced by Bill C-41 are intended to “support Canada’s deep commitment to the people of Afghanistan, while upholding [Canada’s] domestic and international obligations to combat terrorism.”

For the balance of this *Bulletin*, please see [AML/ATF and Charity Law Alert No. 51](#).

2. Federal Budget 2023: Slim Pickings for the Charitable and the NFP Sector

By [Terrance S. Carter](#), [Adriel N. Clayton](#), [Martin U. Wissmath](#) & [Lynne M. Westerhof](#)

Finance Minister Chrystia Freeland tabled the seventh budget of the Liberal federal government (“Budget 2023”) on March 28, 2023. Budget 2023 is comprised of six chapters and three annexes focussing on a wide range of issues, including supporting the middle class, investing in public health and dental care, growing a clean economy, advancing reconciliation, combatting financial crime, and implementing measures to ensure a fair tax system, amongst others matters. What Budget 2023 does not include, unlike recent budgets, are any legislative provisions aimed specifically at assisting or regulating the charitable and not-for-profit (“NFP”) sector. Instead, the specific relevancy of Budget 2023 to the charitable and

NFP sector is primarily limited to various financial incentives to a number of non-profits, as well as general statements dealing with combatting financial crime, with a particular focus on strengthening efforts against money laundering and terrorist financing.

For the balance of this *Bulletin*, please see [Charity & NFP Law Bulletin No. 521](#).

3. Taxpayers' Ombudsperson's Report Concludes Comprehensive Examination of CRA's Audit Selection Process Not Possible, Recommends Anti-Bias Training

By [Ryan M. Prendergast](#) and [Terrance S. Carter](#)

Many in the charitable sector may be disappointed that the Taxpayers' Ombudsperson, François Boileau, has not been able to comprehensively review the Canada Revenue Agency's (CRA) audit selection process, following allegations of anti-Muslim bias against the agency. The Ombudsperson's [report](#) detailing his office's review of the CRA's treatment of Muslim charities was published on March 27, 2023, and clearly stated that his office was not provided with sufficient information to carry out the review it had been tasked with. The Ombudsperson had previously provided a [statement](#) on November 21, 2022, noting that his office may not succeed in analyzing the CRA's audit selection process because of the CRA's practice to not disclose certain information, particularly regarding its risk assessment process, due to national security concerns, as summarized in more detail in Carters' [January 2023 Charity & NFP Law Update](#). In the March 27 report from the Ombudsperson entitled "[Charity Begins with Fairness: More to Explore](#)", the Ombudsperson confirmed that his office had not been able to conduct a complete review.

Some relevant quotes from the report are included below:

- “we have not been able to sufficiently address two of the areas that the Minister asked us to pay special attention to, particularly regarding the [Review and Analysis Division] RAD's activities, including:
 1. the selection of files for audit
 2. the quality of services provided to organizations that are audited”
- “While we did have access to compliance action approach letters for charities who were penalized, suspended, or had their registration revoked, they were redacted, and we did not have access to the supporting documents that informed the decisions in the letters.”

- “What we heard and found was not enough to provide us with a full picture of how the RAD and the Compliance Division select charities for audit.”

The Taxpayers’ Ombudsperson was, however, able to offer one recommendation in the report, namely that the CRA create an unconscious bias training course for CRA employees of the Charities Directorate and make the course mandatory for all employees involved in the audit process. This recommendation came as a result of the Ombudsperson’s observations that statistics provided to his office by the CRA identified “that the completion rates for unconscious bias training taken by RAD employees was low”. He noted that there was a stigma associated with CRA employees expressing that they have known biases which “could explain why employees we interviewed said they had none.” Therefore, the Ombudsperson was of the opinion that destigmatizing unconscious bias through open communication or other methods could help make efforts to address unconscious bias at the CRA more effective.

It is disappointing that the Taxpayers’ Ombudsperson was not provided with the information required to provide a review of RAD’s activities, particularly with regard to the selection of files for audit and the quality of services provided to organizations that are audited. It is hoped that the National Security and Intelligence Review Agency’s review (as explained in more detail in [the article below](#)) will be much more comprehensive and will be able to provide Canadians with a picture of the work of RAD in relation to charity audits, particularly the audits of Muslim charities.

4. NSIRA Announces Review of CRA’s Review and Analysis Division (RAD)

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

The Executive Director of the National Security and Intelligence Review Agency (“NSIRA”), John Davies, sent a [letter](#) to the CRA Commissioner, Bob Hamilton, dated as of March 8, 2023, notifying the Commissioner that NSIRA would be commencing a review of the CRA’s Review and Analysis Division (“RAD”), with a particular focus on “the RAD program’s national security activities and decision-making relating to registered Canadian charities, to assess their reasonableness, necessity, and compliance with the law.”

This letter comes after the International Civil Liberties Monitoring Group [recommended](#) that NSIRA carry out regular reviews of CRA’s anti-terrorism activities – including the Charities Directorate and RAD – and after it was [recommended](#) to the Standing Senate Committee on Human Rights that NSIRA be asked to review the mandate, training and procedures of RAD within the CRA.

In response to NSIRA’s announcement, the CRA Commissioner [stated](#) that the CRA “welcomes this upcoming review and will fully cooperate with NSIRA.” On March 14, 2023, the Minister of National Revenue, the Honourable Diane LeBouthillier, [stated](#) that “The Government of Canada stands with and supports Muslim communities across Canada” and “welcome[s] the review launched by the National Security and Intelligence Review Agency (NSIRA) and view it as an important next step that will complement the forthcoming publication of the Taxpayers’ Ombudsperson’s review.”

The Taxpayers’ Ombudsperson’s report was released on March 27, 2023, less than two weeks after the Minister of National Revenue’s statement, and – as explained in [the article above](#) – was unable to provide a review of the CRA’s audit selection process due to insufficient information provided by the CRA. Therefore, it is hoped that NSIRA’s review will go beyond what the Taxpayers’ Ombudsperson was able to uncover and will be able to provide Canadians with answers with regards to how the CRA conducts charity audits, particularly in relation to Muslim charities.

5. Canadian Bar Association Makes Submission About CRA’s Draft Grant-Making Guidance

By [Jennifer M. Leddy](#)

In response to the CRA’s request for comments on its draft guidance CG-032 “Registered charities making grants to non-qualified donees (draft)”, the Charities and Not-for-Profit Section of the Canadian Bar Association (“CBA Section”) has sent a [letter](#) with comments to improve the draft guidance’s accessibility and application to the charitable sector.

The letter, dated February 6, 2023, highlights five areas where changes can be made to the draft guidance, namely: (1) the risk assessment approach, (2) the use of terms, (3) the effective continuation of direction and control, (4) the explanation of directed giving, and (5) the charitable purposes for foundations that make gifts to qualified donees.

- First, the CBA Section states that the risk assessment found in the draft guidance goes “beyond the legislation’s objectives” and “undermines the intention of Parliament” in part because it includes mandatory accountability requirements that would increase the administrative burden for most Canadian charities working with non-qualified donees.
- Second, the letter highlights how “some of the terms or words used in the [d]raft guidance are not included in the legislation’s relevant provisions or are used differently”.

- Third, when compared with the current “direction and control” regime, the risk assessment framework is “arguably more administratively onerous” and does not align with Parliament’s intention to minimize the administrative burden on charities without reducing their accountability.
- Fourth, the letter points out that the wording in the draft guidance on directed donations causes confusion because it does not align with the wording of the *Income Tax Act* and that, among other measures, the draft guidance should be modified to further explain what will be sufficient for a charity to show compliance with directed giving provisions.
- Finally, the letter from the CBA Section suggests that it would be helpful to have guidance about whether charities that currently have a purpose of “granting to qualified donees” will have to amend their purposes to offer grants to non-qualified donees.

Though the deadline for submissions to the CRA on its draft guidance has now passed, it will be interesting to see how the submissions from various groups, including the CBA Section, are reflected in the revised guidance on qualifying disbursements which is expected to be released in mid-2023. To read Carters’ submissions, please see [Charity & NFP Law Bulletin, No 518](#) and [Charity & NFP Law Bulletin, No 519](#).

6. Court Declines to Intervene in Affairs of Special Act Corporation

By [Ryan M. Prendergast](#)

The Supreme Court of Nova Scotia recently considered whether it had jurisdiction to intervene in a board governance dispute of a special act corporation. In [Conrad v Nova Scotia Federation of Anglers and Hunters](#), the Applicant, a member of the board of directors of the Nova Scotia Federation of Anglers and Hunters (“NSFAH”), sought an order from the court to invalidate a resolution passed by the board approving the credentials of certain clubs and renewing their membership in the NSFAH. After considering caselaw about voluntary associations, the court concluded that it did not have the jurisdiction to intervene in this matter.

NSFAH was incorporated in 1930 by the *Nova Scotia Federation of Anglers and Hunters Act* (the “Act”), which was subsequently amended over the decades. At a board meeting on March 19, 2022, the board of directors adopted a motion to approve the application of several clubs to join the membership of NSFAH. At least 16 of these clubs had been members of NSFAH in previous years but had not provided the necessary information (according to NSFAH’s bylaws and policies) to have their credentials approved by

the board. The Applicant therefore sought an order from the court invalidating the motion that approved the credentials of these 16 clubs.

In its analysis, the court stated that “there is no remedy without a right”. The special act under which NSFAH was incorporated did not have an oppression remedy and, with regard to admission of membership, it used permissive language which, in the opinion of the court, “does not rise to the level of creating a legal obligation arising out of a statutory breach”. Because the court found that “it is not clear that the governing statute of the NSFAH creates a legal right”, it instead considered whether there were other legal rights it should consider. Therefore, the court found that it must consider whether there was a contractual relationship between NSFAH and its members. Such a relationship, the court stated “would require an intention to create legal relations”.

In considering whether there was a contractual relationship, the court reviewed and quoted extensively from several decisions from the Supreme Court of Canada including *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga* (“Aga”), discussed in [Charity & NFP Law Bulletin No. 494](#). The court found that *Aga* “established that the presence of a constitution and bylaws is not sufficient to establish a legal right”. In considering other caselaw about voluntary associations and applying it to the situation before it, the court found that NSFAH’s requirements of an application for membership, payment of a membership fee, and provision of member voting rights could perhaps be sufficient to establish a contractual relationship, but this was not clearly supported by the caselaw.

In considering whether there was an intention to create legal relations, the court applied the test from an Alberta Court of Queen’s Bench decision, *Hon v. Liao* (“Liao”). In *Liao*, a case about a voluntary association which had its own constitution and by-laws, the court established that knowledge and consent to abide by the constitution and by-laws, together with the use of revenue from membership fees for the operation of the association demonstrated an intention to create legal relations by the parties. In this case, the court found that members were aware of their obligations to abide by NSFAH’s constitution and by-laws but members were not clearly entitled to any benefits in return for their membership fees. Therefore, there was not an intention to create legal relations, and there was not a contractual relationship between NSFAH and its members. As a result, the Applicant had no legal right on which to bring a claim.

This case is interesting in that it represents a rare situation where courts will look for contractual relationships between an incorporated not-for-profit entity and its members. Generally, a court will be able to rely on the wording of the incorporating statute to find a legal right, but in this circumstance, the

language in the incorporating act did not provide any specific rights that the Applicant could rely on. All voluntary associations, whether they are incorporated or not, should be aware of the situations in which the court may find that a member has a legal right that is sufficient to warrant the court's intervention in the affairs of the organization.

7. Gift of Land to Township by Will Did Not Create A Charitable Trust

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

On February 24, 2023, the court in [Friends of Nellie Lunn et al. v. Township of Wollaston](#) held that land gifted to a municipality by way of a will did not create a charitable trust.

In 1981, Boleslaw Kilncewicz executed a will ("Will") which left a parcel of land to the Corporation of the Township of Wollaston ("Township"), intending for it to be used as a park. The Will stated:

"I GIVE, DEVISE, BEQUEATH AND APPOINT all my estate, both real and personal, of every nature and kind whatsoever and wheresoever situate, and over which I have any power of appointment, to my Trustee, hereinafter named, upon the following trusts

1. To transfer and convey all my real estate located in the Township of Wollaston, in the County of Hastings, to the Town of Coehill for the purpose of a Park, and I direct that such Park shall be called the "Nellie Lunn Park".

Decades later, the Township decided that it no longer wanted the land, and passed a resolution in 2022 to sell the property. A sale was to close in October 2022, but closing was delayed pending resolution of this case.

The applicants were an Ontario corporation named the Friends of Nellie Lunn Park and a private individual. They claimed that the Will established a charitable trust over the land in question and thereby the sale of the land was a breach of trust. The respondent Township argued that the Will did not create a trust and the Township has fee simple ownership of the land, which allows the Township the right to sell the land.

The court held that the property was not held in trust. For a will to create a trust, much stronger language is required and the language in the Will at hand was not sufficient to meet this threshold. The court found that there was no evidence of the circumstances leading up to the execution of the Will, nor was there any evidence that supported a finding that the Township accepted the land with the understanding it would be required to hold and maintain the land as a public park into perpetuity. As such, there was no "certainty of intention" to create a trust, which is one of the mandatory requirements for a trust to be created.

Although the court found that the sale was otherwise void because the sale was not properly authorized by by-law of the Township, this could be easily remedied by the Township passing the necessary by-law to approve the sale.

This case serves as a reminder that those wishing to make an estate gift subject to a charitable purpose trust should ensure that this is expressed in clear and direct language in the will, communicate the intention to create a trust to the intended bequest recipient, and that the recipient will agree to hold the property in trust.

8. Court Applies Cy-Près Doctrine for Testamentary Gift Made to Charity that Ceased to Exist

By [Jacqueline M. Demczur](#)

The Ontario Superior Court of Justice has confirmed that when an individual makes a gift in a will to a charity that no longer exists, the court may apply the doctrine of *cy-près* to vary the terms of the will so that the gift may be made to a charity with similar charitable objects.

In the case of [Dors et al. v. The Public Guardian and Trustee](#), the testator, Anna Salnikova, who had passed away in 2006, left 20 percent of the residue of her estate to a charity that no longer existed (the “Mission”). The trustees of her estate wished to distribute this gift on a *pro rata* basis to the other 19 charities that Ms. Salnikova had named in her will. However, the Public Guardian and Trustee of Ontario (“PGT”) objected and instead requested that the amount be paid to a charity with similar charitable objects to the Mission in accordance with the doctrine of *cy-près*. In its decision dated March 6, 2023, the Ontario Superior Court of Justice agreed with the PGT and found that it should apply the doctrine of *cy-près* so that the gift could be made to a charity with similar charitable objects as those of the Mission.

Cy-près is a doctrine that allows a court to vary the terms of a will if: (1) the testator’s intentions are either impossible or impractical to carry out, (2) the testator demonstrated a general charitable intention in making the gift in the will, and (3) a gift to an alternative organization would be a gift resembling the original purpose of the gift in the will. In this case, the court found that it was impossible to make the 20% gift as described in the will because the Mission no longer existed. Further, Ms. Salnikova manifested a general charitable intention in her will as she had left 95 percent of her estate to charities. The 20% gift was the largest gift to a charity made in her will and, based on this together with Ms. Salnikova’s involvement in fundraising for the Mission during her life, the judge inferred “that this charity and its objects was of particular importance to the deceased.” Since none of the other 19 charities named in the

will appeared to have a similar purpose to that of the Mission and to not defeat the testator's intention to benefit the specific type of charitable work done by the Mission, the court found that a gift should instead be made to a charity with similar charitable objects to those of the Mission.

The trustees of Ms. Salnikova's estate had argued that since the Mission no longer existed, the gift to it in the will must lapse, thereby creating an intestacy and resulting in the 20% gift being distributed *pro rata* amongst the other remaining 19 charities. However, the court disagreed with this position, stating that:

[29] [...] It is clear that courts will not favour an intestacy where it can be inferred that the Testator intended to devote the failed gift to the charitable purpose or objects of the former institution. In such cases the Court will apply the *cy-près* doctrine in order to apply the bequest to a charitable object as close as possible to the original purpose.

Therefore, the court tasked the PGT with providing the trustees of Ms. Salnikova's estate a list of nominee charities with similar charitable objects to those of the Mission. The trustees could then choose one of the nominees and pay the 20% gift to that organization.

This case is an excellent example of the type of situation in which the court will seek to apply the doctrine of *cy-près* to vary the terms of a charitable gift made in a will which are impossible or impractical to carry out. In such a situation, because the court prioritizes the testator's original charitable intention in making a gift through a will, it is much more likely that a court will apply the *cy-près* doctrine as opposed to allowing a gift to a charity to lapse.

9. Employment Update

Working for Workers Act, 2023 to Increase Fines for Withholding Passports and Work Permits, OHSA Offences

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

The Ontario government is targeting labour trafficking and seeking heftier penalties for violations of health and safety laws in its latest effort to revise employment legislation. Introduced into the Legislative Assembly on March 20, [Bill 79, Working for Workers Act, 2023](#) ("Bill 79") would provide a tenfold increase in monetary fines for contraventions of the *Employment Protection for Foreign Nationals Act, 2009* (the "EPFNA"). Further amendments would increase fines under the *Occupational Health and Safety Act* (the "OHSA"). Provisions of the *Employment Standards Act, 2000* (the "ESA") requiring minimum notice to employees in mass terminations would be amended to include remote workers. Employers,

including charities and not-for-profits, should be aware of these changes and ensure they are compliant with these statutes.

Bill 79 would amend section 41 of the *EPFNA* to increase fines for contraventions by an individual from a current maximum of \$50,000 up to a maximum of \$500,000. Corporations would face fines up to \$1,000,000 for a first-time offence, increasing the current maximum of \$100,000 for first-time offences. In a [news release](#) published March 20, 2023, the provincial government announced that these increases would establish the “highest maximum fines in Canada for businesses and people who are convicted of withholding a foreign national’s passport or work permit.” Convicted individuals under the *EPFNA* may be imprisoned for up to 12 months in addition to the fine.

When an employer terminates 50 or more employees, the *ESA* includes minimum notice provisions under Part XV, depending on the length of time the employee has worked for that employer. Bill 79 would add a new section 53.2 to clarify that employees who work exclusively from home must also be given minimum notice if they are among the 50 or more terminations. The definition of “establishment”, which is currently defined under the *ESA* as a “location at which the employer carries on business”, would be modified by section 53.2 to include “a private residence of the employer’s employee if the employee performs work in the private residence and the employee does not perform work at any other location where the employer carries on business.”

If it passes the legislature as written, Bill 79 would also increase the maximum fine for a corporation for a conviction under the *OHSA* from \$1.5 million up to \$2 million.

Court of Appeal Rules Out of Date Employment Contract Unenforceable

By [Barry W. Kwasniewski](#)

The Court of Appeal for Ontario released its reasons for decision in the case of [Celestini v. Shoplogix Inc.](#) on February 28, 2023. This was an appeal from the Superior Court of Justice in regard to the common law concept of “changed substratum”.

Briefly, the changed substratum doctrine provides that where an employment position has fundamentally changed, the original written agreement between employer and employee should no longer apply as it does not reflect the actual role and duties of the employee. This is because an employment contract should accurately state what is expected of employees, and likewise, what employees can expect from their employer.

At common law, there is a positive duty on employers to provide reasonable notice before dismissing an employee without cause. The period of reasonable notice is determined by examining a number of factors, such as years of service, seniority, qualifications, etc. Employers and employees are free to contract out of these, provided that the statutory minimums under the *Employment Standards Act, 2000* for an employee's entitlements on termination are met.

For the balance of this *Bulletin*, please see [Charity & NFP Law Bulletin No. 520](#).

10. IP Update

By [Sepal Bonni](#)

Trademarks Registered as Official Marks by Charities May Soon be 'Inactivated'

As discussed in previous Charity & NFP Law Updates, significant amendments were introduced into Canada's *Trademarks Act* in 2019. While many of these amendments have already come into force, perhaps the most significant amendment to impact charities will likely come into force at the end of 2023.

In the past, charities have obtained official marks on the basis of being a "public authority". However, in 2002, the Federal Court made it clear that status as a registered charity alone is insufficient to qualify as a public authority for the purpose of obtaining an official mark, and that the test to determine if an organization qualifies as a public authority requires that: (1) a significant degree of control is exercised by the appropriate government over the activities of the body; and (2) the activities of the body benefit the public. Given the Federal Court's strict test for what constitutes a public authority, most charities that may have formerly qualified as a public authority for registration purposes no longer do.

However, even though these charities no longer qualify, their official marks still remain active. Even if the charities that own the official marks no longer exist, the official marks continue to remain active. This is because with the current official mark regime, once an official mark is approved, it remains on the trademarks register until it is either voluntarily withdrawn by the owner or struck from the register by a successful Federal Court action for judicial review. Both of these circumstances are very rare and, as a result, once an official mark is on the register, it is often perpetual in duration. Even though the charities' official mark cannot technically be enforced against third parties, the current regime is of benefit to these organizations given that their official marks continue to exist on the registry and therefore block applicants of confusingly similar trademarks. This then often creates an issue for new applicants who wish to register trademarks that are blocked by official marks.

The amendments to the *Trademarks Act* that will likely come into effect at the end of 2023 will provide a new mechanism for the Trademarks Registrar to declare an official mark invalid where the official mark holder is not a public authority or no longer exists. This will catch many charities that currently hold official marks.

The Canadian Intellectual Property Office has released a draft Practice Notice setting out the procedure for how this may occur. According to the draft Practice Notice, any party will be able to submit a request to the Trademark Office requesting that the official mark be inactivated because the holder is not a public authority, or the holder no longer exists. If the Trademarks Office is satisfied with the request, it will send a notice to the official mark holder requesting evidence of its public authority status. If the official mark holder does not respond or if the evidence is insufficient to satisfy the two-part public authority test, then the official mark will be inactivated.

Although there are advantages to this new mechanism, it will negatively impact many charities that hold official marks. Given that these amendments will likely come into force this year, charities that hold official marks should act now to apply for regular trademarks for any marks that they have as official marks in order to protect them in the future.

11. Privacy Law Update

By [Martin U. Wissmath](#)

Cybersecurity Problems & Objectives for Non-profit Sector Discussed by Working Group

“Every Canadian non-profit is empowered to securely meet its mission and protect the organization and its beneficiaries from cyber threats.” That is the stated vision for cybersecurity in the non-profit sector in a recent report from The Canadian Centre for Nonprofit Digital Resilience (the CCNDR). Published February 2023 on the CCNDR’s [website](#), the report, titled “[Building the Cybersecurity and Resilience of Canada’s Nonprofit Sector: A Vision and Strategy for the Sector](#)” (the “Report”), highlights the challenges facing non-profits from cybersecurity threats, the sufficiency of available solutions, sector-wide strategy and next steps. The Report is based on the results of a working group of 47 participants (the “Working Group”), including representatives “from large and small non-profits, non-profit capacity-builders, non-profit funders, policymakers, academics, cybersecurity experts, and cybersecurity vendors” that met to discuss the problem, and the solution, in May and October, 2022. This Privacy Update briefly summarizes the Report. It is recommended that all charities and non-profits read the full document.

There are “operational, financial, legal and reputational risks with devastating outcomes” for the non-profit sector, according to the Report. Ransomware or phishing attacks, data breaches, and accidental or natural hazards “can put digital information and systems at risk.” While non-profits “adopt systems, software and automated processes” to address these risks, the Report states, they do so without fully understanding them, often due to time and funding constraints, as well as a lack of expertise. “Awareness and attention, funding restrictions, scale, time horizon and outdated systems are key challenges faced by non-profits,” according to the Report. Other issues include a diffusion of responsibility when operating in a federation or association, mandates from funders to collect certain information or use a particular system, the engagement with privacy rights, and limited internet access in rural areas. “Even if they could afford cyber insurance,” the Report notes, “most non-profits would not meet the stringent eligibility requirements.”

Non-profits must have the knowledge, tools, and resources for cybersecurity, according to the Working Group’s vision for the sector. The Report outlines 5 objectives in a sector-wide strategy:

1. Non-profit boards, executives, and staff understand their risks and obligations and prioritize cybersecurity;
2. Non-profits have an easy on-ramp to cybersecurity, beginning with a relevant risk assessment that prioritizes preventive, focused action at different maturity levels;
3. Non-profits have access to a standard against which they can compare themselves and that is accepted by funder;
4. Non-profits have funding to implement required cybersecurity practices;
5. Non-profits have access to a marketplace of vendors providing quality, cost-effective solutions.

To meet these stated objectives, the Working Group decided to “develop and test several prototypes”, beginning with a risk assessment and on-ramp in the immigrant and refugee-serving sector. “The strategic approach is to go deep into the needs of one sector,” the Report states, to develop successful intervention, “and then scale it to other sectors.” The Working Group also intends to develop a model cybersecurity policy, in partnership with the Islamic Family and Social Services Association, which could then be adopted by other social services organizations.

12. Statistics Canada Releases Stats on NPOs in Rural and Small Town Canada

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

New statistics have been released by Statistics Canada on non-profit organizations (“NPOs”) in rural and small towns in Canada. Released on March 3, 2023, [Non-profit organizations in rural and small town of Canada, 2020](#) (the “Report”) provides details on the activities of NPOs in rural and small town areas, which are considered to be outside of census metropolitan areas/census agglomerations (CMAs/CAs). The information in the Report is based on results from the Rural Canada Non-Profits (“RCNP”) Metadata and User Guide, 2020, which was created from data obtained from the Statistics Canada Business Register. Of note, the RCNP database defines NPOs as “organizations that operate for a purpose other than profit [including] social, recreational or hobby groups; certain amateur sports organizations; certain festival organizations; and charities.”

According to the report, nearly one-quarter of the 134,000 Canadian NPOs were in rural and small-town Canada, employing over 428,000 people. While more than 30,000 NPOs were active in rural and small-town Canada in 2022 (representing a 2.7% increase from 2019), those in Quebec, Ontario, Alberta and British Columbia comprised 65.3% of that number, with Atlantic Canada representing 15.5%.

Almost \$23.4 billion in revenue was generated by NPOs in rural and small-town Canada, representing 7.7% of the \$303.1 billion in revenue generated by NPOs across Canada as a whole.

The report also indicates that NPOs with activities in religion “remained predominant” in rural and small-town Canada, followed by sports, recreation and social clubs, and social services. Of note, the report indicates that rural and small-town NPOs in health activities saw the greatest increase in revenues from 2019 to 2020, rising 28.3%, “perhaps owing to challenges related to the COVID-19 pandemic”. This was followed by NPOs involved in law, advocacy and politics, which saw an 11% increase in revenue. Conversely, NPOs in philanthropic intermediaries and voluntarism promotion and culture and recreation saw significant decreases between 2019 and 2020. From 2019 to 2020, the revenue of rural and small-town organizations involved in religious activities declined by 3.4%, while those in urban areas saw their revenue increase by 3.5% over the same period.

Close to four-fifths of NPO employees in rural and small-town Canada worked in health, education and research, and social services and the report found that rural and small-town Canada NPOs engaged in health activities saw a 25.9% increase in employment levels, while those engaged in development and housing activities saw a 15.1% decrease.

13. Legal Risk Management Checklists for Ontario-based Charities and Not-for-Profits

By [Jacqueline M. Demczur](#) and [Terrance S. Carter](#)

The annual [Legal Risk Management Checklist for Ontario-Based Charities](#), as well as the [Legal Risk Management Checklist for Ontario-Based Not-For-Profits](#) updated as of March 2023, are now available through our website at [carters.ca](#).

14. The 2023 Annual *Carters Spring Charity & Not-for-Profit Law Webinar* — Held Virtually on March 2, 2023

The 2023 *Carters Spring Charity & Not-for-Profit Law Webinar*, hosted by Carters on March 2, 2023, had over 950 registered attendees from the charitable and not-for-profit sector tuning in across Canada,.. The special speakers for this webinar were Cathy Taylor, the Executive Director of the Ontario Nonprofit Network (ONN), Sharmila Khare, Director General, Charities Directorate, Canada Revenue Agency and Rob Delaney, Director of the Policy, Planning and Legislation Division of the Charities Directorate. The handouts and presentation materials from this year's webinar are now available below or at the following [link](#).

IN THE PRESS

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

[Consistently inconsistent: Unincorporated associations owning real property in Canada](#) written by Ryan M. Prendergast, was published in the Philanthropist Journal on February 7, 2023.

[Investment powers for charities in Canada](#) written by Terrance S. Carter and Lynne Westerhof, together with Kate Lazier, was published in the Philanthropist Journal on February 28, 2023.

RECENT EVENTS & PRESENTATIONS

The [2023 Carters Spring Charity & Not-for-profit Law Webinar](#) was held on March 2, 2023, and featured all new topics providing and overview of recent developments and practical advice on legal issues that impact charities and not-for-profits. The [full handout package](#) is available on our website, as well as the individual presentation listed below:

- [CRA Draft Guidance on Qualifying Disbursements: A Work in Progress](#) by Terrance S. Carter
- [Transitioning Under the ONCA: More Complicated Than You Think](#) by Theresa L.M. Man
- [The Lowdown on Liability Waivers for Charities and NFPs](#) by Barry W. Kwasniewski
- [Preparing for a Cyber Attack and Data Breach — Why Charities & NFPs Need an Incident Response Plan](#) by Esther Shainblum
- [Essential Charity & NFP Law Update](#) by Ryan M. Prendergast
- [Leasing 101: What Charities & NFPs Need Know Before Signing](#) by Adriel N. Clayton
- Policy Development at the Charities Directorate by Sharmila Khare, Director General of the Charities Directorate of the CRA and Robert Delaney, Director of the Policy, Planning and Legislation Division, Charities Directorate of the CRA (fireside chat – audio only)
- Developing Trends in the Charitable and Not-for-Profit Sector as seen by ONN by Cathy Taylor, Executive Director, Ontario Nonprofit Network (ONN) (fireside chat – audio only)

UPCOMING EVENTS & PRESENTATIONS

[The Canadian Association of Gift Planners' 29th National Conference](#) will be held in Vancouver, BC from April 19 to 21, 2023. Theresa L.M. Man and Terrance S. Carter will be speaking on the topic of Challenging Situations in Gift Receipting on Thursday, April 20, 2023.

[The CBA Charity Law Symposium](#) will be hosted by the CBA on May 12, 2023. Jacqueline M. Demczur will be speaking during the afternoon session on Donor Advised Funds and Related Topics. Terrance S. Carter will be speaking during the morning session on Legal Approaches to Remediating Bias (Part II).

LEGAL TEAM

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



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



[Terrance S. Carter](#), B.A., LL.B, TEP, Trademark Agent – Managing Partner of Carters, Mr. Carter practices in the area of charity and not-for-profit law, and is counsel to Fasken on charitable matters. Mr. Carter is a co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* (Thomson Reuters), a co-editor of *Charities Legislation and Commentary* (LexisNexis, 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.” Ms. Leddy is recognized as a leading expert by *Lexpert*.



[Theresa L.M. Man](#), B.Sc., M.Mus., LL.B., LL.M. – A partner with Carters, Ms. Man practices in the area of charity and not-for-profit law, 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*TM 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.



[Cameron A. Axford](#), B.A., J.D., Student at Law - Cameron graduated from the University of Western Ontario in 2022 with a Juris Doctor. While studying at law school, he was involved with Pro Bono Students Canada in the Radio Pro Bono program and participated in the BLG/Cavalluzzo Labour Law Moot. Prior to law school, Cameron studied journalism at the University of Toronto and Centennial College, receiving a BA with High Distinction from the former. He has worked for a major Canadian daily newspaper as a writer. Cameron has experience doing volunteer work for social development programs in Nicaragua and in leadership roles in domestic philanthropic initiatives.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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