

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

NOVEMBER 2023

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PUBLICATIONS & NEWS RELEASES

1. More Clarity Needed on T3 Filing Requirements for Charities and NPOs

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

As reported in our [Charity & NFP Law Bulletin No. 523](#), the Canada Revenue Agency (“CRA”) has clarified reporting requirements for internal express trusts held by registered charities. On November 10, 2023, the CRA made an announcement that it will not require registered charities to file T3, *Trust Income Tax and Information Return*, for internal trusts held by registered charities (*i.e.*, trusts that are created when a charity “receives property as a gift that is subject to certain legally enforceable terms and conditions; and holds that property as the trustee of the trust”).

However, the CRA announcement does not explain that there are still some situations by which charities and non-profit organizations (“NPOs”) may need to file T3 trust returns. For more information about what is involved in filing T3 reporting requirements for charities and NPOs, reference can be made to our [Charity & NFP Law Bulletin No. 522](#) dated June 29, 2023 that was posted prior to the recent announcement by the CRA.

From a review of the applicable provisions of the *Income Tax Act*, it is apparent that T3 trust reporting will still be required by charities and NPOs in certain situations other than those involving internal express trusts held by charities, including:

1. internal express trusts held by NPOs;
2. express trusts held by charities for beneficiaries other than the charity itself; and
3. bare trusts, including bare trusts held by third parties for the benefit of a charity or an NPO.

In this regard, it would be helpful for the CRA to provide details about the extent of the administrative exemption that has been announced by explaining the circumstances by which charities and NPOs may still be required to file T3 trust returns. In the meantime, charities and NPOs may wish to consult with their own legal and accounting advisors in order to review their particular fact situations to see if there might be specific circumstances by which the organization may still be required to file T3 trust returns by March 30, 2024.

2. CRA News

By [Ryan M. Prendergast](#)

New Version of Form T3010 Coming in the New Year

In response to the Government of Canada's 2022 initiatives aimed at enhancing charitable spending within communities, legislative adjustments to disbursement quota rules for registered charities were enacted. The following information outlines the [upcoming changes](#) to the Form T3010, *Registered Charity Information Return*, scheduled for release by the Canada Revenue Agency (CRA) in January 2024.

Starting January 2024, a new version of the Form T3010 will be introduced to accommodate the modified reporting requirements resulting from the legislative amendments. Two distinct versions of the Form T3010 will be available for download:

Charities with fiscal periods concluding on or before December 30, 2023, are required to file using version 23.

Charities with fiscal periods concluding on or after December 31, 2023, must file using version 24.

It is important to obtain the Form T3010 from the [T3010 Registered Charity Information Return](#) page during the preparation of the annual information return to ensure the use of the correct version. Submission of an outdated form will not be accepted for filing by the CRA.

The CRA strongly encourages all charities to leverage online filing options through [My Business Account](#) (MyBA) or [Represent a Client](#). These platforms automatically present the appropriate version of the annual information return based on the fiscal period being filed. Information on how to sign up for MyBA can be found on the "[Access our online services for charities](#)" page.

For inquiries regarding these changes or assistance with online services, CRA representatives are available at 1-800-267-2384, Monday through Friday, 9 am to 5 pm.

Charities are advised to stay informed about these changes and ensure compliance with the updated filing requirements to facilitate a smooth transition to the new Form T3010 versions.

Charities May Be Eligible for GST/HST Rebate

The CRA is [reminding charities](#) that they may be eligible for a GST/HST rebate.

The CRA emphasizes that registered charities can claim a rebate on the GST/HST they pay through the Public Service Bodies' ("PSB") rebate. This allows eligible charities to recover 50% of the GST and the

federal part of the HST paid on eligible purchases and expenses. If the charity is in a participating province, it is also entitled to a rebate on a portion of the provincial part of the HST.

The claim period for the PSB rebate depends on whether the charity is a GST/HST registrant or not. Registrants align their claim periods with their GST/HST reporting periods (annual, quarterly, or monthly), while non-registrants have two claim periods: the first six months and the last six months of their fiscal year. The amount claimed is determined by calculating the non-creditable tax charged during a specific claim period, excluding amounts claimed or entitled to as input tax credits, rebates, refunds, or remissions. The charity can use [Form GST66](#) to file its PSB rebate application, or [Form RC7066](#) for provincial HST rebates, with up to four years allowed for filing from the due date of the GST/HST return covering the same dates as the claim period for registrants, and up to four years from the last day of the claim period for non-registrants.

The CRA provides additional resources, including Info Sheets and [Guide RC4034](#), for instructions on calculating the non-creditable tax charged and understanding the rebate process. The agency encourages charities to take advantage of this rebate to alleviate the financial burden of the GST/HST on eligible expenses.

Additional resources to help charities acquire GST/HST rebates can be found [online](#).

Disability Not-For-Profits can Apply for New Funding Program

The Government of Canada, through the Social Development Partnerships Program – Disability component (“SDPP-D”), is providing [new funding opportunities](#) to enhance the capacity of national disability organizations and address persistent barriers to accessibility and inclusion. Minister Kamal Khara announced a call for proposals under two streams of the SDPP-D: The Organizational Capacity Development stream, with up to \$6.8 million over two years, and the Intersectional Capacity Development stream, with up to \$3 million over two years.

The Organizational Capacity Development stream aims to improve strategic planning and leadership capacity of national disability organizations, offering funding from \$250,000 to a maximum of \$500,000 per project. The Intersectional Capacity Development stream, supporting collaborative projects addressing intersectional barriers, provides funds ranging from \$500,000 to a maximum of \$750,000.

Eligible not-for-profits have until December 21, 2023, to submit proposals. The initiative aligns with the Disability Inclusion Action Plan, focusing on building accessible and inclusive communities to eliminate physical, societal, and attitudinal barriers. The funding supports projects that enhance the ability of

national disability organizations to serve the disability community effectively and collaboratively address intersectional barriers, fostering social inclusion and active participation of Canadians with disabilities in their communities.

Online information sessions in English and French are available to guide organizations through the application process, emphasizing the government's commitment to creating a truly inclusive country. The call for proposals is purported to reflect a strategic investment in strengthening the capacities of national disability organizations to contribute meaningfully to the Disability Inclusion Action Plan's objective of building a barrier-free and inclusive Canada.

Administrative Exemption from Trust Reporting by Charities

As reported in our [Charity & NFP Law Bulletin No. 523](#), the CRA has clarified the reporting requirements for internal express trusts held by registered charities.

In accordance with a [notice](#) released by the CRA's Charities Directorate on Friday, November 10, 2023, in response to a call by the charitable sector for clarity, the CRA announced that it will **not require** registered charities to file the T3, *Trust Income Tax and Information Return*, for internal trusts.

The announcement explains that the CRA considers that internal trusts are created when a charity receives property as a gift that is subject to certain legally enforceable terms and conditions and holds that property as the trustee of the trust.

For more details, please see [Charity & NFP Law Bulletin No. 523](#), dated November 13, 2023, as well as an article titled [More Clarity Needed on T3 Filing Requirements for Charities and NPOs](#).

3. Legislation Update

By [Terrance S. Carter](#) and [Jennifer M. Leddy](#)

Omnibus Bill Impacting Ontario Charities and Not-For-Profits Passes Third Reading

[Bill 139, Less Red Tape, More Common Sense Act, 2023](#) ("Bill 139"), previously reported on in our [October 2023 Charity & NFP Law Update](#), passed Third Reading in the Ontario Legislature on November 21, 2023.

Bill 139 is an omnibus Bill that will impact 20 statutes. Of particular interest to the charitable/not-for-profit sector are the provisions amending the *Charities Accounting Act* ("CAA") with respect to notice provisions to the Public Guardian and Trustee ("PGT") and the Ontario *Corporations Act* ("OCA") with respect to social clubs.

Charities Accounting Act

As explained in our *October 2023 Charity & NFP Law Update*, subsections 1(1) and 1(6) of the CAA have been amended so that corporations incorporated for a religious, educational, charitable or public purpose that otherwise are deemed to have their “instrument of incorporation” (e.g. articles of incorporation) be an “instrument in writing” within the meaning of the CAA, will no longer be required to provide a copy of such “instrument of incorporation” to the PGT.

This is a welcome administrative relief for charities that are either incorporated in Ontario or incorporated elsewhere in Canada (including under the *Canada Not-for Profit Corporations Act*) but carry on operations in Ontario.

These changes will come into force on the day Bill 139 receives Royal Assent.

Corporations Act

As also reported in our *October 2023 Charity & NFP Update*, social clubs under the OCA have until October 19, 2026 to continue into the *Ontario Not-for-Profit Corporations Act, 2010*, the *Co-operative Corporations Act*, or the *Business Corporations Act*.

Presently, if a social club has multiple classes of shareholders, the continuance must be approved by each class voting separately as a class through a special resolution. Depending on the class structure, the procedure for providing notice to the shareholders and facilitating voting by all classes can be complicated and time-consuming. A failed vote for continuance could result in the club’s forced dissolution. The amendments outlined in Bill 139 will eliminate separate voting by each class of shareholders and stipulate that only those shareholders who are entitled to vote may authorize the continuance. This simplified voting process will ease the administrative burden on social clubs. These provisions will come into effect on the day Bill 139 receives Royal Assent.

Mandatory Reporting on Forced and Child Labour Coming into Effect on January 1, 2024

Certain large charities and not-for-profits might have to file public reports on their efforts to reduce and prevent the prevalence of forced/child labour in their supply chains. As reported in the [May 2023 Charity and NFP Law Update](#), [Bill S-211, Fighting Against Forced Labour and Child Labour in Supply Chains Act](#) (the “Act”) received Royal Assent on May 11, 2023.

As of January 1, 2024, “entities” caught under section 2 of the Act will be subject to reporting obligations. Such entities could include charities and not-for-profits as set out in the definition below:

.....a corporation or a trust, partnership or other unincorporated organization that
[any one of the following (a), (b) or (c) below]

- a) is listed on a stock exchange in Canada
- b) has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years:
 - (i) it has at least \$20 million in assets,
 - (ii) it has generated at least \$40 million in revenue, and
 - (iii) it employs an average of at least 250 employees; **or**
- c) is prescribed by regulations.

The Act does not provide a definition of “business”.

As of January 1, 2024, entities which are caught by the above definition and sell or distribute goods in Canada or elsewhere; import into Canada goods produced outside of the country; or control an entity engaged in these activities, must report on the steps that the entity has taken to “prevent and reduce the risk that forced labour or child labour is used at any step of the production of goods in Canada or elsewhere by the entity or of goods imported into Canada by the entity”.

The report will also have to include, among other information, the entity’s structure, activities and supply chain, its due diligence process regarding forced/child labour, the parts of the supply chain which could potentially involve child/forced labour, the training provided to employees regarding forced/child labour, and an assessment of the entity’s effectiveness in reducing forced/child labour in its supply chain. These reports are due on May 31 of each year, and must be available on the entity’s website.

There is no exemption for charities and not-for-profits under the Act. If they meet the criteria for “entities” under the Act, they will be required to file annual reports. Given the high threshold criteria, the definition of “entities” will likely only apply to very large organizations.

Federal Fall Economic Statement Has Little Impact on the Charity and Not-For-Profit Sector

The Government of Canada released the [2023 Fall Economic Statement](#) on November 21, 2023. The Government states that it intends to focus on “today’s two key challenges”, high prices/mortgages, and housing. There are only a few aspects of specific interest to the charity and not-for-profit sector.

Housing

Regarding housing, Ottawa has outlined its intention to support non-profit, co-op and public housing providers to “build more affordable homes.” One billion dollars will be provided to the Affordable Housing Fund over three years, starting in 2025/2026. The goal is to build more than 7,000 homes by 2028. The Government has also pledged four million dollars to the Housing Accelerator Fund with the goal of building 100,000 new homes by cutting red tape and fast-tracking the creation of new homes. Funding agreements are already in place with a number of cities across Canada. To date not-for-profits will be involved in building affordable housing under these funding agreements in London, Ontario; Kelowna, British Columbia; and Moncton, New Brunswick.

Canadian Emergency Business Account

Ottawa has announced that not-for-profits that took Canadian Emergency Business Account (“CEBA”) loans, discussed in greater detail in our [COVID-19 Resource for Charities & NFPs](#), and which qualify for refinancing can now apply for this refinancing up until March 28, 2024. As well, not-for-profits that qualify will be given an extension of one year to repay loans (until December 31, 2026), and will have access to a three-year, low-interest loan of \$60,000 in the meantime.

Anti-money laundering/terrorist financing

The *2023 Fall Economic Statement* proposes changes to current law with respect to anti-money laundering/terrorist financing (“AML/ATF”). The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and the *Criminal Code*, along with other statutes, will be amended to aid in detecting and addressing sanctions evasion by closing loopholes and inconsistencies, and by providing the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”) with the ability to list the names of entities which present AML/ATF risks.

Canadian Journalism Labour Tax Credit

The *2023 Fall Economic Statement* announced an increase of the Canadian Journalism Labour Tax Credit, which was introduced in the 2019 Budget to support Canadian journalism. The credit provides a refundable 25% tax credit on the salary or wages paid to eligible newsroom employees in qualifying journalism organizations. This expenditure amount is currently capped at \$55,000 per eligible newsroom employee, but the *2023 Fall Economic Statement* proposes to increase the cap to \$85,000, and temporarily increase the percentage of the tax credit to 35% for up to four years.

Previously Announced Tax Measures

The *2023 Fall Economic Statement* also reaffirms the Government's commitment to previously announced tax related measures, including the alternative minimum tax ("AMT"), as referenced in our [August 2023](#) and [September 2023 Charity and NFP Law Updates](#). The Statement also included a vague reference that the Government plans will be "modified to take into account consultations and deliberations" that have taken place over the summer and the fall, although it is not clear what those modifications might be.

4. CRA Releases View on Conversion of Share-Capital to Non-Share Capital Corporations

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

The Canada Revenue Agency ("CRA") provided comments on the tax-exempt status under the paragraph 149(1)(l) of the *Income Tax Act* ("ITA") as a non-profit organization ("NPO") of a share capital corporation ("DLCC") that was converted to a non-profit corporation in CRA View 2021-0921101E5, released on September 22, 2023.

The DLCC was incorporated as a share-capital corporation under special act to operate a club, and was later continued under general corporate legislation as a non-share capital corporation. Its shares were exchanged for membership interests. Shareholders and members did not take any profits from the DLCC, and all amounts earned are invested into maintaining the DLCC's club. Pursuant to the DLCC's articles of amendment and by-laws, the DLCC is restricted from operating the club for the purpose of profit of its members, directors, or officers.

The CRA indicated that for purposes of paragraph 149(1)(l), an organization may be a share capital or non-share capital corporation. However, no part of the corporation's income may be payable to or available for the personal benefit of any shareholder or member of the corporation.

The CRA was of the view that the conversion, in and by itself, does not impact qualification as an NPO under paragraph 149(1)(l). Rather, it is a question of fact whether DLCC qualifies as an NPO, and that an organization could meet the requirements of not-for-profit corporate legislation while not qualifying as an NPO.

The CRA indicated that in circumstances where, as a matter of law, a corporation's shares are converted to membership interests without being redeemed, acquired or cancelled, those shareholders would not be considered to have disposed of their shares, provided the rights and privileges of the shareholders have

not been modified in a substantive way. If there has been a disposition where shares are disposed of by shareholders in consideration for membership interests in a non-share capital corporation, section 51 of the ITA would apply, but only if a membership interest qualified as a “share of the capital stock” of the corporation. Otherwise, where a share is converted to a membership interest in a non-share capital corporation, the CRA stated that section 51 “does not appear to have any application.”

If the DLCC meets the requirements in paragraph 149(1)(l) of the ITA, then it would be required to file a T1044 Non-profit Organization (NPO) Information Return.

Finally, the CRA was of the view that it is a question of fact whether the continuance of the DLCC under the *Canada Business Corporations Act* (the “CBCA”) or the *Canada Not-for-Profit Corporations Act* (the “CNCA”) would impact its qualification as an NPO. In this regard, the CRA noted that the criteria to be a not-for-profit in the CNCA is not the same as the criteria required for NPOs under paragraph 149(1)(l). The CRA pointed out that since the CNCA provides that “no part of a corporation’s profits or of its property or accretions to the value of the property may be distributed, directly or indirectly, to a member... except in furtherance of its activities...”, it means that CNCA corporations can operate with a profit purpose, provided that profit is used to support the organization’s objectives. As such, any profit purpose in a CNCA corporation would prevent it from qualifying as an NPO.

5. Employment Update

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

Expected Salary and AI Use Disclosure Among Changes to Ontario Employment Standard

Employers of charities and not-for-profits should take note that they soon may be required to include salary ranges for advertised job positions, as part of amendments to Ontario employment standards. Bill 149, *Working for Workers Four Act, 2023* (“Bill 149”) was ordered referred to the Standing Committee on Social Policy in its Second Reading in the Ontario Legislative Assembly on November 23, 2023. Among the proposed amendments to the *Employment Standards Act, 2000* (“ESA”), Bill 149 would require employers to include the “expected compensation” for publicly advertised job positions, as well as disclose whether artificial intelligence is used to “screen, assess or select applicants” for the position, in new sections to be added to the ESA. Bill 149 includes further amendments to the *Digital Platform Workers’ Rights Act, 2022*, the *Fair Access to Regulated Professions and Compulsory Trades Act*, and the *Workplace Safety and Insurance Act, 1997*.

If it receives Royal Assent, Bill 149 would add a new Part III.1 to the ESA, titled “Job Postings”, with new sections 8.1 to 8.4 added. Section 8.2 would require every employer “who advertises a publicly advertised job posting” to include “expected compensation for the position or the range of expected compensation for the position.” A posted salary range would be subject to conditions, limitations and restrictions as prescribed by regulation. Section 8.3 would prohibit employers from including “any requirements related to Canadian experience” in a publicly advertised job posting “or in any associated application form”. Section 8.4 would require a statement disclosing the use of artificial intelligence.

According to a November 14, 2023 government [announcement](#) (the “Announcement”), the provincial government intends Bill 149 to help “millions of people in Ontario earn bigger pay cheques” and support newcomers to the province. The Announcement also stated that the provincial government is launching consultations to “Restrict the use of Non-Disclosure Agreements (NDAs) in the settlement of cases of workplace sexual harassment, misconduct or violence.”

Ontario Human Rights Commission Officially Acknowledges Caste Discrimination

The Ontario Human Rights Commission (“OHRC”) has updated its [policy statement](#) emphasizing the rights and legal responsibilities related to preventing and addressing caste-based discrimination under Ontario’s *Human Rights Code* (the “Code”). The policy statement, updated on October 26, 2023, defines a caste system as a social hierarchy based on ancestry, with various markers, such as names, rituals, and customs used for identification. Despite being invisible, a person’s caste can lead to discrimination in areas like employment, housing, and education. Employers of charities and not-for-profits should be mindful of this policy and ensure that there is no caste-based discrimination in their organization.

According to the OHRC, caste discrimination profoundly impacts individuals, resulting in social and economic exclusion, unequal opportunities, and even harassment. The OHRC recognizes caste-based discrimination as a violation of human rights, aligning with international perspectives highlighted in a 2016 United Nations report: “[Caste systems violate human rights and dignity of millions worldwide.](#)” The OHRC states that existing Code grounds, including ancestry, creed, colour, race, ethnic origin, place of origin, family status or “possibly other grounds” in Ontario provide adequate protection against caste-related discrimination, emphasizing an intersectional approach that considers multiple identity factors.

However, the Code has limitations, addressing discrimination only in specific areas like services, housing, employment, and contracts. Religious groups and organizations have exceptions, according to the OHRC policy statement, allowing certain restrictions based on Code grounds. Organizations are legally obligated to create discrimination-free environments, investigate caste-based discrimination claims, and implement

remedies. Training and public awareness initiatives are recommended to combat misinformation and prejudice contributing to caste-based discrimination, according to the policy statement. Additionally, school boards have specific obligations under Ontario's *Education Act* and *Provincial Code of Conduct*.

The OHRC highlights the potential violation of Canada's *Criminal Code* in cases of hate activities targeting specific groups. The comprehensive policy statement underscores the OHRC's commitment to addressing caste-based discrimination within the legal framework and fostering inclusive environments through education and awareness.

6. Privacy Update

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

Federal Privacy Commissioner Launches Public Consultation for Biometrics Guidance

In an era marked by rapid technological advancements, the Office of the Privacy Commissioner of Canada (“OPC”) is proactively seeking public input to overhaul its guidance for organizations handling biometric information in both public and private sectors. The OPC [announced](#) consultations for the new [draft guidance](#) on October 11, 2023. The [current guidelines](#), instituted in 2011, are undergoing a crucial re-evaluation due to the transformative evolution of technologies, such as fingerprinting, voice identification, facial recognition, and emerging applications of genetic data.

Commissioner Philippe Dufresne highlighted the escalating frequency of biometric applications in various sectors, citing examples like law enforcement utilizing facial recognition technology and instances where companies deploy voiceprint authentication programs without obtaining necessary consent. Acknowledging the dynamic nature of this field, the OPC underscores the need for updated guidance to ensure that organizations employ these technologies in a manner protective of privacy.

To facilitate this comprehensive update, the OPC has released two draft guidance documents. One document addresses risks under the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”), the federal law governing privacy in the private sector, while the other focuses on the *Privacy Act*, which governs how federal institutions handle personal information. Charities and not-for-profits will want to pay attention to the draft guidance for organizations governed under PIPEDA, which sometimes requires compliance from charities and non-profit organizations [engaged in commercial activities](#), and is a best-practice standard for privacy due diligence for all organizations.

Stakeholders, including the general public, are invited to contribute their insights and recommendations to this vital process, underscoring a collaborative effort to shape guidelines that align with both contemporary technological advancements and evolving privacy considerations. The deadline for feedback is January 12, 2024. Feedback can be submitted through the [Biometrics guidance — Consultation feedback form](#) on the OPC website.

Commissioner Advocates Robust Privacy Measures to Protect Young People in Digital Era

[In an address to the Senate Standing Committee](#) on Access to Information (the “Standing Committee”), Privacy and Ethics, federal Privacy Commissioner Philippe Dufresne (the “Commissioner”) underscored the need for balance between technological innovation and the protection of privacy, particularly concerning the evolving landscape of social media platforms such as TikTok. The Commissioner appeared before the Standing Committee on October 25, 2023, for its study of the Use of Social Media Platforms for Data Harvesting and Unethical or Illicit Sharing of Personal Information with Foreign Entities. Charities and not-for-profits that use social media should ensure that they have comprehensive privacy policies with additional protections to restrict the collection, use, and disclosure of any personal information from children and young people.

Recognizing the considerable potential for innovation and connection in the online realm, the Commissioner highlighted the substantial risks, particularly for young people. In collaboration with counterparts from Quebec, British Columbia, and Alberta, he initiated an investigation into TikTok in February, probing its alignment with Canadian privacy legislation. The focus was on evaluating the validity of consent for the collection, use, and disclosure of personal information, especially that of children.

The Commissioner emphasized the urgency of prioritizing the privacy rights of young people, a significant demographic among TikTok users. Constraints on discussing the company's practices publicly were acknowledged due to the ongoing investigation.

Directing his remarks toward privacy principles, Commissioner Dufresne addressed the unique challenges faced by children in the digital age, emphasizing the necessity for robust safeguards. He underscored the right of children to maintain their innocence even in the digital world, aligning with UNICEF's guidance on the disproportionate impact of digital technologies on young people.

The Commissioner advocated support for potential enhancements in [Bill C-27](#), the *Digital Charter Implementation Act*, which passed Second Reading in April, 2023 and is currently at consideration in

Committee, to emphasize express recognition of children's privacy and best interests. The proposed law should include safeguards against unauthorized access to children's information and considerations regarding the appropriateness of its collection, use, and disclosure.

Highlighting a resolution adopted by provincial and territorial colleagues, Commissioner Dufresne urged organizations to prioritize young people's best interests, advocating for age-appropriate privacy tools and consent mechanisms. He emphasized the rejection of deceptive practices and supported the deletion and de-indexing of information collected from children.

In conclusion, the Commissioner stressed the imperative for government and organizations to act, ensuring young people could benefit from technology without facing risks. Anticipating valuable insights from the TikTok investigation, he looked forward to the progression of Bill C-27, foreseeing enhanced privacy protections for children and minors in the ever-evolving digital landscape.

7. IP Update

By [Sepal Bonni](#)

Reminder: Government Trademark Fees are Increasing in the New Year

As reported in the [August 2023 Charity and NFP Law Update](#), on January 1, 2024, the Canadian Intellectual Property Office (“CIPO”) will be increasing trademark application and renewal fees. Most fees will be **increasing by 25%**, along with the annual fee adjustment. For the filing of new trademark applications, this represents a **30% increase in fees overall**. The stated goal of this fee increase is to increase revenue to CIPO to better serve clients.

Charities and not-for-profits should be capitalizing on the remaining time in the year to review their trademark portfolios and determine what filings and renewals can be done before the January 1, 2024 fee increase. Directors/officers should speak with a qualified IP lawyer immediately should they have any questions or concerns about the coming fee increases.

8. Standing Senate Committee on Human Rights Releases Report on Islamophobia

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

The Standing Senate Committee on Human Rights (the “Committee”) released a 79-page report, entitled [Combating Hate: Islamophobia and its Impact on Muslims in Canada](#) (the “Report”), on November 2, 2023. The Report reflects a year-long project which saw the Committee undertake 21 public meetings and

received testimony from 138 witnesses, including Terrance S. Carter, who was [called as an expert witness](#) before the Committee on February 13, 2023 (discussed on pages 52-53 of the Report).

The Report begins by stating that Islamophobia is on the rise, and is not an unusual experience for many Muslim-Canadians. Based on witness testimonies, data, and input from Muslim communities, the Report presents 13 recommendations aimed at addressing Islamophobia in Canada.

The Report is structured into four sections. Briefly, section one focuses on understanding intersectional discrimination, and discusses how the impact of Islamophobia is compounded as a result of its intersection with other forms of discrimination, including those related to gender, race, disability, and sexual orientation. Section two outlines recent examples of Islamophobic hate crimes in Canada, discusses the role of law enforcement, including its legal framework in response to hate crimes, and provides policy recommendations to address this issue. Section three explores stereotypes and misinformation about Islam, and emphasizes the role that education and federal institutions both play in confronting misinformation and hate speech.

Of particular interest, section four focuses on addressing systemic Islamophobia, and includes a section on discrimination in the charitable sector. In this regard, the Committee heard from witnesses that “charitable works are the heart of Muslim communities, but that Muslim charities are disproportionately targeted by the Canada Revenue Agency (CRA) for audit and revocation.” The Report further states that “it is clear that [the CRA’s Review and Analysis Division’s] work to date – regardless of the intentions of its employees – has demonstrated structural bias against Muslim charities.”

The Report acknowledges that systemic Islamophobia is pervasive, affecting areas such as national security, secularism, workplace discrimination, and the correctional system. While the Report highlights egregious instances, it underscores the equally harmful nature of systemic Islamophobia in less visible contexts. For example, beyond audits for national security, the Report found that “Muslim charities are often discriminated against based on misconceptions of Islam, and bias that views valid religious activities as primarily those that resemble Christian practices.”

As well, of note to the charitable sector, Recommendations number 9, 10 and 11 deal with aspects of the regulation of charities (see our [March 2023 Charity & NFP Law Update](#)), as follows:

Recommendation 9

That the Government of Canada introduce legislation requiring the Canada Revenue Agency to collect and publish data on religious organizations subject to

audits and revocations, and to analyse such data to develop a strategy to reduce bias.

Recommendation 10

That the Minister of National Revenue review the mandate and functioning of the Review and Analysis Division of the Canada Revenue Agency, taking into account the conclusions of the pending review by the National Security and Intelligence Review Agency.

Recommendation 11

That the Department of Justice introduce legislation to establish an independent civilian body to review decisions of the Canada Revenue Agency's Charities Directorate and provide timely decisions on appeals.

The Report emphasizes the urgent need to confront Islamophobia, which it states is “a serious and growing problem in Canadian society.” Stressing the right of Canadians to practice their religion and feel secure, it calls for a reversal of the “disturbing rise of violence and hatred stemming from Islamophobia”. The Report also underscores the necessity of addressing systemic disadvantages faced by Muslims through legislative changes, policy reforms, and broader cultural shifts. The 13 recommendations outlined in the Report reflect concerns voiced by communities across Canada, with a call for urgent action from the federal government and a collective responsibility for all Canadians, including politicians and legislatures, to foster an inclusive society.

9. AML/ATF Update

By [Terrance S. Carter](#), [Sean S. Carter](#) and [Urshita Grover](#)

FATF Publishes Revised Recommendation 8 on Non-profit Organizations and Related Best Practices Guidance Paper

The Financial Action Task Force (“FATF”), which is the global money laundering and terrorist financing watchdog, published revised [Recommendation 8 and its Interpretive Note](#) on non-profit organisations (“NPOs”) on November 17, 2023, along with a [new Best Practices guidance paper](#) (the “Best Practices Paper”) on the implementation of Recommendation 8. As reported in our [June 2022 Charity & NFP Law Update](#), the FATF held a plenary from June 14-17, 2022 which, among other things, included an agreement to start new work to update the FATF best practices paper on combating the abuse of NPOs in relation to terrorist financing.

The previous significant changes to FATF Recommendation 8 from 2016 were discussed in our [September 29, 2016 Anti-terrorism and Charity Law Alert No. 46](#), some of which are still relevant today, such as FATF's definition of NPOs and the shift towards a risk-based approach. The new amendments made to the 2016 Recommendation are tracked as follows:

Countries should ~~review~~ identify the ~~adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to fall within the FATF definition of non-profit organisations (NPOs) and assess their~~ terrorist financing ~~abuse risks~~. Countries should ~~apply~~ have in place focused and, proportionate ~~and risk-based~~ measures, ~~without unduly disrupting or discouraging legitimate NPO activities, in line with the risk-based approach, to such non-profit organisations. The purpose of these measures is to protect them~~ such NPOs from terrorist financing abuse, including:

- a) by terrorist organisations posing as legitimate entities;
- b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

The Interpretive Note to Recommendation 8, which has been revised substantially, makes it clear that:

It is not in line with Recommendation 8 to apply measures to organisations working in the not-for-profit realm to protect them from [terrorist financing] abuse when they do not fall within the FATF's functional definition of NPOs. It is not in line with Recommendation 8 to implement any measures that are not proportionate to the assessed [terrorist financing] risks, and are therefore overly burdensome or restrictive. NPOs are not reporting entities and should not be required to conduct customer due diligence.

FATF's functional definition of an NPO "refers to a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of 'good works'."

The key updates in Recommendation 8 require countries to periodically identify organisations that fall within this "functional" definition of NPOs and assess the terrorist financing risks posed to them. Among these, only a small portion of NPOs may be facing a "high risk" of terrorist financing abuse. Recommendation 8 requires countries to have in place focused, proportionate and risk-based measures to address terrorist financing risks identified. This risk-based approach is essential, as opposed to a "one-size-fits-all", which would be inconsistent with the risk-based approach given the diversity within the domestic NPO sector and the varying degrees of risk of terrorist financing abuse they face. Further, many

NPOs may already have adequate self-regulatory measures and related internal control measures to mitigate terrorist financing risks, so as not to necessitate additional measures from national authorities. According to Recommendation 8, countries should be mindful of the potential impact of measures on legitimate NPO activities as disproportionate obligations on NPOs may hinder their legitimate activities and the delivery of much needed services, thus affecting economic and other human rights. It also clarifies that countries should ensure oversight or monitoring of NPOs, but they need not designate and supervise NPOs as reporting entities or require them to conduct customer due diligence.

The new Best Practices Paper on the implementation of Recommendation 8, which has been recently published has taken into account input from NPOs, financial institutions, banks and other relevant stakeholders. Reflecting the recent amendments to Recommendation 8, the Best Practices Paper describes the effective approach through which countries can combat terrorist financing abuse of NPOs through the identification, assessment and understanding of terrorist financing risk and how to mitigate it, in addition to including a section on how NPOs can protect themselves. Whether a particular measure is a good practice for an NPO that partially or fully mitigates the specific risk involved requires taking into context the unique circumstances of the NPO, and such a determination includes the level and type of terrorist financing risk by virtue of the type of NPO, its activities, characteristics, the type of funds or assets being distributed, the geographical context, and other controls and due diligence measures in place, among other considerations.

Further, the Best Practices Paper includes examples of bad practices and specifically explains how not to implement the FATF's requirements, which can be of significant relevance to the purposes of charities because as stated in the Best Practices Paper:

Complying with the FATF Recommendations should not contravene a country's obligations under the Charter of the United Nations, and international law, in particular, international human rights law, international refugee law and international humanitarian law.... Implementation of [Recommendation] 8 should respect and observe fundamental human rights and freedoms, such as freedom of opinion, expression, religion or belief, and freedom of peaceful assembly and of association.

Bill C-42 Receives Royal Assent to Change AML/ATF Aspects of Other Acts

[Bill C-42, An Act to amend the Canada Business Corporations Act and to make consequential and related amendments to other Acts](#), received Royal Assent on November 2, 2023. The stated intention of Bill C-42 is to strengthen "the government's commitment to the implementation of a publicly accessible beneficial ownership registry of corporations governed under the *Canada Business Corporations Act*

“CBCA”) in furtherance of its efforts to bolster Canada’s anti-money laundering and anti-terrorist financing regime.” In addition to amending the CBCA, Bill C-42 will amend the *Access to Information Act*, the *Income Tax Act*, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and the *Budget Implementation Act, 2022, No. 1*.

Federally incorporated corporations pose a risk for money laundering due to their ability to conceal ownership. While information on directors is publicly accessible, it may not distinguish between the legal and beneficial owners, and the absence of a centralized registry makes it challenging to obtain beneficial ownership details. As stated in the [Legislative Summary of Bill C-42](#):

A ‘legal owner’ of an asset holds the legal title to that asset in their own name, while a ‘beneficial owner’ possesses certain benefits of ownership even if they do not appear on its legal title. For example, someone who is not the legal owner of a corporation might directly or indirectly have the power to influence the actions of that company and may therefore be considered its beneficial owner. Notably, legal and beneficial ownership are not mutually exclusive.

The FATF emphasizes beneficial ownership transparency in its recommendations, specifically in Recommendation 10, requiring financial institutions to conduct customer due diligence, including identifying and verifying the identity of beneficial owners, with a focus on understanding the ownership and control structure of legal persons and arrangements. Various international jurisdictions establish different thresholds for defining a “beneficial owner”. The FATF does not mandate a specific threshold but it considers a 25% control threshold through ownership interest, voting rights, or the ability to change corporate board members, as acceptable.

In response to the need for accurate information on beneficial owners, federal and provincial/territorial ministers of finance in Canada, as of December 11, 2017, committed to legislative amendments in corporate statutes to ensure corporations maintain updated information on beneficial owners, which can be accessed by law enforcement and tax authorities. Federal amendments, notably in the CBCA since 2018, mandate federally incorporated businesses to establish and maintain a list of “individuals with significant control” (“ISCs”). The CBCA defines an ISC based on interests or rights in a significant number of shares, specifying details for the ISC register, including names, addresses, and descriptions of their control. The corporation must ensure accuracy, completeness, and transparency of this information and disclose it to authorities, shareholders, and creditors upon request or affidavit.

The amendments to the CBCA by Bill C-42 include expanding the information collected in the ISC register to encompass citizenship and address for service, requiring corporations to update the ISC register

annually and upon request, and empowering the Director to determine necessary ISC register information, penalizing non-compliance. The amendments also establish offences for directors and officers who knowingly permit contravention of beneficial ownership obligations, with increased penalties following committee amendments. Furthermore, the amendments introduce a publicly accessible beneficial ownership registry for CBCA-governed corporations, specifying information to be made public, exemptions, and a provision allowing ISC individuals to request non-publication under certain circumstances. Other changes empower the Director to dissolve non-compliant corporations, repeal sections allowing shareholder and creditor access to ISC register information, grant the Director authority to provide ISC information to provincial authorities, and introduce whistleblower protections. Additional amendments address definitions, prescribing influence parameters, and granting the Director authority to request records and information related to CBCA compliance.

In Clause 17 of Bill C-42, section 241(4)(u) is added to the *Income Tax Act*, authorizing the communication of specific taxpayer information to a Department of Industry official solely for the purpose of verifying and validating data required under section 21.21 of the CBCA concerning the corporate beneficial ownership registry. Clause 18 amends section 73(1)(c) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to broaden the Governor in Council's regulatory authority regarding the reporting of discrepancies in information on the beneficial ownership or control of an entity to government institutions or agencies. Lastly, Clause 19 repeals section 434 of the *Budget Implementation Act, 2022, No. 1*.

Bill C-42 comes into force on a day or days to be determined by order of the Governor in Council.

10. The 2023 Annual Charity & Not-for-Profit Law Webinar — Held Virtually on November 9, 2023

The 2023 Carters Annual Charity & Not-for-Profit Law Webinar, hosted by Carters Professional Corporation on November 9, 2023, had over 1,180 registered attendees from the charitable and not-for-profit sector tuning in across Canada. The special guest for this webinar was Robert Lefebvre of the Ottawa Police Services, Supervisor - Background Clearance Unit. He spoke on the topic of Vulnerable Sector Checks: What Charities and NFPs Need to Know, along with Carters partner Esther S.J. Oh. The handouts and presentation materials from this year's webinar are now available below or at the following [link](#). Links to individual presentation materials are available under [Recent Events & Presentations](#), below.

11. November 2023 Legal Risk Management Checklists for Ontario-based Charities and Not-for-Profits

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

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 November 2023, are now available through our website at [carters.ca](#).

12. Charities Legislation & Commentary, 2024 Edition

The 2024 Charities Legislation & Commentary, co-edited by Terrance S. Carter, M. Elena Hoffstein and Professor Adam Parachin, published on November 30, 2023, and is now available. This consolidation provides an updated tool to facilitate charity law research by setting out excerpts from, and in some cases the entire text of approximately 145 key federal and Ontario statutes and 75 regulations that apply to charities. New to the 2024 edition is a look at the full text of the *Anti-terrorism Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, commentary on the most recent amendments to the *Income Tax Act* which will affect charities, discussion of amendments to the *Ontario Not-for-Profit Corporations Act, 2010* and *Trustee Act*, and discussion on proposed changes to the *Personal Information Protection and Electronic Documents Act* which could have an impact on charities. Order the book by clicking [here](#).

13. Career Opportunities at Carters

Carters is currently looking for a Charity Lawyer with a minimum of two-three years experience in charity and not-for-profit law with a focus in corporate and tax law to join our team of charity and not-for-profit lawyers. The successful candidate will work on a wide variety of files including those dealing with incorporations, applications for charitable status, gift planning and providing advice on complex corporate and tax structuring. The successful candidate will be able to work remotely with in person connection being available at either our Ottawa or Orangeville office locations. All interested applicants are invited to view our [Career Opportunities page](#) for more details.

IN THE PRESS

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

RECENT EVENTS & PRESENTATIONS

[Essential Update on Charity Law](#) was presented by Terrance S. Carter on September 29, 2023 at the Christian Legal Fellowship (CLF) National Conference.

[The CRA's New Regime of Qualifying Disbursements](#) was presented by Terrance S. Carter at the ATRI 2023 Conference on September 30, 2023.

[Carters Annual Charity & Not-for-Profit Law Webinar](#) was held on **Thursday, November 9, 2023**. Providing an overview of recent developments and practical advice on legal issues that impact charities and not-for-profits.

- [Full 'Handout'](#)
- [Essential Charity & NFP Law Update](#) by Adriel Clayton
- [Alternative Minimum Tax and New Trust Reporting Rules for Charities](#) by Theresa Man
- [Things Charities & NFPs Should Do but Don't](#) by Ryan Prendergast
- [Contract Essentials for Charities & NFPs: Make Sure You're Protected](#) by Esther Shainblum and Barry Kwasniewski
- [Donor Advised Funds: What You Need to Know in 2023](#) by Jacqueline Demczur
- [Top Five Hot Topics in Real Estate for Charities & NFPs](#) by Nancy Claridge
- [The New Qualifying Disbursement Regime for Charities: What does it Mean in Practice](#) by Terrance Carter

- [**Vulnerable Sector Checks: What Charities and NFPs Need to Know**](#) by Robert Lefebvre
- [**Vulnerable Sector Checks: What Charities and NFPs Need to Know - Brief Comments from a Practitioner's Perspective**](#) by Esther Oh

[**The ONCA and Beyond: Governance and Policy Issues to Consider**](#) was presented by Jacqueline M. Demczur at the Federation of Ontario Lawyers Associations (FOLA) Fall Plenary on November 10, 2023.

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