

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

## SEPTEMBER 2023

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## PUBLICATIONS & NEWS RELEASES

### 1. **Imagine Canada and CAGP make Submissions on the Proposed Alternative Minimum Tax (AMT) Changes**

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

Our August 2023 [Charity & NFP Law Update](#) explained the Department of Finance’s proposed legislative changes to the alternative minimum tax (“AMT”) rules, and the negative impact this will have on future transformational gifts by high net worth donors to charities in Canada. In response to the Government of Canada’s proposal for feedback, [Imagine Canada](#) and the [Canadian Association of Gift Planners](#) (“CAGP”) have both made substantive submissions voicing concerns about the proposed amendments and their potential impact on charitable donations in Canada, as well as their recommendations. CAGP’s submission was [endorsed](#) by 180 signatories and sent to the Department of Finance on September 25, 2023.

The submission by Imagine Canada recommends against the implementation of the proposed amendments to the AMT. While acknowledging that income inequality is a national concern and wealthy Canadians should pay their fair share of taxes, Imagine Canada argues that limiting tax incentives for charitable donations to accomplish this goal will disincentivize the only category of donors (*i.e.*, higher income Canadians) whose contributions bridge the gap left by declining donations from others in recent years. Rising inflation, a challenging labour market, and a rising cost of insurance are already straining charities’ ability to operate.

Imagine Canada also criticizes the Federal Government’s contradictory and incoherent policy strategy for the charitable sector. The Government recently invested resources to increase the disbursement quota of foundations to boost charitable spending, in addition to setting up a \$400 million fund to compensate for lost donation revenues. However, the proposed AMT changes targeting charitable giving conflict with those initiatives by potentially limiting donations to charities, something which Imagine Canada asserts is not supported by Canadians. As suggested by a poll by Imagine Canada, a majority of Canadians support current tax incentives of charitable giving and believe that the Federal Government is not doing enough to support the sector’s work. Overall, Imagine Canada recommends that the Government release projections on the impact of AMT changes on charitable sector revenues and donor behavior, maintain a 0% inclusion rate for capital gains on donations of publicly listed securities, and preserve the full charitable donation tax credit in the AMT calculation.

Similarly, the submission by the CAGP urges the Government to reconsider the proposed AMT amendments. The proposed amendments to the AMT rules aim to broaden the base of high-income taxpayers subject to AMT by denying a number of tax deductions, reducing non-refundable tax credits, and increasing the AMT tax rate. The CAGP argues that these changes could discourage high-valued donations, which are essential for the charitable sector's sustainability and ability to provide vital services to Canadians. The CAGP posits that restricting access to full donation tax credits wrongly suggests that Canadian individual taxpayers who make altruistic decisions to support qualified donees are somehow enriching themselves by claiming such tax credits. The submission argues that any claw back of the charitable donation tax credit undermines the Government's tax policy to support the charitable sector's work and disrupts private wealth transfer to charity in Canada. The CAGP also points out the Government's inconsistent approach to promoting charitable giving, particularly in supporting ongoing operations of qualified donees through incentivizing private philanthropy. The CAGP highlights that historically, transformational donations represent approximately 35% of total charitable gifts in Canada. Therefore, up to one-third of the annual \$11.8 billion in charitable giving by Canadians could be negatively impacted by the proposed changes to the AMT rules.

The CAGP recommends that the Government exclude donation tax credits from the basic minimum tax credit calculations and reconsider the proposed changes that affect non-cash gifts of capital property and publicly listed securities. The submission emphasizes the importance of maintaining a supportive tax policy to encourage private funding of qualified donees. The CAGP also provides a number of real-world examples of transformational gifts made by philanthropists in Canada to illustrate the potential negative impact of the proposed AMT changes on charitable donations.

Both Imagine Canada and the CAGP are concerned that the proposed amendments to the AMT rules will deter high-value charitable donations and undermine the vital work of the charitable sector. They argue that maintaining tax incentives for charitable giving is crucial for sustaining the sector. They call for a reconsideration of the proposed changes and greater transparency in assessing the potential impact on charitable donations and the sector as a whole.

These recommendations are abundantly sensible and essential to maintaining a vibrant charitable sector in Canada. Hopefully, the Department of Finance will be listening.

## 2. No Clarity Yet on New Trust Reporting Rules for Charities

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

Our [Charity & NFP Law Bulletin No. 522](#) (June 2023) and [Charity & NFP Law Update](#) (August 2023) raised serious concerns relating to the new trust reporting requirement in recent amendments to the *Income Tax Act* (“ITA”) that require T3 returns be filed for express trusts within 90 days from the trust’s year end. Although there are exemptions from these filing requirements for registered charities and non-profit organizations, there is no exemption for internal express trusts held by charities (such as endowment funds, scholarship funds, or restricted building funds that are established as internal express trusts). Charities that fail to file the required T3 returns could face serious penalties for each express trust, being the greater of \$2,500 or 5% of the value of the trust property.

As reported in our August Update, it is hoped that the Department of Finance (“Finance”) or the Canada Revenue Agency (“CRA”) would provide a solution to the onerous new trust reporting requirement for internal express trusts held by charities, such as an administrative exemption or an amendment to the ITA. However, to date there has been no official indication of a solution forthcoming from either Finance or the CRA. The lack of any type of announcement is concerning because the clock is starting to run down on the time that charities have to do the necessary and extensive due diligence that will be required to complete and file T3 returns within 90 days of December 31, 2023. Hopefully, a solution will be announced soon by Finance or by the CRA. If not, the charitable sector may want to start advocating for a solution before it is too late.

## 3. Corporate Update

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

**Corporations Canada Integrates NUANS Name Search Reports into Online Filing Centre**  
Corporations Canada’s integration of the NUANS name search report with its Online Filing Centre was [completed](#) on September 20, 2023 and is now in effect. As we had previously written in our August 2023 [Charity & NFP Law Update](#), this is part of Corporations Canada’s ongoing efforts to improve client service.

Organizations incorporated under the *Canada Not-for-profit Corporations Act* that need to obtain a NUANS name search report for incorporation or corporate name preapproval services must now purchase the report through the Online Filing Centre. Corporations Canada also stopped accepting NUANS name search reports bought within 90 days prior to September 20, 2023.

## 4. Taxpayer was “Grossly Negligent” in Financially Contributing to Charitable Donation Scheme

By [Jacqueline M. Demczur](#)

In the case of [Osborne v. The King, 2023 TCC 98](#), decided on July 13, 2023, Clare Osborne (“Appellant”) appealed the CRA’s assessment of his 2006 taxation year, together with subsequent penalties levied under s. 163(2) of the *Income Tax Act* (“ITA”), in relation to donations made to an alleged charitable donation scheme.

The Appellant had received the contact information of an accountant, Fais Khan, through a co-worker. As the Appellant traveled for work, he asked his wife (“Mrs. Osborne”) to contact Mr. Khan. The two met and Mr. Khan gave a presentation about various charitable causes to which he recommended that the Osbornes make donations. Following these presentations, Mrs. Osborne, throughout 2006, gave Mr. Khan tens of thousands of dollars, either in cash or cheques made out to him personally, to donate on their behalf to these charities.

In April 2007, the Appellant met Mr. Khan for the first time when signing their 2006 tax returns prepared by him. The Appellant was not impressed with Mr. Khan, describing him as “greasy” to the court. While he decided against using Mr. Khan as the family accountant in future years, he felt that, with the tax deadline looming, there was no choice but to allow Mr. Khan to file on their behalf for the 2006 year. The Appellant then signed the tax return information slips without reviewing their contents.

Prior to 2006, the Appellant had never donated more than \$300 to charity in any taxation year and only to charities in which they were involved. However, in 2006, he donated \$60,003 to various charities, all of which were unknown to him.

In early 2008, Mr. Khan was arrested for financial crimes and, shortly after, the CRA and law enforcement agents arrived at the Osborne house. The family was detained, and their premises searched extensively. Although they were charged with income tax evasion as a result of the search, these criminal charges were later dropped for procedural reasons.

At trial, the Osbornes claimed that they were victims of Khan, a conman, and had assisted the CRA once they knew their dealings with Mr. Khan were illegitimate. The CRA did not see it this way, characterizing the Osbornes’ actions as “complicit surrender of those involved with something to hide.” In response, the Appellant claimed that the CRA had a “personal” vendetta against him and his wife.

There were four grounds on which the Appellant challenged the disallowed donations and the imposition of penalties, namely:

- (i) he is an honest, law-abiding person, hoodwinked and ‘conned’ by a convicted criminal;
- (ii) the CRA has treated victims of Khan’s fraud unequally;
- (iii) Mr. Osborne had no intention to misrepresent, knowingly file a false return, or avoid paying income taxes; and,
- (iv) he neither anticipated, expected nor suspected the dealings of Khan were fraudulent.

The court sought to answer the questions if the Appellant was entitled to the disallowed charitable tax credits and if the s. 163(2) penalties were justified due to gross negligence on his part.

Regarding the Osbornes’ treatment during the criminal investigation, the court stated that it does not have, “and cannot have any, legal bearing on the issue of the correctness of the assessment for tax and imposed penalties.” The court continued that the Minister of National Revenue (“Minister”) is not held to a standard of “treating one taxpayer the same as or less fairly than another.” Finally, the court stated that penalties under the ITA do not revolve around intention or (un)ethical behavior, but rather is determinate on the tax liability of a taxpayer and the presence of gross negligence is a factor in this analysis.

The court found various deficiencies with the “donations” made by the Appellant and this was enough for noncompliance with the ITA. Further, the court found no intent to donate on Mr. Osbourne’s part because he could not speak to any details about the organizations receiving the donations. In addition, the “donations” were never actually made to these charities and instead went to Mr. Khan personally. For these reasons, the tax credits were disallowed.

The court then reviewed the penalties imposed on the Appellant, which the Minister justified on the basis of gross negligence. It concluded that the Appellant, an executive at a major bank at the time, should have known when he met Mr. Khan that something was awry. The court found that even though the Appellant immediately did not trust Mr. Khan, he still decided to sign the tax information return slips without examining them and this was conclusive proof of gross negligence. For these reasons, the court found that the penalties were justified.

This case serves as a reminder to taxpayers that tax professionals and those holding themselves out as such might not be reliable and therefore taxpayers must always do appropriate due diligence before retaining a tax advisor. In addition, the fact that a taxpayer’s agent acts in a fraudulent manner will not

necessarily shield the taxpayer from liability, especially when they are grossly negligent in their own financial affairs.

## 5. CRA Views: Gifts of Charitable Remainder Trusts

By [Ryan M. Prendergast](#)

In the CRA technical interpretation document 2022-0943881E5, from March 10, 2023, the CRA addressed the question of whether an individual can add the taxable capital gain realized on the transfer of property to a charitable remainder trust (“CRT”) into “total gifts” as defined in subsection 118.1(1) of the *Income Tax Act* (“ITA”). The individual had transferred the property to a CRT and then gifted an equitable interest in the trust to a qualified donee. The CRA took the position that the realized taxable capital gain on the property transfer to the CRT is not eligible for inclusion in the formula to determine “total gifts” as explained below because the property that is the subject of the gift is the equitable interest in the trust, and not the property being settled in the trust.

The CRA explains that a CRT is not an entity specifically dealt with in the ITA, but is a widely used term for gift planning structures in which a qualified donee (*i.e.* a registered charity) has an interest. The CRA has traditionally held that if someone transfers capital property to a trust and a qualified donee is granted an equitable interest in the trust, allowing them to receive the property once there are no more income beneficiaries could be considered a gift from the person who set up the trust to the qualified donee. The property considered to have been gifted to the qualified donee is the equitable interest in the trust and not the capital property actually transferred to the trust by the settlor.

For an equitable interest in a trust to be considered a gift to a qualified donee, the transfer of property to fulfill the qualified donee’s capital interest must be permanent and the qualified donee’s right to receive the trust’s property in the future must be guaranteed and irrevocable.

Referencing subsection 118.1(1) of the ITA, the CRA states that a taxpayer’s “total gifts” for a year is calculated based on their “total charitable gifts”, “total cultural gifts” and “total ecological gifts”. Paragraph (a) of the “total gifts” definition includes the lesser of the following amounts:

- (i) the individual’s total charitable gifts for the year;
- (ii) the individual’s income for the year where the individual dies in the year or in the following taxation year; and

- (iii) in any other case, the lesser of the individual's income for the year and the amount determined by a formula that includes, among other things, the total of,
  - A. 75% of variable A, described as the individual's income for the year; and
  - B. 25% of variable B, described as the taxable capital gain in respect of a gift made by the individual in the taxation year (in respect of which gift an eligible amount is included in the individual's total charitable gifts for the taxation year).

Given CRA's position that property gifted by the individual to the qualified donee is an equitable interest in a CRT (the eligible amount of which is included in the individual's total charitable gifts), then the taxable capital gain referred to in Variable B concerning the gift of that equitable interest and the individual's taxable capital gain arising from the transfer of the capital property to the CRT would not be included in Variable B of paragraph (a) of the definition of "total gifts" in subsection 118.1(1) of the ITA.

Given the complexity involved with CRT's and the potential tax consequences, donors need to carefully work with their advisors to avoid any unintended consequences in transferring capital property to CRTs.

## 6. Interest Free Loan Found to Invalidate Charitable Donations

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

On August 22, 2023, the Tax Court of Canada released its decision in the case of [Nixon v. The King, 2023 TCC 124 \(CanLII\)](#). This was an appeal of reassessments made under the *Income Tax Act* for the Appellant's 2002 and 2003 taxation years. The appeal was dismissed by the court. The Appellant taxpayer was a participant in initiatives organized by Berkshire Funding Initiatives Limited ("Berkshire") and Talisker Funding Limited ("Talisker"). The Appellant received an official donation receipt from Ideas Canada Foundation ("Ideas") for his two "donations" of \$300,000 made in 2002 and 2003, respectively. The Minister of National Revenue ("Minister") denied the claim on a number of grounds, but the primary reason was a determination that no gift was made by the Appellant since the Appellant received a benefit through his participation in Berkshire, by receiving an interest free loan.

The Berkshire program was previously reviewed by the Tax Court of Canada in a prior case, *Kossow v. Her Majesty the Queen*, where the court found that Ms. Kossow had not made a gift because of the significant benefit she received as a result of her participation in the Berkshire program. This decision was affirmed by the Federal Court of Appeal.



As background, Talisker and Berkshire jointly promoted and operated Ideas, which the Minister described as leveraged-donation programs. In this regard, Talisker had provided 25-year term interest free loans for those making donations to Ideas. The court described the following requirements which were generally required to obtain a loan and be a participant in Ideas:

- (i) Sign a pledge to Ideas in the amount the participant purports to donate;
- (ii) Complete a loan application and power of attorney;
- (iii) Complete a promissory note for the amount of the applied-for loan;
- (iv) Write a cheque to Talisker “as agent” for his 20% contribution toward the donation to Ideas; and
- (v) Write cheques to Talisker (in its own right) for loan processing fees of 1-5% of the donation and security deposit equal to 10% of the donation.

Each of the loans totaled 80% of the participant’s donation to Ideas.

The Appellant argued that his fact situation was distinguishable from *Kossow*, and alleged that the loan he received was a separate, arms-length transaction from his donation to Ideas. In this regard, the Appellant argued that he did not follow the template that the other participants of the Berkshire program were required to follow.

The Appellant claimed that the funds that he obtained from Talisker were independent from his donation to Ideas. In this regard, the Appellant argued that the court should see the withdrawals of \$300,000 from his bank account on September 18, 2002 and February 17, 2003 as impoverishments. The Appellant argued that the (claimed) loan from Talisker on the identical dates were separate transactions unrelated to his gift and therefore alleged that the Appellant received no benefit as a result of his participation in Berkshire and the claimed donation amounts of \$300,000 in 2002 and 2003 should be allowed.

The court noted that prior to participating in the Berkshire program, the Appellant received promotional material from Berkshire, stating that he could expect to receive an annual cash flow benefit of \$73,200 and \$43,200 in 2002 and 2003, respectively. The court found that, “In the entirety of the promotional material, it was made clear to the Appellant that he would be financially enriched as a result of his participation in the Berkshire program.”

After reviewing numerous transactions that occurred, the court summarized the central issue in the case: whether the Appellant’s alleged donations of \$300,000 in both 2002 and 2003 were gifts within the meaning of s. 118.1(1) of the *Income Tax Act*.

The court cited a 1991 ruling from *Friedberg v. Her Majesty the Queen*, where the court stated that for the purpose of s. 118.1(1):

...a gift is a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor....

In reviewing the facts, the court found there was “no commercial reality to the conclusion the Appellant wishes the court to reach, specifically that the loan from Talisker was a separate arm’s length transaction from his gift to Ideas.” In addition, the court stated that the objective facts contradicted the Appellant’s position that he had the intention to pay back a loan amount to Talisker.

Instead, the court found that the objective evidence at trial supported the conclusion that the Appellant and the promoters of the Berkshire program reached an arrangement, whereby the Appellant would immediately be reimbursed for claimed donations of \$300,000 in 2002 and 2003.

*Nixon* serves as a reminder that initiatives and schemes which involve collection of payments through the guise of charitable donations in exchange for conferring of benefits to the individuals making those payments will be carefully scrutinized by the Minister and the courts and where there are not the requisite elements of a gift present, the official donation receipt will be denied.

## 7. Employment Update

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

### **Upcoming Deadline for AODA Compliance Reporting in Ontario on Dec. 31, 2023**

Charities and not-for-profit organizations operating in Ontario must prepare for an end-of-year deadline under the *Accessibility for Ontarians with Disabilities Act, 2005* (“AODA”). Under the AODA, enacted to enhance accessibility and inclusivity for individuals with disabilities, employers of charities and not-for-profits with 20 or more employees must file their accessibility compliance reports by December 31, 2023.

The AODA’s scope extends to organizations, including charities and not-for-profits, with employees in Ontario, along with designated public sector organizations. Organizations with 20 or more employees are obliged to complete and submit an accessibility compliance report to gauge their adherence to the AODA and the *Integrated Accessibility Standards Regulation* (“IASR”). Organizations with fewer than 20 employees are still required to create accessibility policies.

The accessibility compliance report serves as an online, self-reporting mechanism that provides information to the Ministry for Seniors and Accessibility. This comprehensive report delves into various aspects of an organization's compliance efforts:

- **Accessibility Plan:** Has your organization formulated and put into action a multi-year accessibility strategy, confirming a dedication to continual progress?
- **Education and Training:** Does your organization provide suitable education and training concerning the AODA and the Ontario Human Rights Code, with a particular focus on individuals with disabilities?
- **Written Policies:** Has your organization created and implemented written policies outlining how it intends to achieve accessibility by meeting all applicable requirements in the IASR?
- **Feedback Mechanism:** Does your organization have a well-defined process for receiving and responding to feedback that is accessible to individuals with disabilities?

For charities and not-for-profits with 50 or more employees in Ontario, answers to additional questions are required:

- **Website Accessibility:** Does your organization control one or more websites directly or indirectly?
- **Web Content Compliance:** Do all your organization's internet websites align with the World Wide Web Consortium Web Content Accessibility Guidelines 2.0 Level AA? This excludes live captions and pre-recorded audio descriptions.

To fulfill the requirements of the accessibility compliance report, employers are encouraged to visit the Government of Ontario's Central Forms Repository, which includes an [Accessibility Standards Checklist](#), and download the [Accessibility Compliance Reporting Form](#). In cases where an alternate format is necessary, organizations may request the Accessibility Compliance Reporting Form by emailing [accessibility@ontario.ca](mailto:accessibility@ontario.ca).

Navigating the intricacies of AODA/IASR compliance can be challenging, and many organizations may have questions or concerns about the impending reporting deadline. To address these inquiries and ensure a smooth compliance process, organizations may wish to obtain legal advice.

## 8. Privacy Update

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

### **Federal Privacy Commissioner Promotes Privacy as ‘Fundamental Right’ in Annual Report**

Protecting children’s privacy and online safety, keeping up with the impact of artificial intelligence on privacy, and preparing for potential privacy law reform are three strategic priorities identified by Canada’s privacy commissioner in the Office of the Privacy Commissioner of Canada’s (“OPC”) 2022–23 annual report to Parliament (the “Annual Report”) that will be of interest to charities and not-for-profits. The OPC’s Annual Report, [Protecting and promoting privacy in a digital world](#), published on the OPC website on September 19, 2023, reports on privacy issues arising under the federal *Privacy Act*, which applies to federal government institutions, and under the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”), which applies to federal works, undertakings or businesses and to the collection, use and disclosure of personal information in the course of a commercial activity and across borders.

In the opening message of the Annual Report, Privacy Commissioner Philippe Dufresne promoted his “vision of privacy based on 3 key pillars”:

- First, privacy is a fundamental right, which means that it must be treated as a priority. It also means that in clear cases of conflict with private and public interests, privacy should prevail.
- Second, privacy supports both the public interest and Canada’s innovation and competitiveness. It is not a zero-sum game between privacy rights and public and private interests; we can have both, and Canadians deserve nothing less.
- Third, privacy accelerates the trust that Canadians have in their institutions and in their participation as digital citizens. Creating a culture of privacy, and being seen to be doing so, generates trust and engagement with our public institutions, which is good for the public interest, and also sustains trust and loyalty from clients and customers, which is good for innovation and economic success.

The Privacy Commissioner also outlined three “strategic priorities”:

1. keeping up with and staying ahead of technological advancements and their impact on privacy, particularly with respect to artificial intelligence (AI) and generative AI;
2. protecting children’s privacy so that they can benefit from technology and be active online safely and free from fear that they may be targeted, manipulated, or harmed as a result; and

3. preparing for potential law reform should Bill C-27, the *Digital Charter Implementation Act*, be adopted by Parliament.

The Annual Report includes a Year in Review of the investigations that the OPC had undertaken under PIPEDA. The OPC's focus for investigations as stated in the Annual Report "remains on the need to protect Canadians' fundamental right to privacy and to foster increased trust in the Canadian digital economy by helping private-sector organizations comply with privacy law." The OPC received and accepted 454 complaints under PIPEDA, an increase of 6% over the previous year, according to the Annual Report, including two complaints against not-for-profit organizations.

Data breach reports also increased by 6% over the previous year, with 681 breach reports under PIPEDA, according to the Annual Report, while the OPC suspects that many breaches go unreported, or even undetected. The majority of breaches related to unauthorized access to personal information, more than half of which were attributed to cyber attacks using phishing, malware or compromised credentials to access organizations' systems. The OPC advises organizations to make security a priority in order to protect against such attacks, and to deploy enhanced safety measures such as enhancing protections for employee credentials, applying security patches as they become available, and requiring two-factor or multi-factor authentication. The not-for-profit sector is not immune to data breaches, as 36 reports – 5% of the total detach breach notifications – were related to not-for-profit organizations, according to the Annual Report's statistical tables.

In addition, the Annual Report also highlighted a [2021 OPC report](#) of findings relating to a complaint about a charity that relied on opt-out, implied, consent to enlist donors in a donor list trading program. A donor on the list complained that the opt-out check box on the charity's mail-in donation form was inadequate. The OPC found that sharing donors' names and addresses with third parties fell "outside the donors' reasonable expectations", that the donor's name and address was sensitive information when combined with the information that they had donated to the respondent charity, that the information given to donors about the fact that their donation history and mailing address would be shared with third parties was "not sufficient to support meaningful consent", that express opt-in consent was required to share such information and that the charity did not obtain meaningful consent for its disclosure of donor information to other not-for-profit organizations. The charity agreed to implement the OPC's recommendation to seek opt-in, express, consent, "and later elected to exit the donor list sharing program."

The Annual Report provides very useful information for charities and not-for-profits, which should be looking to PIPEDA as setting out privacy best practices, and learning from the examples of the breach investigations carried out by the OPC over the year.

## 9. AML/ATF Update

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

### **United Nations General Assembly Releases Report on Countering Terrorism**

The United Nations General Assembly passed Resolution 76/169 in December of 2021. This resolution urges member states to ensure that human rights are respected when governments oppose terrorism.

On August 2, 2023, a [report](#) (“the report”) was produced by the United Nations General Assembly, which further expands on and clarifies those goals.

The report emphasizes the need to view countering terrorism and safeguarding human rights as interconnected goals, while also highlighting ongoing concerns regarding national counter-terrorism laws, due process, fair trials, and the impact on civic freedoms, as well as addressing the role of new technologies and the situation of third-country nationals with alleged ties to designated terrorist organizations.

The UN Global Counter-Terrorism Strategy promotes a holistic approach, with the following categories being recognized as significant in the fight against terrorism.

#### 1. Counter-Terrorism Legislation

The absence of a universally accepted definition of terrorism has led to varying definitions in national legislation, but international legal frameworks provide guidance on possible definitions, emphasizing compliance with international human rights law and principle of legality. Vague and overbroad criminal laws related to counter-terrorism create uncertainty and may infringe on rights, like freedom of expression, freedom of association, and peaceful assembly. States have been advised to review their terrorism laws to align them with human rights standards. The use of terms like “extremism” without specifying “violent extremism conducive to terrorism” can be problematic and overly broad, potentially encroaching on human rights, necessitating precise legal definitions in accordance with international human rights law.

#### 2. Civic Space and Counter-Terrorism

The Secretary-General emphasizes civic space and participation as essential principles for advancing human rights. It is essential that civil society organizations, particularly local and women’s groups, foster

dialogue and create an environment hostile to terrorism incitement. Resolution 76/169 urges states to protect civil society work, recognizing its value in enhancing human rights efforts while countering terrorism.

However, some counter-terrorism measures restrict civic space and hinder civil society work, including arbitrary detention, travel restrictions, and criminalization of civil society activities related to ill-defined terrorism-related offenses. Ethnic and religious minorities, human rights defenders, journalists, and political opposition members are disproportionately affected. Proscription and targeted sanctions, though theoretically for preventing terrorism, have raised concerns about compliance with human rights standards and misuse against civil society organizations. Online freedom of expression is also constrained by vague counter-terrorism laws and private companies' influence over content moderation.

### 3. Administration of Justice and the Death Penalty in Context of Counter-Terrorism

Accountability for serious violations of international humanitarian and human rights laws is essential for upholding the rule of law and justice for victims, with states obligated to investigate, prosecute, and punish perpetrators of human rights violations and terrorism-related offenses while also protecting individuals from terrorism threats. However, human rights violations persist in terrorism-related legal proceedings, with concerns about due process, allegations of torture, coerced confessions, and extended detention without proper oversight. The imposition of the death penalty for terrorism-related offenses that do not meet the “most serious crimes” threshold, especially when convictions lack fair trial guarantees, remains a concern. Children have also faced the death penalty for terrorism-related crimes in some countries, and limited progress in prosecuting sexual and gender-based violence by terrorist groups or in counter-terrorism contexts raises further issues, calling for increased international support to address these challenges.

### 4. Use of New Technologies in Counter-Terrorism Efforts

The use of artificial intelligence and emerging technologies in counter-terrorism presents both opportunities and risks. While these technologies can enhance the effectiveness of counter-terrorism measures, they also raise significant concerns regarding human rights, including privacy, freedom of expression, non-discrimination, and fair trial rights. Surveillance measures and the use of biometric technologies risk violating the rights to privacy and non-discrimination, particularly when targeting minorities and marginalized communities. Internet shutdowns, often justified for maintaining public order and national security, have been condemned by human rights bodies as indiscriminate and

disproportionate. Careful scrutiny and oversight are essential to prevent technology misuse and uphold human rights in counter-terrorism efforts.

## 5. Individuals with Alleged Links to Foreign Terrorist Fighters

Thousands, including women and children, with suspected ties to terrorist groups like Da'esh, are held in dire conditions in Syria's displacement camps, facing limited access to humanitarian aid and legal recourse, with the COVID-19 pandemic worsening their situation. Children in these camps, a significant majority, have restricted access to education and healthcare, and there are concerns about forced separations of boys from their families. Slow repatriation efforts, the removal of nationality, and deteriorating conditions have led to an unsustainable situation, prompting the United Nations to launch a Global Framework to address these issues, emphasizing the need for safe and voluntary repatriation as the most suitable solution given the evolving accountability landscape in some countries of origin.

## 6. Conclusion

The report concludes by stating that the global commitment to human rights remains essential in the context of countering terrorism, where the protection of human rights and counter-terrorism objectives must be pursued collectively by states.

The report is a welcome and much needed counterbalance to the proliferation of overly broad anti-terrorism legislation that has been passed by many countries since 2001.

## **10. Carters is Pleased to Welcome Urshita Grover as a New Associate**

Carters is pleased to welcome Urshita Grover, H.B.Sc., J.D., as a new associate to the firm. Urshita was called to the Ontario Bar in June 2020 after completing her articles with Carters. She graduated with a J.D. and holds an Honours Bachelor of Science degree (with Distinction) from the University of Toronto.

Before joining the firm in 2023, Urshita was able to gain considerable experience in both corporate commercial law as well as civil litigation. Building on this background, Urshita is able to integrate her wide range of experience into a diverse and practical approach to the practice of charity and not-for-profit law for her clients.



## IN THE PRESS

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

## UPCOMING EVENTS & PRESENTATIONS

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

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

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

## LEGAL TEAM

Editor: Terrance S. Carter

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



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



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



[Terrance S. Carter](#), B.A., LL.B, TEP, Trademark Agent – Managing Partner of Carters, Mr. Carter practices in the area of charity and not-for-profit law, and is counsel to Fasken on charitable matters. Mr. Carter is a co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* (Thomson Reuters), a co-editor of *Charities Legislation and Commentary* (LexisNexis, 2022), and co-author of *Branding and Copyright for Charities and Non-Profit Organizations* (2019 LexisNexis). He is recognized as a leading expert by *Lexpert*, *The Best Lawyers in Canada* and *Chambers and Partners*. Mr. Carter is a former member of CRA Advisory Committee on the Charitable Sector, and is a Past Chair of the Canadian Bar Association and Ontario Bar Association Charities and Not-for-Profit Law Sections.



[Sean S. Carter](#), B.A., LL.B. – Sean Carter is a partner with Carters and the head of the litigation practice group at Carters. Sean has broad experience in civil litigation and joined Carters in 2012 after having articulated with and been an associate with Fasken (Toronto office) for three years. He is ranked as a leading expert by *The Best Lawyers in Canada*. Sean has published extensively, co-authoring several articles and papers on anti-terrorism law, including publications in *The International Journal of Not-for-Profit Law*, *The Lawyers Weekly*, *Charity & NFP Law Bulletin* and the *Anti-Terrorism and Charity Law Alert*, as well as presentations to the Law Society of Ontario and Ontario Bar Association CLE learning programs.



[Nancy E. Claridge](#), B.A., M.A., LL.B. – Called to the Ontario Bar in 2006, Nancy Claridge is a partner with Carters practicing in the areas of corporate and commercial law, anti-terrorism, charity, real estate, and wills and estates, in addition to being the assistant editor of *Charity & NFP Law Update*. After obtaining a Master's degree, she spent several years developing legal databases for LexisNexis Canada, before attending Osgoode Hall Law School where she was a Senior Editor of the *Osgoode Hall Law Journal*, Editor-in-Chief of the *Obiter Dicta* newspaper, and was awarded the Dean's Gold Key Award and Student Honour Award. Nancy is recognized as a leading expert by *Lexpert*.



[Adriel N. Clayton](#), B.A. (Hons), J.D. - Called to the Ontario Bar in 2014, Adriel Clayton manages Carters' knowledge management and research division, and practices in commercial leasing and real estate. Before joining Carters, Adriel practiced real estate, corporate/commercial and charity law in the GTA, where he focused on commercial leasing and refinancing transactions. Adriel worked for the City of Toronto negotiating, drafting and interpreting commercial leases and enforcing compliance. Adriel has provided in-depth research and writing for the *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations*.



[Jacqueline M. Demczur](#), B.A., LL.B. – A partner with the firm, Ms. Demczur practices in charity and not-for-profit law, including incorporation, corporate restructuring, and legal risk management reviews. Ms. Demczur has been recognized as a leading expert in charity and not-for-profit law by *Lexpert* and *The Best Lawyers in Canada*. She is a contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*, and has written numerous articles on charity and not-for-profit issues for the *Lawyers Weekly*, *The Philanthropist* and *Charity & NFP Law Bulletin*, among others. Ms. Demczur is also a regular speaker at the annual *Church & Charity Law Seminar*<sup>TM</sup>.



[Urshita Grover](#), H.B.Sc., J.D. – Urshita was called to the Ontario Bar in June 2020 after completing her articles with Carters. Urshita worked as a research intern for a diversity and inclusion firm. Urshita has volunteered with Pro Bono Students Canada, and was an Executive Member of the U of T Law First Generation Network. Urshita was able to gain considerable experience in both corporate commercial law as well as civil litigation. Building on this background, Urshita is able to integrate her wide range of experience into a diverse and practical approach to the practice of charity and not-for-profit law for her clients.



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



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



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



[Theresa L.M. Man](#), B.Sc., M.Mus., LL.B., LL.M. – A partner with Carters, Ms. Man practices in the area of charity and not-for-profit law, is ranked by *Lexpert*, *Best Lawyers in Canada*, and *Chambers and Partners*, and received the 2022 OBA AMS/John Hodgson Award of Excellence in Charity and Not-For-Profit Law. She is a co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* published by Thomson Reuters. She is a former member of the Technical Issues Working Group of the CRA Charities Directorate, a member and former chair of the CBA Charities and Not-for-Profit Law Section and the OBA Charities and Not-for-Profit Law Section. Ms. Man has also written on charity and taxation issues for various publications.



[Esther S.J. Oh](#), B.A., LL.B. – A partner with Carters, Ms. Oh practices in charity and not-for-profit law, and is recognized as a leading expert in charity and not-for-profit law by *Lexpert* and *The Best Lawyers in Canada*. Ms. Oh has written numerous articles on charity and not-for-profit legal issues, including incorporation and risk management. Ms. Oh has written articles for *The Lawyer's Daily*, [www.carters.ca](http://www.carters.ca) and the *Charity & NFP Law Bulletin*. Ms. Oh is a regular speaker at the annual *Church & Charity Law Seminar*<sup>™</sup> 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](http://www.carters.ca). Ryan has been a regular presenter at the annual *Church & Charity Law Seminar*<sup>™</sup>, 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.

## ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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