

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

APRIL 2024

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PUBLICATIONS & NEWS RELEASES

1. Federal Budget 2024: Impact on Charities and Not-For-Profits

By [Terrance S. Carter](#), [Sean S. Carter](#), [Urshita Grover](#), [Theresa L.M. Man](#), [Ryan M. Prendergast](#), [Esther Shainblum](#), [Cameron A. Axford](#) and [Martin U. Wissmath](#)

Finance Minister Chrystia Freeland tabled the eighth budget of the Liberal federal government (“Budget 2024”) on April 16, 2024. Budget 2024 is comprised of eight chapters and three annexes, with the relevant proposed tax measures being summarized in “Tax Measures: Supplementary Information” that includes a Notice of Ways and Means Motion to Amend the Income Tax Act (“ITA”) setting out the specific proposed amendments to the ITA.

Charity & NFP Law Bulletin No. 526 provides a brief summary and commentary on relevant provisions proposed in Budget 2024 that impact the charitable and not-for-profit (“NFP”) sector. Budget 2024 includes a number of legislative proposals that will directly affect charities and NFPs, including a degree of relief to the Alternative Minimum Tax involving gifts to charities, as well as “improv[ing] the operations of the rules related to registered charities and other qualified donees” concerning the requirements to be a registered foreign charity, communication and services to charities, and donation receipts, as well as expanding the powers of the Canada Revenue Agency (“CRA”). In addition, Budget 2024 includes an announcement that legislative amendments will be made to expand the capabilities of the federal government to share information in order to combat money laundering and terrorist financing. Finally, of note, Budget 2024 includes program funding initiatives and grants of interest to the charity and NFP sector, including affordable housing, post-secondary institutions, community organizations, and not-for-profit child care.

To read the balance of this *Bulletin*, [click here](#).

2. Legislation Update

By [Adriel N. Clayton](#)

Bill C-35, Canada Early Learning and Child Care Act

A federal bill intended to set out the federal government’s “vision for a Canada-wide early learning and child care system” has finally been passed more than a year after its introduction. Bill C-35, *Canada Early Learning and Child Care Act* received Royal Assent on March 19, 2024 after first being introduced in the House of Commons on December 8, 2022.

The Act enshrines guiding principles for federal investments in a Canada-wide child care system, with a goal for Canadians to “have access to regulated high-quality, inclusive early learning and child care for an average cost of \$10-a-day by March 2026” according to a March 20, 2024 [news release](#) from Employment and Social Development Canada.

Of note, the Act sets out guiding principles for Canada’s early learning and child care system, including a system that aims to “support the provision of, and facilitate equitable access to, high-quality early learning and child care programs and services — in particular those that are provided by public and not for profit child care providers — that meet standards set by provincial governments or Indigenous governing bodies, that are reflective of other evidence-based best practices in high-quality service provision and that respond to the varying needs of children and families”, and that is accessible to families of all income levels and inclusive of systematically marginalized grounds.

The Act also sets out the federal government’s commitment to maintain long-term funding for programs and services, which will be provided “primarily through agreements with the provincial governments and Indigenous governing bodies and other Indigenous entities that represent the interests of an Indigenous group and its members.”

3. CRA News

By [Esther S.J. Oh](#) and [Cameron A. Axford](#)

CRA Clarifies Issues Surrounding Remote Employees

The Canada Revenue Agency (“CRA”) introduced significant changes regarding determination of the province or territory of employment for remote workers and changes that will apply to taxpayers claiming home office expense deductions for the 2023 taxation year. This will be relevant to charities and NFPs that have employees who work remotely.

Firstly, the CRA issued [guidelines](#) (“Guidelines”) on April 10, 2024, for determining the province or territory of employment for remote workers for payroll deduction purposes, effective from January 1, 2024. A determination of the province or territory of employment (which CRA refers to as the POE) is required so that proper deductions are withheld on any employment income, including salaries, wages or commissions.

The POE is determined by a review of the following criteria:

- the type of income;

- the residency status of the employee;
- the establishment of the employer where the employee reports for work.

Under the third criteria for income tax, CPP and EI withholding purposes, an establishment of the employer is any place or premises in Canada that is owned, leased or rented by the employer where employees report to work or from which employees are paid.

An employee is considered to be “reporting for work at an establishment of the employer if one of the following scenarios applies.” The first scenario is part of CRA’s new administrative policy:

1. where full-time remote work agreement was made and the employee can be reasonably considered to be “attached to an establishment of the employer”; or
2. the employee reports for work physically at the establishment.

Under the first scenario, it is first necessary to determine that a full-time remote work agreement was made. If yes, the new CRA administrative policy would apply and it would then be necessary to determine if the employee is reasonably considered to be “attached to an establishment of the employer.” All of the background facts relevant to the employee’s situation must be assessed. CRA states that the primary indicator to determine if an employee can reasonably be considered “attached to an establishment of the employer” is whether the employee physically comes to work to carry out any employment duties, if there is no full-time remote work agreement.

The CRA Guidelines list a number of secondary indicators that can be reviewed to determine the establishment of the employer where the employee (if it was not for the full-time remote work agreement), would physically come to work to carry out their employment duties:

- “The establishment where the employee attends or would attend in-person meetings, through any type of communication;
- The establishment where the employee receives or would receive work-related material or equipment or associated instructions and assistance;
- The establishment where the employee comes or would come in-person to receive instructions from their employer regarding their duties, through any type of communication;
- The establishment that is responsible for or supervises the employee, as indicated in the contractual agreements between the employer and the employee;

- The establishment to which the employee would report based on the nature of the duties performed by the employee”;
- Generally, all the indicators need to be reviewed together in order to determine whether the employee is reasonably considered to be “attached to an establishment of the employer”.

Written agreements which outline these factors are important in determining the issue of attachment.

[The new policy on home office expenses](#), published on January 23, 2024, stipulates that employees can only deduct eligible expenses if they meet specific criteria set out in the CRA publication. New, more detailed requirements will apply for taxpayers wanting to claim home office expenses for the year 2023. The new requirements are also relevant to employers who must provide a completed [T2200 form](#), Declaration of Conditions of Employment to employees who will claim home office expenses.

To be eligible for these deductions, the employee must have worked from home for more than 50% of their time for at least four consecutive weeks. The expenses incurred must be directly related to their work (and must not have been reimbursed by the employer). The CRA publication provides further information, including examples of eligible and non-eligible home office expenses that may be deducted.

These changes provide further clarification on requirements that apply to home office expense deductions and criteria to be used to determine the province or territory of employment for remote workers.

4. Corporate Update

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

Ontario Updates Forms under the Not-for-Profit Corporations Act and Corporations Information Act

The Ontario Business Registry of the Ontario Ministry of Public and Business Service Delivery (“Ministry”) released a notice on April 3, 2024 that the Articles of Amalgamation under the Ontario *Not-for-profit Corporations Act* (“ONCA”) and Initial Return/Notice of Change/Annual Return under the Ontario *Corporations Information Act* have been updated. These forms and related instructions are updated in order to clear instructions, match legislative requirements and specific fields mandatory. The specific changes are as follows:

1. [Form 5272 & Instructions – Articles of Amalgamation – Not-for-Profit Corporations Act, 2010](#).

This form is to be used for amalgamation under the ONCA. Under subsection 112(2) of the ONCA, articles of amalgamation must have attached to them a “statement of a director or an officer of each amalgamating corporation” stating certain information required under subsection 112(2)(a)

and (b). Form 5272 originally incorrectly required that a “signed statutory declaration of a director or an officer” be attached to the articles, which is inconsistent with the requirement in the ONCA. The updated Form 5272 now requires a “signed statement(s) of a director or an officer of each amalgamating corporation” be provided instead, making it consistent with the requirements in the ONCA.

2. [Form 5284 & Instructions – Initial Return/Notice of Change/Annual Return by an Ontario Corporation – Corporations Information Act](#). This form applies to for-profit and not-for-profit corporations, as well as co-operatives, subject to the *Business Corporations Act*, *Corporations Act*, ONCA, and *Co-operative Corporations Act* respectively. The following new information is inserted in section 3 of the form: “An official email address is required for administrative purposes and must be kept current. If you are not sure a primary activity code (NAICS code) was already provided, please provide one or the form will be returned if a primary activity code is not in the Ministry’s record.”

In addition, [Form 5285 & Instructions – Initial Return/Notice of Change/Annual Return for an EP Foreign with Share – Corporations Information Act](#) was also updated. This form is to be completed by extra-provincial foreign business corporations with licence to carry on business in Ontario. In general, this has no application to the non-share capital corporations incorporated under the ONCA.

Since the launch of the Ontario Business Registry on October 19, 2021, the Ministry has been making various updates to the forms and how documents are filed. In this regard, the Ministry has taken a phased approach to implement enhancements, such as rich text editor functionality and modernized wizard design to the “Shares & Provisions” and “Purposes & Provisions” text fields in various forms.

5. Some Good News and Some Not So Good News About the Impact of Trust Reporting Requirements on Charities and NFPs

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

On Monday, April 1, 2024, the authors published an article titled “Some Good News and Some Not so Good News About the Impact of Trust Reporting Requirements on Charities and NFPs” Although the filing deadline for T3s of April 2, 2024 has come and gone, the authors still feel that there is a need for the CRA to provide more clarity concerning the difference in filing requirements and applicable exemptions between bare trusts and express trust. As such, we are including a [link to the April 1, 2024 article](#) in this Update for those readers who may be interested.

6. CRA Releases View on Computing Donation Tax Credit

By [Ryan M. Prendergast](#)

The Canada Revenue Agency (“CRA”) released CRA View 2023-1000021E5, dated January 23, 2024, a technical interpretation in which it considered the donation tax credit and the definition of “total charitable gifts” under subsection 118.1(3) of the *Income Tax Act* (“ITA”). More specifically, the CRA considered the scenario of where a taxpayer had made a \$400 charitable gift to a qualified donee in the 2023 taxation year, and sought to claim a portion of the gift in the 2023 taxation year and claim the remainder in the 2024 taxation year.

In its response, the CRA explained that the discretionary non-refundable tax credit set out in subsection 118.1(3) of the ITA is provided to individuals for a taxation year computed by reference to the individual’s total gifts for the year. Subsection 118.1(1) defines “total gifts” for a taxation year by reference to the individual’s “total charitable gifts”, “total cultural gifts” and “total ecological gifts”, all as defined in subsection 118.1(1). Further to this, the CRA stated that subsection 118.1(1) defines an individual’s “total charitable gifts” for a taxation year as being the total of the eligible amount of gifts made to qualified donees by the individual or their spouse or common-law partner in the particular year or any of the five preceding taxation years.

As well, the CRA stated that subsection 118.1(2.1) of the ITA provides that when determining total charitable gifts, no amount in respect of total cultural gifts and total ecological gifts made in a particular taxation year “will be considered to have been included in determining an individual’s charitable donations tax credit until qualifying amounts in respect of such gifts made in preceding taxation years are considered to have been so included.” This means that when determining an individual’s charitable donations tax credits, gifts will be considered to have been claimed on a “first-in, first-out” basis in the order in which they were made.

Therefore, individuals can include charitable gifts from the past five years in their income tax calculations, provided they weren’t previously claimed in prior tax years, subject to the limits outlined in section 118.1 of the ITA.

7. Federal Court of Appeal Dismisses Fraternal Foundation's Appeal Against Loss of Charitable Status

By [Ryan M. Prendergast](#) and [Urshita Grover](#)

On March 21, 2024, the Federal Court of Appeal (“FCA”) released its decision concerning [Sigma Chi Canadian Foundation v Canada \(National Revenue\)](#). The fraternal organization (the “Appellant”), a registered charity, appealed to the court from a decision of the Minister of National Revenue (the “Minister”) to revoke the organization’s charitable status.

The Canada Revenue Agency (“CRA”) audited the Appellant’s operations in 2010 and 2011, finding a number of areas of non-compliance, including failure to devote its resources to charitable activities and the provision of personal benefits to its members. The Appellant entered into a compliance agreement with CRA.

A further audit in 2017 found that the Appellant was still non-compliant with the aforementioned issues, in addition to new areas of non-compliance, including making gifts to non-qualified donees and transferring funds to an American organization without direction and control. The Minister issued a notice of intention to revoke. While the Appellant filed an objection, the Minister confirmed the notice of intent to revoke. The Appellant appealed the revocation to the FCA and argued that the Minister breached her duty of procedural fairness and that her conduct raised a reasonable apprehension of bias.

The FCA applied the standard of review of the highly deferential standard of palpable and overriding error. The court found there was no palpable and overriding error in the Minister’s finding that the Appellant provided private benefits to its membership through scholarships which were not available to the public. Though the organization argued that the scholarships were “open to all male university students eligible to apply for Sigma Chi membership”, they were only awarded to recipients who joined the organization. Further, upon registration, the Appellant’s stated purpose of funding education initiatives made no mention of restrictions to those within the organization, but as of May 2023, its website indicated that these funds were “primarily for the benefit of Active Chapters and Active brothers”.

The court also found no reviewable error in the Minister’s finding that the Appellant provided funds to non-qualified donees by way of making loans to Sigma Chi fraternity housing corporations, which exist to provide housing to members of the organization. The Appellant also breached the compliance agreement by failing to obtain security for loans to London Sigma Chi Properties and by making a further advance to London Sigma Chi Properties.

As well, there was also no reviewable error in the Minister's finding that the Appellant failed to maintain direction and control over a scholarship program which it partially funded, but was administered in the United States. The organization did not have direction and control over the funds it contributed given, among other things, that the Appellant only had one of the eight seats on the governing board, and only two of sixteen seats on the selection committee.

Finally, there was no reasonable apprehension of bias or deprivation of procedural fairness in the decision of the Minister. The Appellant alleged that the Minister's actions suggested bias because she treated the Appellant differently from other organizations with similar scholarship practices, citing examples from the University of Toronto which limited eligibility to particular colleges at that institution, but precedent indicates that the benefit others receive from an exemption is not pertinent, and the evidence presented did not sufficiently support meaningful comparisons.

The Appellant further argued that the Minister's refusal to consider their offers to implement corrective measures had raised a reasonable apprehension of bias. However, the Minister had pointed out that the Appellant had been given three formal chances to address the issues raised, which were taken seriously and thoroughly reviewed, leading to the conclusion that the Appellant was not entitled to continue negotiating further corrective measures, particularly due to its failure to fulfill obligations under the compliance agreement.

This case serves as a reminder that registered charities that have entered into a compliance agreement need to be very careful to ensure they are compliant, as CRA is likely to conduct a follow-up audit. As well, given the highly deferential standard of review granted to decisions of the Minister by the FCA, registered charities face a high bar in convincing the court that CRA has made a palpable and overriding error in relation to audit decisions. As such, registered charities should be cautious in complying with the statutory requirements of the ITA to avoid having to appeal decisions made by CRA to the FCA where they are likely to lose.

8. Court Finds Agricultural Society Breached Natural Justice by Expelling Director

By [Jennifer M. Leddy](#)

An agricultural society that was the beneficiary of an estate terminated the corporate membership of a director for an apparent conflict of interest when her family members sold property of the estate, but the director successfully sued and had her membership reinstated. In [Dillon v Carp Agricultural Society](#), published March 28, 2024, the Ontario Superior Court of Justice found the respondent, Carp Agricultural

Society (“CAS”) had “breached the rules of natural justice in the manner that it investigated” and set aside the decision to revoke the applicant’s membership. CAS, a registered charity, had concluded the applicant, Ms. Laurie Dillon, had breached her fiduciary duties as a director because she was in a conflict of interest in relation to the sale of the estate property. The court decided the CAS Board had erred in its conclusion and reinstated the applicant’s membership in the CAS pursuant to section 191 of the Ontario *Not-for-Profit Corporations Act* (the “ONCA”), which gives the court jurisdiction and broad authority to make compliance orders and, in these circumstances, allowed the court to determine if the Applicant has been aggrieved” by the process that led to the revocation of her membership.

The applicant and her husband, Tim Dillon, are both real estate agents in Ottawa. The applicant learned in late 2020 that CAS was a 75 percent beneficiary of an estate, which comprised mainly the deceased testator’s house. The testator had promised his neighbor, Taylor White, the right of first refusal on his house after his death at an asking price of \$300,000. Mr. White refused to purchase the house because he thought that it was only worth \$240,000. The estate trustee, Margaret Blair, was the applicant’s neighbor, and sought Mr. Dillon’s advice on the house’s worth. He suggested it would be worth about \$310,000 but also said that the only way to test the price would be to put it on the market, which Ms. Blair did not do. The applicant’s father, Bruce Baird, ended up purchasing the property for \$300,000, for which Ms. Blair insisted that Mr. Dillon receive a commission. Mr. Baird then sold the property in 2021 for \$500,000. Neither the applicant nor her husband, nor the real estate brokerage they worked for, owned by the applicant’s mother, took a commission when they represented Mr. Baird in the \$500,000 sale.

In June 2021, the applicant attended a meeting at the CAS office and brought documentation supporting her claim that “she had not been involved in any of the transactions” regarding the sale of the estate property. In August 2021, the CAS formed an Executive Committee to investigate the sale of the property, which it completed in November 2021, finding the applicant in breach of fiduciary obligations, in conflict of interest and breach of CAS’s Constitution, Policies and Procedures. “[D]iscipline was warranted”, the CAS had concluded, because the applicant failed to disclose a conflict of interest and her husband had received a commission from the sale of the property, which the applicant’s father had sold for profit. While the minutes of the CAS Board meeting did not mention the investigation’s conclusions, they stated that the Board requested the applicant’s resignation as a director, or her membership would be revoked.

The applicant declined to resign, appealed the revocation decision and requested that “she be given the opportunity to plead her case in person before the members of the Board.” The CAS reopened the investigation in January 2022 and directed a series of questions in writing to the applicant, who submitted

further documentation in March 2022 to support her appeal. However, the CAS maintained and communicated its original decision in an April 2022 letter. “No reasons were given”, the court noted, “and no information about the findings that were relied upon was provided.”

In its analysis, the court cited the CAS’s Constitution and Disciplinary Policy, finding the CAS Board had “improperly handled the process” from the first meeting when issues of the estate came to its attention, and failed to follow its own Constitution or its own By-laws. The process followed by the Executive Committee and the reasons it provided did not “allow for a meaningful analysis to determine if the CAS Constitution’s Disciplinary Policy was followed” either in its investigation or decision phases. the court found. Although the boards of not-for-profit corporations, such as the CAS, “are not held to a standard of perfection”, and “should be granted deference”, the court stated that the CAS Board “followed a process that was fundamentally flawed and did not follow its constitution.” The Board also failed to follow a “fair and reasonable process” as required by section 51 of the ONCA.

Turning to the CAS’s allegation of a conflict of interest, “there was no material contract or transaction before the CAS Board,” and therefore “no conflict of interest to declare.” The notion of conflict of interest was misinterpreted by the CAS, as the charity was simply a beneficiary and entitled to receive only what was bequeathed in the will; there was “no transaction before the CAS Board that requires a vote of any kind.” Finally, the court ruled there was no breach of the applicant’s fiduciary duty, because she had not personally profited from her trust obligations nor put her own interests ahead of the CAS, which the court held not to have been prejudiced by the applicant’s husband providing realty services to the estate. “The payment of the commission does not flow from the trust obligations of the Applicant”, the court stated. As for the Applicant’s status as a director or officer, the court declined to comment.

Once again, this case is a reminder that not-for-profits and charities must follow their own By-laws and Policies when disciplining members. If they fail to do so, the court may step in and issue a compliance order. In addition, the case provides a strong warning that the rules of natural justice must be filed in the discipline of corporate members.

9. Office of the Public Guardian and Trustee and Ministry of Public and Business Service Delivery Release Updated Not-for-Profit Incorporator’s Handbook

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

On April 19, 2024, the Office of the Public Guardian and Trustee (“OPGT”) and the Ministry of Public and Business Service Delivery jointly released an updated version of the [Not-for-Profit Incorporator’s](#)

[Handbook](#) (the “Handbook”). This document serves to both provide basic information on how to incorporate not-for-profit organizations (“NFPs”) as corporations, as well as provide the public with information on charitable corporations, a special type of NFP corporation. This discussion includes information on the Ontario *Not-for-Profit Corporations Act* (“ONCA”), and its relevant regulations, which govern NFPs incorporated in Ontario.

The Handbook is clear that it is only to serve as a basic guide, and that ONCA and the Regulations should be referred to for certainty. It also states that it should not be used as a substitute for advice from a lawyer or accountant on legal and financial issues, respectively.

The Handbook was last updated in 2021. The most significant change is in regards to reporting requirements of the OPGT, which is summarized in section 6.4.2 and Appendix B of the Handbook. This states that charities are not required to send notice of their establishment, receipt of funds, or governance changes to the OPGT. Despite this, the OPGT can request information or documents about the administration or management of the charity, and charities can be statutorily required to provide it in certain instances. Further, the OPGT can require that the accounts of the administration and management of a charity’s property to be passed in the Superior Court of Justice.

Ontario charities and NFPs are encouraged to review the Handbook and contact a charity lawyer if they have any questions.

10. A Deep Dive into the T3010: Why the T3010 Matters to Gift Planners

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

The new version 24 of the CRA’s T3010 *Registered Charity Information Return* was released on January 8, 2024 to be used by registered charities for fiscal year ending on or after December 31, 2023, as reported in our [Charity & NFP Law Bulletin No. 525](#).

In a presentation given at the Canadian Association of Gift Planners (CAGP) Foundation’s 2024 Advanced Canadian Gift Planning Summit in Ottawa on April 2, 2024, Theresa Man explains various issues and concerns of how the new version 24 of the CRA’s impacts charities. Although the emphasis of the presentation was focused on gift planners, the issues are likewise applicable to all charities.

The presentation pointed out that the T3010 is not just a tax return for accountants to complete, but has real practical implications for charities. The presentation provided an overview of the T3010 form, the

schedules attached to the form, and various other forms that need to be completed as part of a complete T3010 filing. Most importantly, the presentation provides an insightful explanation of new information that is now required to be reported in version 24 and pointed out concerns with this new required information, including donor advised funds held by registered charities, restricted funds held by foundations, impact investing made by charities, and calculation tracking the disbursement quota obligation.

The full PowerPoint presentation can be viewed on the [Carters website here](#).

11.A Deeper Dive into QDs and DQs: Qualifying Disbursements and Disbursement Quota Regimes

By [Terrance S. Carter](#)

Unlike a DQ Sandwich from Dairy Queen that is predictable and generally satisfying, the murky and evolving world of DQs (“Disbursement Quota Rules”) and QDs (“Qualifying Disbursements”) is neither predictable nor very satisfying.

In a presentation given at the Canadian Association of Gift Planners 30th National Conference on Strategic Philanthropy in Ottawa on April 3, 2024, Terrance Carter explains a number of the key aspects concerning the complexities, challenges and interrelationships associated with the new qualifying disbursement regime and its practical implications, as well as the increased disbursement quota regime and its changes and challenges.

The full PowerPoint from this presentation can be viewed on the [Carters website here](#).

12. Employment Update

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

New Employment Law Amendments Require Disclosures for Salary in Job Ads, AI Usage

With new legislation for employers in Ontario, including charities and not-for-profits, employers will have to disclose expected salary ranges for publicly advertised job positions, state whether they use artificial intelligence to screen applicants, and can no longer require Canadian work experience. Bill 149, the [Working for Workers Four Act, 2024](#) (the “Act”), received Royal Assent in the Ontario Legislative Assembly on March 21, 2024, with amendments to four employment law related statutes: the *Employment Standards Act, 2000* (the “ESA”), the *Digital Platform Workers’ Rights Act, 2022* (the “DPWRA”), the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* (“FARPCTA”), the *Workplace*

Safety and Insurance Act, 1997 (“*WSIA*”). Not all of the amendments have yet come into force, as noted below. The Act is the fourth in a series of employment law amending statutes enacted by the provincial legislature over the past four years since the *Working for Workers Act, 2021*.

The Ontario government highlighted several of the legislative changes brought by the Act in a March 21, 2024 [announcement](#):

- Firefighters and fire investigators diagnosed with esophageal cancer would qualify for compensation after 15 years of employment instead of 25.
 - This amendment is not yet in force, and is to be proclaimed into force at a future date.
- Employers cannot deduct service workers’ wages for “dine and dash” incidents in the restaurant and hospitality industry, or “gas and dash” theft at gas stations. Trial shifts are now paid, and employers sharing in pooled tips must perform the same work as their staff. Employees can choose their direct deposit account for tip payments.
 - This amendment is now in force as of March 21, 2024.
- Eliminating Canadian experience requirements: Ontario has become the first province to ban the use of Canadian experience as a job requirement, facilitating the hiring of qualified workers, particularly in health care.
 - This amendment is not yet in force, and is to be proclaimed into force at a future date.
- Employers are now required to disclose salary ranges in job postings and indicate if AI is used in the hiring process to help candidates make informed decisions.
 - This amendment is not yet in force, and is to be proclaimed into force at a future date
- The *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* is amended to ensure regulated professions assess qualifications transparently, objectively, and fairly, including third-party assessments.
 - This amendment is not yet in force, and is to be proclaimed into force at a future date.
- Clarifying vacation pay provisions: Employees must be informed if their vacation pay is provided in a manner other than a lump sum before their vacation and require a written agreement.
 - This amendment will come into force on June 21, 2024.

- Supporting injured workers: Measures have been introduced to enable additional increases to Workplace Safety and Insurance Board benefits above the annual inflation rate, providing greater support for injured workers.
 - This amendment is not yet in force, and is to be proclaimed into force at a future date.

Further amendments to the *ESA* include provisions recognizing trial period work as part of employee training. The Act adds a new Part III.1, titled “Job Postings”, which includes new sections 8.2, 8.3, and 8.4 to be proclaimed into force by the Lieutenant Governor at a future date:

Compensation range information

8.2 (1) Every employer who advertises a publicly advertised job posting shall include in the posting information about the expected compensation for the position or the range of expected compensation for the position.

[...]

Canadian experience

8.3 (1) No employer who advertises a publicly advertised job posting shall include in the posting or in any associated application form any requirements related to Canadian experience.

[...]

Use of artificial intelligence

8.4 (1) Every employer who advertises a publicly advertised job posting and who uses artificial intelligence to screen, assess or select applicants for the position shall include in the posting a statement disclosing the use of the artificial intelligence.

Under this new part to the *ESA*, employers will also be required to retain copies of all of their publicly advertised job postings, along with applications for those postings, for a minimum period of three years after the job posting is removed from public access.

Some *ESA* amendments will come into force on June 21, 2024. Amendments to subsection 11(4) expand regulations concerning direct deposit wage payments. Another addition, section 14.1, outlines permissible methods for tip payments or other gratuities and related requirements. Subsection 14.4(6) mandates the disclosure of employer policies regarding tip sharing or sharing in other gratuities. Employers will need to retain copies of all written policies with regard to sharing tips or gratuities for three years “after the policy ceases to be in effect.” Changes to subsection 36(3) clarify vacation pay methods, to ensure the employer adheres to the employment agreement.

The full list of the Act's amendments is available on the [Ontario Legislative Assembly website](#).

13. AI Update

By [Adriel N. Clayton](#) and [Cameron A. Axford](#)

Competition Bureau Introduces AI Discussion Paper

On March 20, 2024, the Competition Bureau of Canada (the "Bureau") released a discussion paper titled "[Artificial intelligence and competition](#)" (the "Paper"). It examines the impact of artificial intelligence ("AI") on various sectors of the economy and emphasizes the role of governments and policymakers in understanding and addressing its implications. It also explores AI's potential effects on competition within the framework of Canadian competition law across different market sectors, including mergers, monopolistic practices, cartels, and deceptive marketing practices. It aims to stimulate informed discussion to deepen the understanding of AI's influence on competition and how the Bureau can promote fair competition in AI markets. While the Paper does not specifically mention the charitable and not-for-profit (NFP) sector, it will be of general interest to the charities and NFPs that use AI in their operations, which is certain to increase as AI technology develops.

The Paper is broken into three sections.

Section 1 explores definitions of AI, and examines the various technologies which employ it. The definition of AI varies across academic, industrial, and governance perspectives, contributing to a lack of consensus. Recently, efforts have been made to establish a comprehensive definition of AI, such as the *Artificial Intelligence and Data Act* within Canada's Bill C-27. This governance perspective is crucial for understanding the impacts of AI on competition and marketplace dynamics. The effects of AI on competition are multifaceted, as it can both enhance competition by fostering innovation and efficiency while also raising concerns about the concentration of AI capabilities among dominant companies, potentially leading to anticompetitive behavior. Understanding and evaluating AI's impact on competition is essential for safeguarding competition in Canada and ensuring benefits for businesses and consumers across various sectors, including AI, by examining specific AI technologies and their applications in relevant markets. Section one then goes on to examine the different categories of AI, most notably, generative AI, which includes the program ChatGPT, which is often what is meant when members of the public refer to AI in the general sense.

Section 2 outlines markets for AI technologies. The production of AI products and services involves participation from various markets, including those for AI infrastructure, AI development, and AI

deployment. The markets for AI infrastructure encompass the supply of computer resources and data necessary for AI development. The markets for AI development involve the supply of AI technologies, such as models, algorithms, and architectures. Lastly, the markets for AI deployment pertain to the supply of customer-facing AI products or services.

Section 3 considers the effect that AI could have on economic competition in Canada. It acknowledges that, “[c]ertain characteristics of AI markets could affect the degree to which market concentration and market power may arise and develop.” Negative possibilities include the high barrier to entry of the AI development market, using AI technologies to identify and implement predatory, exclusionary, or discriminatory conduct, using AI technology to identify and implement opportunities for cartel agreements, and using AI for deceptive marketing purposes, all of which would limit competition and harm consumers. Positive possible aspect of AI on competition are the ability for AI to differentiate similar products via their inclusion in said product – setting them apart from competitors, and “network effects” which would see technologies create more downstream opportunities, all of which would increase competition. Ultimately, the Competition Bureau advocates that all levels of government consider policy which champions competition, recommending that the [Competition Policy Assessment Toolkit](#) be used.

The Paper offers an overview of AI’s impact on competition and the technologies integrated into AI products and services, serving as the current set of considerations monitored by the Bureau. It seeks feedback from stakeholders on potential competition impacts in Canadian markets and any additional considerations relevant to the Bureau’s attention. This would be a good opportunity for the charitable and NFP sectors to provide feedback concerning how AI might impact competition within their respective sectors.

14. AML/ATF Update

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

UN Special Rapporteur Calls for Protection of Human Rights in Anti-Terror Measures

In his [inaugural report](#) (“the Report”) to the Human Rights Council, dated January 17, 2024, Ben Saul, the newly appointed UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, underscored a disconcerting dissonance between the extensive global endeavors to combat terrorism and a corresponding deficiency in safeguarding human rights. His claim is that, over the span of more than twenty years, efforts to combat terrorism have been marred by a litany of human rights violations.

The landscape of counter-terrorism, as framed by the Report, is fraught with a multitude of human rights transgressions. These include, but are not limited to, unlawful killings, arbitrary detention, torture, unfair trials, privacy infringements resulting from mass surveillance, and the curtailment of fundamental freedoms, such as expression, assembly, association, and political participation.

Saul pointed out the insidious repercussions of misusing counter-terrorism measures, not only in infringing upon the rights of suspected individuals, but also in imperiling the liberties of the innocent. He condemned the pervasive misuse of broadly defined terrorism laws against civil society, targeting political dissidents, activists, journalists, human rights defenders, minorities, and students alike. Moreover, Saul highlighted the detrimental effects of prolonged states of emergency on human rights.

The excessive use of military force in response to terrorism was also discussed in the Report, claiming that it often leads to violations of international humanitarian law and international criminal law. Furthermore, the escalating trend of cross-border military actions by states, even when not justified under the principles of self-defence in international law, was deemed as concerning.

Saul lamented the failure of many states to address the root causes of terrorism, including their own human rights violations, while impunity for such transgressions remains rampant. He also criticized the UN's role in exacerbating the issue by endorsing authoritarian regimes' adoption of draconian counter-terrorism laws without adequate legal and human rights safeguards.

Setting forth his priorities for his tenure, Saul articulated his commitment to ensuring that regional organizations uphold human rights while combating terrorism, that coercive administrative measures employed to prevent terrorism comply with human rights standards, and that states are held accountable for widespread human rights violations stemming from counter-terrorism efforts, with due attention to providing victims with comprehensive remedies.

Additionally, Saul pledged to continue the initiatives of his predecessor, focusing on preventing the misuse of counter-terrorism measures against civil society, safeguarding the rights of detainees in conflict zones, such as north-east Syria and Guantánamo Bay, regulating the use of new technologies in counter-terrorism, and protecting the victims of terrorism.

In a cautionary note, the Report highlighted the heightened risk to human rights in the realm of counter-terrorism due to increasing authoritarianism, domestic polarization, geopolitical tensions, dysfunction within the Security Council, and the proliferation of social media platforms facilitating dehumanization,

incitement, and misinformation. Saul urged states to transcend mere lip service and prioritize human rights in all counter-terrorism endeavors to restore public trust in the international human rights framework.

New FINTRAC Guidance for Reporting Suspicious Transactions Comes into Effect

[A new guidance](#) (the “Guidance”) from the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”), the national financial intelligence agency, came into effect on April 6, 2024, replacing former guidance entitled “What is a suspicious transaction report?” and “Reporting suspicious transactions to FINTRAC”. The Guidance discusses when and how to report suspicious transactions to FINTRAC under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“the Act”) and associated Regulations.

15. Notice of Correction

In our March 2024 *Charity and NFP Law Update*, the article titled “Charities Directorate Releases Comprehensive Report on its Activities” incorrectly stated that the Charities Directorate had conducted 38 audits in the 2021-2022 year when in fact the audit period being reported on covered the period from 2008-2022. The March Update has been reposted now to correctly report the following:

“The Charities Directorate undertook 38 audits between *2008 and March 31, 2022* related to potential terrorist abuse of Canadian charities.” (emphasis added)

16. Career Opportunities at Carters

There are currently two career opportunities available at Carters:

Charity Lawyer

Carters is currently looking for a Charity Lawyer with a minimum of two to four 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.

Civil Litigation Associate

Carters Professional Corporation is currently looking for a **Civil Litigation Associate** with three to eight years’ experience to service our Toronto office. Experience in general corporate/commercial litigation is fundamental, and other areas, such as charities and estate litigation would be an asset. Strong

drafting and research skills, along with substantive court experience, including motions and trial experience are essential.

Applicants interested in either position are invited to submit their cover letters and resumes in confidence to: admin@carters.ca to the attention of Terrance Carter, Managing Partner.

IN THE PRESS

[Legal Analysis – Federal Budget 2024: Impact on Charities and not-for-profits – Charity Law Bulletin No. 526](#) was mentioned in Imagine Canada’s Early Alert on April 23, 2024

[Charity & NFP Law Update – March 2024 \(Carters Professional Corporation\)](#) was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.

RECENT EVENTS & PRESENTATIONS

[The Advanced Canadian Gift Planning Summit](#) was held by the CAGP Foundation on April 2, 2024 in Ottawa, Ontario at the Westin Ottawa. Theresa L.M. Man presented on the topic of the T3010, A Deep Dive into the T3010 – Why the T3010 Matters to Gift Planners

[The Canadian Association of Gift Planners \(CAGP\) Conference 2024](#) was held on April 3-5, 2024 in Ottawa, Ontario at the Westin Ottawa. Terrance S. Carter was a guest speaker and presented on Qualifying Disbursements and Disbursement Quota Rules (A Deeper Dive into QDs and DQs), on April 3, 2024.

UPCOMING EVENTS

[Free Methodist Church In Canada 2024 Conference from April 25-28, 2024](#) – Jacqueline Demczur , a Partner at Carters Professional Corporation, will be presenting a pre-recorded workshop on the topic of **[A Beginners Guide to Church Incorporation.](#)**

[CBA Charity Law Symposium](#) will be hosted by the Canadian Bar Association on Thursday, May 9, 2024. Terrance S. Carter from Carters and Heather Keachie from Gardiner Roberts LLP will present on the topic of Ideas and Perspectives on Qualifying Disbursements.

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 partner at Carters Professional Corporation, 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*, 2024 Edition (LexisNexis Butterworths), a contributing author to *The Management of Nonprofit and Charitable Organizations in Canada*, 5th Edition (2023 LexisNexis Butterworths), and co-author of *Branding and Copyright for Charities and Non-Profit Organizations* 3rd Edition (2019 LexisNexis Butterworths) and a Primer for Directors of Not-for-Profit Corporations (Industry Canada). He is recognized as a leading expert by *Expert*, *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 *Expert*.



[Adriel N. Clayton](#), B.A. (Hons), J.D. - Called to the Ontario Bar in 2014, Adriel Clayton is a partner at Carters Professional Corporation, 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*, *The Best Lawyers in Canada* and *Chambers and Partners*. She is a contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations*, and has written numerous articles on charity and not-for-profit issues for the *Lawyers Weekly*, *The Philanthropist* and *Charity & NFP Law Bulletin*, among others. Ms. Demczur is also a regular speaker at the annual *Church & Charity Law Seminar*TM.



[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 and the *Charity & NFP Law Bulletin*. Ms. Oh is a regular speaker at the annual *Church & Charity Law Seminar*[™] and has been an invited speaker to the Canadian Bar Association, Imagine Canada and various other organizations.



[Ryan M. Prendergast](#), B.A., LL.B. - Mr. Prendergast joined Carters in 2010, becoming a partner in 2018, with a practice focus of providing corporate and tax advice to charities and non-profit organizations. Ryan has co-authored papers for the Law Society of Ontario, and has written articles for *The Lawyers Weekly*, *Hilborn:ECS*, Ontario Bar Association *Charity & Not-for-Profit Law Section Newsletter*, *Charity & NFP Law Bulletins* and publications on www.carters.ca. Ryan has been a regular presenter at the annual *Church & Charity Law Seminar*[™], Healthcare Philanthropy: Check-Up, Ontario Bar Association and Imagine Canada Sector Source. Ryan is recognized as a leading expert by *Lexpert* and *The Best Lawyers in Canada*.



[Esther Shainblum](#), B.A., LL.B., LL.M., CRM – Ms. Shainblum is a partner with Carters, and practices 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.

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CARTERS PROFESSIONAL CORPORATION

PARTNERS:

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

tcarter@carters.ca

(Counsel to Fasken)

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

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

tman@carters.ca

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

jdemczur@carters.ca

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

estheroh@carters.ca

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

nclaridge@carters.ca

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

jleddy@carters.ca

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

bwk@carters.ca

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

scarter@carters.ca

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

rmp@carters.ca

Sepal Bonni B.Sc., M.Sc., J.D.

sbonni@carters.ca

ASSOCIATES:

Esther Shainblum B.A., LL.B., LL.M., CRM

eshainblum@carters.ca

Adriel N. Clayton B.A. (Hons), J.D.

aclayton2@carters.ca

Heidi N. LeBlanc J.D.

hleblanc@carters.ca

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

mwissmath@carters.ca

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

caxford@carters.ca

Urshita Grover, H.B.Sc., J.D.

ugrover@carters.ca

Orangeville Office

211 Broadway, P.O. Box 440

Orangeville, Ontario, Canada

L9W 1K4

Tel: (519) 942-0001

Fax: (519) 942-0300

Ottawa Office

117 Centrepointe Drive, Suite 350

Nepean, Ontario, Canada

K2G 5X3

Tel: (613) 235-4774

Fax: (613) 235-9838

Toronto Office

67 Yonge Street, Suite 1402

Toronto, Ontario, Canada

M5E 1J8

Tel: (416) 594-1616

Fax: (416) 594-1209