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CHARITY & NFP LAW UPDATE

JANUARY 2024

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

JANUARY 2024

SECTIONS

HIGHLIGHTS

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Tuesday February 13, 2024

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PUBLICATIONS & NEWS RELEASES

1. Review and Commentary on the CRA's Final Guidance on Qualifying Disbursements

By Terrance S. Carter, Jacqueline M. Demczur and Urshita Grover

On December 19, 2023, following feedback received from the charitable sector over the last year, the Canada Revenue Agency ("CRA") released Guidance CG-032, *Registered charities making grants to non-qualified donees* ("Final Guidance"). This Final Guidance sets out the CRA's requirements for charities making "grants" to both qualified donees and grantee organizations (*i.e.* non-qualified donees) under the qualifying disbursements regime which has been in place since June 2022.

Bulletin No. 524 provides an overview of the history and development of the qualifying disbursements regime, a summary of the key requirements set out in the Final Guidance that charities interested in making qualifying disbursements need to be aware of, as well an in-depth commentary on substantive issues, either addressed in the Final Guidance or which may require further clarity from the CRA.

To read the balance of this *Bulletin*, please see *Charity & NFP Law Bulletin No. 524*.

2. CRA Releases New Version of Form T3010

By Terrance S. Carter and Ryan M. Prendergast

The Canada Revenue Agency ("CRA") released version 24 of Form T3010, *Registered Charity Information Return*, ("Form T3010") on January 8, 2024 ("Version 24"). The CRA announced the release of this new Version 24 on November 9, 2023, stating that "[i]n 2022, the Government of Canada announced measures to boost charitable spending in our communities and passed legislation changing disbursement quota rules for registered charities." In this regard, the CRA was referring to Budget 2022, in which the Government of Canada had announced these measures, including that the CRA will "improve the collection of information from charities, including [...] on information related to investments and donor-advised funds held by charities."

To read the balance of this *Bulletin*, please see *Charity & NFP Law Bulletin No. 525*.

3. Legislation Update

By Terrance S. Carter and Adriel N. Clayton

Federal Guidance to Prepare Reports under New Act against Forced and Child Labour

The Government of Canada has published a new guidance, entitled "Prepare a report – Entities" (the "Guidance"), to assist organizations, including certain charities and not-for-profits, that are required to file public reports to comply with new legislation against forced and child labour. As reported in our May 2023 *Charity & NFP Law Update*, the new requirements were set out in Bill S-211, the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, which received Royal Assent on May 11, 2023. The Act was subsequently brought into force as of January 1, 2024.

The Guidance, which was published on December 20, 2023, provides an overview on how to file a report for organizations that are "reporting entities" under the Act. While there are no specific exemptions for charities or not-for-profits under the Act, it will only apply to certain large organizations that meet the threshold of being a "reporting entity", as discussed in our May 2023 *Charity & NFP Law Update*. Commencing in 2024, reporting entities must submit a report to the Minister of Public Safety on or before May 31st of each year. The Guidance lists mandatory information to be included in the report, such as an organization's structure, policies, training, assessments, and steps taken to "prevent and reduce the risk that forced labour or child labour is used" in the production or importation of goods.

Regulatory Changes under Ontario's *Child Care and Early Years Act, 2014*

The Ontario Government has amended Ontario Regulation 137/15, *General* under the *Child Care and Early Years Act, 2014* to further protect the safety of children. In particular, all licensed child care operators are required to have a Safe Arrival and Dismissal Policy (the "Policy") in place by January 1, 2024. The Policy would carefully monitor when a child does not arrive at the licensed child care program or is not picked up as expected.

Section 50 of the Regulation sets out that the Policy should provide that the child may only be released to individuals specified by a child's parent, or in accordance with written permission from a child's parent to release the child from the program at a specified time without supervision. In addition, the Policy should set out steps that must be taken if a child does not arrive, or is not picked up, as expected at the child care centre or home child care premises.

Section 11.1 of the Regulation was also amended as of January 1, 2024 to clarify that child care staff who are employed and complete their educational placement in their current place of work may continue to be counted as a staff member, allowing educational programs where staff are enrolled to determine the

experiential learning requirements for students. This regulatory clarification will reduce barriers to obtaining an Early Childhood Educator placement and support Ontario's Child Care Workforce Strategy.

4. CRA Publishes View on Capital Gains for Tax Exempt Entities

By Ryan M. Prendergast

The CRA released a technical interpretation, CRA View 2021-0905311E5, on December 13, 2023, in which it addressed capital gains tax implications on the proposed sale of property by a tax-exempt non-profit organization ("NPO") under s. 149(1)(l) of the *Income Tax Act* (the "ITA"). In particular, the CRA responded to the question of whether a specific NPO (the "Society") could be exempt from tax on capital gains realized on the proposed sale of its clubhouse property.

The CRA stated that subsection 149(5) of the ITA sets out rules for property income earned by NPOs that meet all of the paragraph 149(1)(l) conditions and whose main purpose is to provide dining, recreational or sporting facilities for its members. In this regard, during the period that an NPO meets these requirements, an *inter vivos* trust is deemed to exist, and the NPO's property is deemed to be the deemed trust's property. Further to this, the CRA advised that tax is payable by the trust on any income from property (including dividends, interest, rental income, and taxable capital gains), excluding any taxable capital gain realized on the disposition of property used exclusively for, and directly in the course of, providing dining, recreational or sporting facilities for its members.

In this technical interpretation, the CRA considered that the Society appeared to have been organized in conformity with paragraph 149(1)(l), but at some point in time began actively pursuing a profit purpose and ceased to be exempt under paragraph 149(1)(l). Upon ceasing to be exempt, an NPO is subject to the rules in subsection 149(10), which effectively provide that any capital gain accrued by the Society after it ceased to be an NPO would be subject to tax. As such, the Society therefore likely ceased to be an NPO, and ceased to be exempt, meaning that any resulting taxable capital gain on the proposed sale of its real property would not be fully tax-exempt.

The CRA considered that the Society may alternatively qualify for an exemption under paragraph 149(1)(k) of the ITA, which exempts the taxable income of a labour organization or society or a benevolent or fraternal benefit society or order. While the ITA does not define "labour organization or society" or "benevolent or fraternal benefit society or order", the CRA relied on the common use of those terms as defined in Black's Law Dictionary and the Canadian Oxford Dictionary. On this basis, however, the CRA considered that the Society did not appear to be a labour organization or society.

The CRA added that, unlike the case for paragraph 149(1)(l) NPOs, paragraph 149(1)(k) does not require an organization to be organized and operated exclusively for any purpose other than profit. However, it stated that profit-generating activities cannot be the principal activity of the 149(1)(k) entity.

It concluded that whether the Society qualifies for the exemptions under paragraphs 149(1)(k) or (l) for a taxation year is a question of fact to be determined at the end of the taxation year after considering all of the organization's activities during that year. Subsection 149(1) of the ITA contains a number of definitions for various tax-exempt organizations. Given the complexities related to real property held by those claiming exempt status under paragraph 149(1)(l) of the ITA, it would be a good idea for those organizations to review with their advisors whether they are claiming the appropriate exempt status and if they can meet the definition of what may be a more favorable exempt status, such as being a labour organization or society, as opposed to being an NPO.

5. ONCA Gives Courts Right to Review Election or Appointment of Director

By Jennifer Leddy

The case of *Metmeke v Yigzaw* is an interesting case about the authority given to a court under the ONCA to review the election or appointment of a director. In this case, a contested election for a church's board of directors (the "board") spiraled out of control, leading to a motion to overturn the results of that election.

Philipos Yemane Yigzaw ("Mr. Yigzaw") was a director of the Kidus Metmeke Yohanns Eritrean Orthodox Tewahdo Church (the "Church"), a not-for-profit organization incorporated under the Ontario *Not-for-Profit Corporations Act, 2010* ("ONCA") until the election held on October 23, 2022. He claimed that the results had to be overturned because of highly irregular circumstances surrounding the election.

To begin with, notice of the election was sent through the messaging service, Whatsapp. Mr. Yigzaw claimed that this prevented all members from receiving notice of the election because not all members subscribed to Whatsapp. Moreover, when the election was held on October 23, a violent altercation occurred as two rival factions in the church confronted each other, leading to police responding to the scene. From this point on, the parties disagreed on the subsequent events.

Mr. Yigzaw argued that many members left the meeting room to seek medical attention for injuries they had received during the brawl, and that the police forcibly cleared the room in which the vote was to take place. The Church argued that most people had remained for the vote, which was conducted in the presence of the police who maintained order among the members.

The motion to challenge the results was brought by Mr. Yigzaw under subsections 31(1) and (2) of the ONCA. These provisions allow the court to "determine any controversy with respect to an election or appointment of a director of the corporation", and to make any order which the court sees fit. Subsections 31 (1) and (2) of the ONCA read as follows:

> **Court review of election or appointment of director**
>
> **31** (1) A corporation or a director or member of the corporation may apply to the court to determine any controversy with respect to an election or appointment of a director of the corporation. 2010, c. 15, s. 31 (1).
>
> **Powers of court**
>
> (2) On an application under this section, the court may make any order that it thinks fit, including an order,
>
> (a) restraining a director whose election or appointment is disputed from acting pending determination of the dispute;
>
> (b) declaring the result of the disputed election or appointment;
>
> (c) requiring a new election or appointment, and including in the order directions for the management of the activities and affairs of the corporation until a new election is held or appointment made; and
>
> (d) determining the voting rights of members and of persons claiming to hold memberships. 2010, c. 15, s. 31 (2).

Mr. Yigzaw's position was that the election was not valid because of the improper way in which it had been called, that it excluded women from running as candidates when a woman had been on the previous board, the fight during the election, and that non-members had participated in the voting process. Conversely, the Church argued that the vote had been carried out according to its by-laws, and that there was no legal basis for the relief which Mr. Yigzaw sought, or, alternatively, it was too complicated a matter for the court to decide on a motion.

The court was unsympathetic to the Church's positions. It found that it had appropriate legal authority under the ONCA to deal with the motion, and that due to the highly irregular vote which was conducted, Mr. Yigzaw was entitled under the ONCA to bring the motion. Pursuant to the Church's by-laws, at least 51% of members had to be in attendance at the meeting to conduct a valid vote. The Church was unable to establish that quorum was achieved because it had no evidence with respect to how many members it had, failing to produce a membership list, and no evidence of how many people attended the evening before and after the fight.

The court found that these factors, compounded by the likelihood that some members could have been intimidated by the violence which occurred prior to the vote, made the October 23, 2022 vote invalid. The court, under subsection 31(2) of ONCA, reinstated the board that was in place prior to this vote, and ordered a new vote to take place within 60 days, observed by an independent lawyer. The court also held that if the parties could not agree on the version of the by-law that was in force, the *Standard Organizational By-law* under the ONCA should apply to the election until a new board amended or replaced it.

Metmeke serves as a reminder of the importance of corporations having up-to-date membership lists and following their by-laws. And of course, to conduct its elections with civility.

6. Employment Update

By Barry W. Kwasniewski and Martin U. Wissmath

Employee Receives $81,100 in Damages for Early Termination of Fixed-Term Contract

Employment contracts for a fixed term should have carefully drafted early termination clauses, or else the employer may be liable to the employee for damages for the entire unexpired term of the contract. The British Columbia Supreme Court (the "Court") in *Lefebvre v Gisborne Holdings Ltd.*, published December 19, 2023, ruled against the defendant employer in favour of the employee plaintiff, and held Gisborne Holdings Ltd. (the "Employer") liable for $81,100 in damages to Kavita Lefebvre (the "Plaintiff").

The Employer hired the Plaintiff on a fixed-term employment contract for 18 months, as a replacement for an employee taking parental leave, commencing May 2022 and ending in October 2023, with an hourly rate of $25.95 and a completion bonus of $5,000 to be paid on the end date or "upon layoff", according to the contract. "No payment (partial or otherwise)" would be paid if there was "a quit or termination for cause." Six weeks into the term of the contract, the Employer terminated the Plaintiff's employment after she sent an email to a human resources manager (the "Email"). The "tone and content" of that Email "caused an irreconcilable breakdown of the employment relationship" and constituted sufficient cause for dismissal, the Employer argued. Therefore, the Plaintiff was terminated for cause and not entitled to damages, according to the Employer. At the time of her termination, however, the Employer did not inform the Plaintiff that she had been terminated with cause. Alternatively, the Employer argued, the Plaintiff was terminated without cause and only entitled to the $5,000 payout "less the two weeks severance pay she received." The Plaintiff argued that she was terminated without cause, and the fixed term contract did not provide for termination without cause.

On the issue of whether the Plaintiff was terminated with, or without cause, the Court found the Email did not constitute just cause for dismissal. Onus is on the Employer to prove just cause, which the Court cited, in accordance with B.C. law, as "employee behaviour that, viewed in all the circumstances, is seriously incompatible with the employee's duties, conduct which goes to the root of the contract and fundamentally strikes at the employment relationship." The Email, the Court stated, was "direct and strongly worded, but it was not rude or unprofessional." It "did not rise to the level of insubordination." Although the Employer's human resources manager may have been offended by the Email, "progressive discipline, rather than summary termination, would have been a reasonable response."

As for whether the employment contracted provided for early termination without cause, the Employer argued that the $5,000 completion bonus was sufficient. The Court, however, found that the completion bonus lacked necessary language and failed to state that the Employer was entitled to terminate the Plaintiff without cause prior to the October 27, 2023 end date. The completion bonus obligated the Employer to pay a bonus "in certain circumstances" but did not actually provide for early termination without cause, according to the Court.

Relying on precedent, the Plaintiff argued that she was owed damages based on the full term of the employment contract, as if she had earned the full amount and worked to the end of the term. The Employer argued that even if the Plaintiff was terminated without cause, she failed in her legal duty to mitigate her damages as a result of losing her employment. The Court held there is a "heavy onus" on the Employer to prove a failure to mitigate, and there is "uncertainty as to whether a duty to mitigate is owed by an employee with a fixed-term employment contract who is wrongfully dismissed." According to the Court, the Employer must first establish that the Plaintiff should reasonably have done more in her attempt to find new employment, and second, that the Plaintiff would have been successful in obtaining employment. The Plaintiff "took reasonable steps to find alternate employment", the Court ruled, and accepted the Plaintiff's calculation of $81,100 in damages for the remaining full term of the 18-month employment contract. Although the Plaintiff had also sued for punitive damages, the Court found this unwarranted, because the Employer's conduct was "not reprehensible and worthy of censure."

7. Privacy Update

By Esther Shainblum and Cameron A. Axford

Privacy Commissioners Announce Principles for Development and Use of Generative AI

On December 7, 2023, Canada's federal, provincial and territorial privacy commissioners, announced new principles ("Principles") for the responsible development and use of generative artificial intelligence ("AI").

The Principles are intended to address the potential risks of this new technology by helping developers/providers and organizations using generative AI to apply Canadian privacy principles and to ensure the fairness of their systems. The use of AI can amplify bias, thus resulting in discriminatory outcomes, and can also expose children to harm. Therefore, the Principles are intended to help developers and organizations using AI to mitigate the risks to vulnerable populations through protective measures such as privacy impact assessments.

The Principles largely track the ten fair information principles discussed frequently in this publication, and are as follows:

1. Legal Authority and Consent

Ensure legal authority for collecting and using personal information; when consent is the legal authority, it should be valid and meaningful.

The generation or inference of identifiable information by a generative AI system will be considered a collection of personal information, which would require legal authority. Consent to the collection and use of personal information should be valid, meaningful and documented.

If personal information is obtained from third parties, one must ensure that the third parties collected it lawfully and have appropriate authority to disclose it. In sensitive contexts like healthcare, consent may be inadequate and privacy and ethics may also need to be considered, under independent oversight.

2. Appropriate Purposes

Collection, use and disclosure of personal information should only be for appropriate purposes, *i.e.* reasons that a reasonable person would consider appropriate in the circumstances.

Responsible use of personal information in generative AI involves aligning with appropriate purposes, avoiding "no-go zones" that lead to unfair or unethical outcomes. Developers should conduct

adversarial testing to identify and mitigate unintended inappropriate uses. Organizations using generative AI must comply with privacy laws and monitor for inappropriate uses or biased outcomes. Emphasis is on avoiding unlawful collection, unfair profiling, and activities causing harm, with a commitment to cease any violative generative AI system activity. Adherence to the Principles ensures ethical and lawful deployment of generative AI systems, safeguarding against potential risks and discriminatory practices.

3. Necessity and proportionality

Establish the necessity and proportionality of using generative AI, and personal information within generative AI systems, to achieve intended purposes.

Responsible use of generative AI involves establishing the necessity and proportionality of using personal information to achieve intended purposes. Preference should be given to using anonymized, de identified or synthetic data when personal information is not required. Organizations must assess the validity and reliability of the generative AI as well as its necessity and effectiveness across its lifecycle. Organizations should consider alternative privacy-protective technologies. This principle safeguards against unnecessary use of personal information and promotes responsible practices, protection of privacy, and exploring alternatives to generative AI use.

4. Openness

Be open and transparent about the collection, use and disclosure of personal information and the potential risks to individuals' privacy.

Ensuring transparency in generative AI use requires clear communication about personal information throughout the system's lifecycle. All parties should specify the what, how, when, and why of data use, providing understandable information to the intended audience before, during, and after system use. and inform users about privacy risks and mitigations in public-facing tools. The Principles stress open communication, promoting understanding, and ensuring informed use of generative AI systems.

5. Accountability

Establish accountability for compliance with privacy legislation and principles and make AI tools explainable.

Developers and users are responsible for compliance with privacy legislation and should be able to demonstrate compliance. This principle requires a clearly defined governance structure for privacy

compliance, a mechanism to receive and respond to privacy complaints and the use of privacy impact assessments, auditing and vulnerability testing to mitigate against potential impacts of the AI on privacy and other fundamental rights. Developers should be able to explain how a system works and a rationale for how outputs are derived. If this is not possible, the use of AI may not be appropriate.

6. Individual Access

Facilitate individuals' right to access their personal information by developing procedures that enable it to be meaningfully exercised.

Upholding individuals' right to access personal information in generative AI requires establishing procedures for meaningful exercise of this right. Processes should allow access to and correction of information collected during system use. Mechanisms for accessing or correcting personal information in AI models, are crucial. Organizations using generative AI, especially in decision-making, can facilitate transparency and accountability by maintaining records to facilitate fulfillment requests for access to information related to those decisions.

7. Limiting Collection, Use, and Disclosure

Limit the collection, use, and disclosure of personal information to only what is needed to fulfill the explicitly specified, appropriate identified purpose.

The collection and use of personal information for AI tools should be limited to what is necessary for the intended purpose and anonymized or de-identified data should be used as much as possible.

Users should also establish appropriate retention schedules, for personal information, avoid function creep by using personal information only for the purpose for which it was collected and avoid indiscriminate collection of personal information.

8. Accuracy

Personal information must be as accurate, complete and up-to-date as necessary for the purposes for which it is to be used.

This Principle emphasizes accuracy to ensure responsible and effective use of generative AI.

Any personal information used to train generative AI models should be as accurate as necessary for the purposes and should be updated when information becomes out of date or inaccurate. Users should take reasonable steps to ensure that any outputs from a generative AI tool are accurate as necessary

for the purpose, especially if those outputs are used to make or assist in decisions about an individual or individuals, will be used in high-risk contexts, or will be released publicly.

Accuracy issues may render a generative AI system inappropriate, particularly in contexts with significant impacts on individuals.

9. Safeguards

Establish safeguards to protect personal information and mitigate potential privacy risks.

This Principle underscores the importance of safeguarding personal information, being aware of potential threats, and ensuring responsible and secure use of generative AI systems.

Users of generative AI must protect personal information by implementing safeguards appropriate to the sensitivity of the data throughout the tool's lifecycle and by being aware of and mitigating possible threats to the data.

Products and services should be designed to prevent inappropriate use of AI as well as the creation of illegal or harmful content. Users must monitor use of the AI to detect and prevent inappropriate uses and threats.

As AI becomes more integrated into modern workplaces and social settings, individuals and organizations will need to be aware of the legal implications of using these new technologies, whether as a provider or a client.

Ontario Introduces New Administrative Monetary Penalties for Mishandling of Personal Health Information

In Ontario, privacy in the health care sector is governed by the *Personal Health Information Protection Act, 2004* ("PHIPA"). PHIPA applies to all health information custodians (HICs) in the province, including health care providers, clinics, institutions such as hospitals, long term care and retirement homes, pharmacies, laboratories and other persons who have custody or control of personal health information (PHI) as a result of or in connection with performing their duties.

As of January 1, 2024, Section 61.1 of PHIPA and its accompanying regulation [O. Reg. 329/04, s. 35] came into force. They allow the Information and Privacy Commissioner of Ontario ("IPC") to impose administrative monetary penalties ("AMPs") on organizations or individuals who violate PHIPA or its regulations. According to the IPC's guidance on AMPs (the "Guidance"), having the ability to impose

AMPs will provide the IPC with greater flexibility and are part of a toolkit of escalating actions and interventions that it can use to address contraventions of PHIPA.

Up to now, the IPC would have needed to refer offences to the Attorney General of Ontario for prosecution and the imposition of fines These new provisions will allow the IPC to impose the AMPs directly.

According to the Guidance, the IPC will take a measured and proportionate approach to each contravention and the AMPs will not be used in "cases involving unintentional errors or one-off mistakes… provided there is evidence of prompt and reasonable corrective action being taken upon discovery of the error". AMPs are to be used for intentional, malfeasant actions, such as snooping into patient records, contraventions for economic gain or deliberate violations of an individual's right of access to their own PHI. There may be situations in which an AMP is not appropriate, such as where an organization is a victim of a cyberattack, despite having reasonable and appropriate safeguards in place.

AMPs can be as high as $50,000 for individuals and $500,000 for an organization. However, the IPC can levy higher penalties in instances where a violator has monetarily benefited from their misuse of PHI, to prevent them from deriving any economic benefit from violating PHIPA. In determining the amount of an AMP, the IPC must consider specific criteria alongside any other relevant factors. These criteria include evaluating the degree to which the contravention deviates from the requirements of the PHIPA or its regulations, the extent to which the person could have prevented the contravention, the extent of any harm or potential harm to others resulting from the contraventions whether any steps were taken to mitigate or remediate the harm, the number of affected individuals and entities, whether any steps were taken to notify the IPC and affected individuals, the extent to which the person derived economic benefits from the contravention, and whether there were any past contraventions of PHIPA or its regulations by the person in question.

The IPC may refer the most severe cases to the Attorney General for prosecution where there is evidence of an offence having been committed. An individual found guilty of committing an offence under PHIPA can be liable for a fine of up to $200,000, up to one-year imprisonment, or both. An organization can be liable for a fine of up to $1,000,000.

Many HICs are charities and not for profit organizations. They should take steps to put in place robust privacy policies and practices, including audits and oversight of staff and volunteers, to minimize the risk of exposure to AMPs or fines for contraventions of PHIPA.

8. IP Update

By Sepal Bonni

Quebec Releases Draft Regulations Relating to Charter of the French Language

On January 10, 2024, the Quebec government published the draft *Regulation to amend mainly the Regulation respecting the language of commerce and business* (the "Regulation"). If passed, the Regulation will amend the Quebec *Charter of the French Language* (the "*Charter*") and the current regulations. The Regulation provides some guidance on the recent amendments to the *Charter* that were introduced by Bill 96, which was previously discussed in the *June 2022 Charity & NFP Law Update*.

The Regulation includes the following changes which charities and NFPs in Quebec should be mindful of:

Non-French Trademarks Appearing on Products

Bill 96 indicates that only non-French "registered trademarks" (for which there is no French registered version of the trademark) may appear on "products". The Regulation clarifies that a "product" includes its container, wrapping and any document or object supplied with it. Importantly, it also expands on the definition of "registered trademark" to include any pending trademark application that is filed with the Canadian Intellectual Property Office.

Bill 96 indicates that if an exempt non-French "registered trademark" on a product includes a non-French "generic term or a description of a product", the generic term or description will have to appear in French elsewhere on the product. The Regulation defines define a "generic term" as "one or more words describing the nature of a product" and "description" of the product as "one or more words describing the characteristics of the product." It also clarifies that **no generic term or product description included in a non-French trademark may be given greater prominence than that in French or be available on more favourable terms.**

The Regulation grants a two-year extension to comply with relevant trademark provisions to products manufactured before June 1, 2025 which do not have a registered French version of the trademark. This will allow products not meeting the requirements to be distributed and offered for sale until June 1, 2027.

Public Signage

For public signage, the definition of "registered trademark" remains the same. That is, non-French trademarks on pubic signs and in commercial advertising are only permitted if the trademark is registered

with the Canadian Intellectual Property Office, and no corresponding French version exists. The definition has not been expanded to include trademark applications as it has for products.

Bill 96 mandated that when signage that is visible from outside premises, even if the trademark is registered, the trademark must be accompanied by French text that is "markedly predominant". The French text could include a generic term, a description of the products or services considered, or a slogan. The Regulation states that the "markedly prominent" tthreshold will be met where "the text in French has a much greater visual impact than the text in the other language." The Regulation also clarifies that in order to have a "much greater visual impact", (1) the French text must be twice as large as the non-French text, and (2) the legibility and permanent visibility of the French text must be equivalent to those of the non-French text.

It must be noted that the Regulation is under consultation until February 24, 2024 and could be revised in the coming weeks. Should the Regulation come into force, there it will have a significant impact on any charity or not-for-profit which operates in Quebec.

9. Imagine Canada Releases New Report on Social Innovation and Social Finance

By Esther S.J. Oh

As set out in the Social Finance Research Report (the "Report") by Imagine Canada, released in late 2023, Social Innovation and Social Finance "represent new and emergent approaches that harness the creativity, compassion, and entrepreneurial spirit that thrives in social purpose organizations." In this regard, the Report states, "Social purpose organizations are at the heart of this movement, and having access to resources is essential to their ability to innovate, scale solutions, and sustain their activities long-term."

Since the development of the Social Innovation and Social Finance Strategy in 2018 (the "Strategy"), the Government of Canada has actively implemented the twelve recommendations set out in the Strategy, notably through the Investment Readiness Program ("IRP") that has the aim of helping social purpose organizations build their capacity to participate in Canada's growing social finance market. Another long-term social finance initiative by the Federal Government is the $755 million Social Finance Fund ("SFF"), which was launched in May 2023 with the objective of advancing the growth of the social finance market in Canada.

The Report presents research findings aimed at advancing social innovation and social finance in Canada, including a review of the enablers and barriers of social finance, as well as exploring why social purpose

organizations ("SPOs") engage in social finance. The Report also expands the understanding of the social finance ecosystem, emphasizing the significance of co-creation and collaboration, and underscores how social finance in Canada aligns with both domestic well-being and global initiatives such as the UN's Sustainable Development Goals, illustrating the alignment of local efforts with global objectives. The methodology of research includes individual analysis of 22 case studies, cross-case analysis, participant validation, and an expert group survey. Six key findings are highlighted by the Report, which will be outlined below.

1. Motivations for Engaging in Social Finance

Social purpose organizations engage in social finance primarily to diversify funding sources, secure access to capital, and overcome challenges related to conventional financing options. The focus on social impact and sustainability drives these organizations to seek personalized financial solutions and foster collaborative partnerships, underscoring the significance of tailored financial approaches for communities facing barriers in accessing financial products aligned with their values.

2. Enablers and Barriers of Social Finance

The Report pinpoints various factors influencing social finance for social purpose organizations. Positive factors, or enablers, include a clearly defined social or environmental mission, visionary governance, impact measurement, and access to social finance products. Barriers include a limited financial track record, high transaction costs, and a scarcity of accessible social finance products. The Report notes that it is crucial to comprehend and address these barriers to foster inclusive and sustainable social finance practices.

3. Hybrid Organizations Can Increase Organizational Resilience

Hybrid organizations (which carry out both for-profit and nonprofit activities), have emerged as a common approach for addressing complex social, environmental, or legal challenges. By combining social and financial objectives, these organizations create sustainable solutions that foster positive impact while maintaining financial viability. Nonprofit and charitable entities sometimes choose to establish for-profit entities to navigate regulatory barriers, optimize fund deployment, or reduce transaction costs. This approach underscores the necessity for adaptability in the social finance landscape and emphasizes the importance of adapting to the unique challenges encountered by organizations.

4. Expanded Understanding of the Social Finance Ecosystem

The Report underscores the significance of broadening our understanding of the social finance ecosystem to include universities, foundations, pension funds, incubators, accelerators, economic development organizations, and global development organizations. In this regard, the Report points out that involving these stakeholders in the ecosystem encourages diverse perspectives and facilitates collaborative solutions.

5. Role of Consultants in Social Finance

The Report indicates that consultants play a crucial role in social finance by offering expertise, conducting market research, facilitating impact measurement, establishing partnerships, and supporting policy development, thereby empowering organizations to navigate the social finance landscape.

6. Social Finance is a Complex Adaptive System

The Report observes that the social finance ecosystem functions as a complex adaptive system marked by increasing interconnectedness, adaptation, feedback loops, and enabling factors. Successfully navigating the social finance landscape necessitates an understanding of and leverage over these dynamics.

In closing, the Report offers valuable insights into Canada's social finance ecosystem, highlighting its potential to address societal challenges and promote financial sustainability for social purpose organizations. The Report concludes by stating that if social finance is to fulfill its potential, it is crucial that all stakeholders in the ecosystem understand why social purpose organizations engage in social finance, and the factors that help and hinder them in their efforts to use social finance tools.

10. Career Opportunities at Carters

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

IN THE PRESS

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

UPCOMING EVENTS

Carters/Fasken: Healthcare Philanthropy Webinar, **Tuesday February 13, 2024** – A complimentary webinar hosted by Carters Professional Corporation and Fasken. Registration is available online.

The Advanced Canadian Gift Planning Summit will be held by the CAGP Foundation on April 2, 2024 in Ottawa, Ontario at the Westin Ottawa. Theresa L.M. Man will be presenting on the topic of the T3010, A Deep Dive into the T3010 – Why the T3010 Matters to Gift Planners from 11:30 am – 12:30 pm.

The Canadian Association of Gift Planners (CAGP) Conference 2024 will be held April 3-5, 2024 in Ottawa, Ontario at the Westin Ottawa. Mr. Terrance Carter will be a Guest Speaker, presenting on Qualifying Disbursements and Disbursement Quota Rules (A Deeper Dive into QDs and DQs), on April 3, 2024 from 11:15 am - 12:15 pm.

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 articled 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 *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 articled 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.

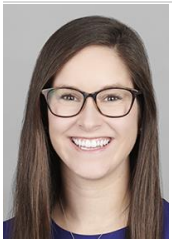
Nancy E. Claridge, B.A., M.A., LL.B. – Called to the Ontario Bar in 2006, Nancy Claridge is a partner with Carters practicing in the areas of corporate and commercial law, anti-terrorism, charity, real estate, and wills and estates, in addition to being the assistant editor of *Charity & NFP Law Update*. 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 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*™.

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 (CCCB). 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.

ACKNOWLEDGEMENTS, ERRATA AND OTHER MISCELLANEOUS ITEMS

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