

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

JUNE 2024

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Carters Annual Charity & Not-for-Profit Law Webinar™ SAVE THE DATE – Thursday, November 14, 2024

Hosted by Carters Professional Corporation
Special Guest Speakers – **The Honourable Ratna Omidvar**, C.M., O.Ont., Senator for Ontario &
Mr. Bruce MacDonald, President and CEO of IMAGINE Canada
Details will be posted soon at www.carters.ca

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PUBLICATIONS & NEWS RELEASES

1. Minister of Public Safety Publishes Guidance on Criminal Code Exceptions When Providing Aid in Areas Controlled by Terrorist Groups

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

The anti-terrorist financing provisions of the *Criminal Code* (the “Code”) are the critical elements of Canada’s counter-terrorism efforts. However, the Taliban’s takeover of Afghanistan in August 2021 drew attention to the difficulties in delivering international assistance in areas controlled by terrorist groups without violating provisions of the Code. To address these serious shortcomings that have been a reality for Canadian international charities for decades, Bill C-41, *An Act to amend the Criminal Code and to make consequential amendments to other Acts*, was passed on June 20, 2023, amending the anti-terrorist financing provisions in section 83.03 of the Code to allow humanitarian exceptions and the establishment of an Authorization Regime (as described below) for specific activities in terrorist-controlled areas. An explanation of the two exceptions in Bill C-41 was previously set out in our [AML/ATF and Charity Law Alert No. 53](#), in August 2023.

In our *Alert No. 53*, we explained that subsections 83.03(1) and (2) of the Code (and their predecessors, subsections 83.03(a) and (b)) make it an indictable offence, liable to a term of not more than 10 years imprisonment, for any person who directly or indirectly makes available property or financial or other related services for terrorist purposes or for use by terrorist groups. As mentioned above, the language in these provisions was broad enough to include circumstances where Canadian charities and not-for-profits (“NFPs”) wished to provide humanitarian aid in Afghanistan following the return to power of the Taliban. Bill C-41 modified the anti-terrorist financing offences found in subsections 83.03(1) and (2) of the Code by specifying that such activities may not be done “wilfully and without lawful justification or excuse”. This amendment to the Code provides some element of comfort to charities and NFPs that provide humanitarian aid and other essential services with a “lawful justification”. Examples of what constitutes potential lawful justifications include the two exceptions listed in section 83.03 being: (1) a blanket exception for “humanitarian assistance activities” (the “Humanitarian Assistance Exception”), and (2) a narrower exception for certain activities that is dependent on an organization applying for and receiving an authorization from the federal government to carry out certain activities in a geographic area controlled by a terrorist group (the “Authorization Regime”).

For nearly a year, charities and NFPs that wished to take advantage of the exceptions provided by Bill C-41 were without any guidance on how to proceed, as there was nothing to explain how the Minister of Public Safety (the “Public Safety Minister”) and law enforcement agencies would treat charitable/humanitarian organizations wanting to work under the new legislation. This led to a precarious position where groups were reluctant to provide assistance for fear of falling outside the new exceptions.

As an accountability measure under subsection 83.0392(1) of the Code, the Public Safety Minister is required to prepare an annual report detailing the operation of sections 83.031 to 83.0391 for the previous calendar year. As a result, the Department of Public Safety Canada released the “2023 Annual Report of the Minister of Public Safety Concerning *Criminal Code* sections 83.031 to 83.0391: A Regime to Authorize Certain Activities in a Geographic Area that is Controlled By a Terrorist Group” on April 19, 2024 (the “2023 Annual Report”). The 2023 Annual Report, while providing a basic overview of the Authorization Regime, as well as the progress of operationalizing the Authorization Regime and setting out the role of various government partners, including Global Affairs Canada, Immigration, Refugees and Citizenship Canada, Royal Canadian Mounted Police, Canada Revenue Agency and Finance Canada, provided only limited information concerning the application of the two exemptions provided for in Bill C-41.

However, on June 19, 2024, the Department of Public Safety Canada officially launched the Authorization Regime and has now started accepting applications for authorization from eligible members of the public and/or organizations. In doing so, the Department of Public Safety Canada released an operational policy guidance titled *Authorization regime and humanitarian exception for activities in terrorist group controlled areas - Section 83.03 Criminal Code* (the “Guidance”). The Guidance provides clarity concerning the two exceptions provided by Bill C-41 and, most significantly, the process for applying for the narrow exception for certain activities under the Authorization Regime.

Those interested in submitting an application under the Authorization Regime [can fill out and submit the form](#), but organizations are advised to consult with legal counsel before doing so because of the complexities involved in the application process and the risks of noncompliance.

This *AML/ATF Alert* summarizes the contents of the Guidance and explains what is required from the Public Safety Minister to ensure that charities and NFPs can provide legitimate aid without fear of prosecution under the Code. To read the balance of this *Alert*, please see [AML/ATF and Charity Law Alert No. 54](#).

2. Legislation Update

By [Terrance S. Carter](#), [Jacqueline M. Demczur](#), and [Adriel N. Clayton](#)

Federal Government Announces Changes to Capital Gains Inclusion Rate

Following its announcement in the 2024 Federal Budget, the Government of Canada has proposed adjustments to the capital gains inclusion rate effective for gains realized as of June 25, 2024. The federal government introduced the [Notice of Ways and Means Motion to introduce An Act to amend the Income Tax Act and the Income Tax Regulations](#) in Parliament on June 10, 2024, proposing to increase the capital gains inclusion rate for corporations and trusts from 1/2 of the capital gain to 2/3 of the capital gain. Similarly, for individual taxpayers, where capital gains exceed an annual threshold of \$250,000, the capital gains inclusion rate would be increased from 1/2 of the capital gain to 2/3 of the capital gain. This will have an impact on donors who wish to make donations of capital property to charities, particularly if those donors are affected by the new Alternative Minimum Tax regime involving charitable donations set out in the 2024 Federal Budget, and as discussed in [Charity & NFP Law Bulletin No. 526](#) and the [May 2024 Charity & NFP Law Update](#).

Of note for registered charities, the Notice of Ways and Means Motion proposes amendments to paragraph 110(1)(d.01) of the *Income Tax Act* concerning charitable donations of employee option securities. Currently, where an employee acquires a security under an option and donates it to a qualified donee, the employee will be entitled to a deduction under paragraph 110(1)(d.01) (in addition to the option share deduction) equal to one-half of the security option benefit. The Notice of Ways and Means Motion proposes to increase this deduction to an amount equal to two-thirds of the security option benefit.

Federal Bill C-70, *An Act respecting countering foreign interference* Receives Royal Assent

[Bill C-70, *An Act respecting countering foreign interference*](#) received Royal Assent on June 20, 2024. The Bill enacts measures to counter foreign interference aimed at all levels of government, the private sector, academia, diaspora communities, and the general public. The Bill also introduces the *Foreign Influence Transparency and Accountability Act*, which will create the Foreign Influence Transparency Registry and which will be brought into force on a date to be set by the Governor-in-Council, according to a [news release](#) by Public Safety Canada.

Compared to the draft Bill in its initial stages, the final assented-to Act remains largely unchanged, although it contains additional clarifications to revisions of the *Canadian Security Intelligence Service Act*; additional language indicating that appointment of the Foreign Influence Transparency Commissioner will require approval by resolution of the Senate and House of Commons; a stated response time from the

Minister following a review of the new Act; and transitional provisions regarding federal, provincial, territorial, municipal, and Indigenous processes.

As set out in further detail in [Charity & NFP Law Bulletin No. 527](#), Bill 70 requires individuals and entities, including Canadian charities and not-for-profits, that enter into an arrangement with a foreign principal to register their arrangements and disclose any foreign influence activities undertaken where they are in relation to government or political processes in Canada, with certain stated exemptions. This will now be an important compliance issue for charities and not-for-profits that have international relationships to be aware of.

Fighting Against Forced Labour and Child Labour in Supply Chains Act Filing Deadline Passed

As reported in our [November 2023 Charity & NFP Update](#) and [March 2024 Charity & NFP Law Update](#), Canada implemented the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the “Act”) on January 1, 2024. This law mandates that entities which fall under the provisions of the Act must file public reports with the Minister of Public Safety, Democratic Institutions and Intergovernmental Affairs (the “Minister”) regarding their efforts to limit and eliminate forced and/or child labour within their supply chains. While filing requirements only apply to “entities” as defined under the Act, which will generally only include large organizations, charities and not-for-profits that are “entities” are not exempt from filing requirements.

The filing deadline for this year was May 31, 2024. Although this date has now passed, Public Safety Canada is providing entities with a grace period, and has [indicated](#) that it will continue to accept late submissions and publish any reports that may be received beyond the deadline. In addition to late filings, Public Safety Canada will also accept revised versions of previously submitted reports. Reports can be revised by re-completing the online questionnaire.

Bill S-279 Completes Second Reading in the Senate

Bill S-279 *An Act to amend the Income Tax Act (data on registered charities)* (the “Bill”) completed its second reading in the Senate on May 30, 2024. Previously explained in the [February 2024 Legislation Update](#), the Bill proposes to authorize the collection of diversity data under the *Income Tax Act* for the purpose of fostering transparency and inclusivity within the charitable sector. Some recent reactions from the charitable sector are discussed in this month’s [CRA News](#).

PEI Bill 41, *Benevolent and Community Crowdfunding Act*

Prince Edward Island has enacted new legislation governing public appeals and crowdfunding. [Bill 41, *Benevolent and Community Crowdfunding Act*](#) (the “Act”) was introduced in the provincial Legislative Assembly on November 23, 2023 and received Royal Assent on April 23, 2024. The Act is largely based on the Uniform Law Conference of Canada’s (“ULCC”) *Uniform Benevolent and Community Crowdfunding Act, 2020* (the “*Uniform Crowdfunding Act, 2020*”), and generally follows the same structure as the ULCC’s proposed legislation.

As reported in the [August 2020 Charity & NFP Law Update](#), the *Uniform Crowdfunding Act, 2020* was introduced by the ULCC to provide an appropriate legal framework to assist in the creation and administration of funds from an “informal public appeal” (e.g. informal fundraising carried out in response to a specific event or concern, such as the crowdfunding initiatives in response to the 2018 Humboldt Broncos tragedy) in order to ensure that trust law applies evenly to all appeals. PEI is the second province in Canada, following Saskatchewan, to enact public appeals legislation.

3. CRA News

By [Jacqueline M. Demczur](#)

Charities Directorate Releases Privacy Impact Assessment

The Canadian Constitution grants provinces the authority to manage charities operating within their jurisdiction. However, the federal government, through the *Income Tax Act*, regulates tax benefits for registered charities and other qualified donees. The Canada Revenue Agency (CRA), particularly the Charities program, is responsible for registering and monitoring these entities for income tax purposes. This involves collecting, using, storing, disclosing, retaining, and disposing of personal information related to individuals connected to qualified donees.

On May 3, 2024, the Charities Directorate Released a [privacy impact assessment](#) (PIA) on data it collects from charities and other qualified donees. The findings of this report are summarized below.

Registration and Compliance

To issue official donation receipts for income tax purposes, certain qualified donees must:

- Be listed by the CRA.
- Maintain books and records for CRA inspection.

- Issue donation receipts according to the Income Tax Act.

Qualified donees include registered Canadian amateur athletic associations, municipalities, universities outside Canada, foreign charities that received a gift from His Majesty, public bodies performing government functions in Canada, low-cost housing corporations for the aged, and registered journalism organizations.

Personal information collected includes general contact details for registration and audits, such as names, titles, and donation records.

Ineligible Individuals

Post-Budget 2011 amendments to the *Income Tax Act* allow the CRA to reject or revoke charity status if an ineligible individual is involved. This includes those with criminal histories or past misconduct. The CRA can also suspend receipting privileges if such individuals manage the charity.

Registered Journalism Organizations

Introduced in Budget 2019, registered journalism organizations can become tax-exempt qualified donees to support Canadian journalism. These organizations must produce original news content and meet specific requirements, including arm's length board operations and limitations on gift sources.

Privacy Impact Assessment Scope

The Privacy Impact Assessment (PIA) aims to identify and mitigate privacy risks associated with the Charities program, focusing on the collection, use, disclosure, storage, and disposal of personal information. It does not cover the National Security Disclosure Program.

The following risk identification and categorization features a risk level from one (low) to four (high), depending on the perceived vulnerability of the type of program or the particular information collected by the CRA.

Risk Identification and Categorization

A) Type of Program or Activity

The Charities program involves decisions about client organizations rather than identifiable individuals, posing a low privacy risk (Level 1).

B) Type of Personal Information Involved

Personal information collected includes names, contact details, and official titles, with a high privacy risk (Level 4) due to additional sensitive information accessed from internal and external sources.

C) Program or Activity Partners and Private Sector Involvement

The program involves significant data sharing with other CRA programs, federal institutions, provincial governments, private sector organizations, international organizations or foreign governments, posing a high privacy risk (Level 4).

D) Duration of the Program or Activity

The Charities program is long-term with no planned end date, posing a moderate privacy risk (Level 3).

E) Program Population

The program affects certain individuals connected to qualified donees, including “the entity’s officials, representatives, employees and associates, and in some cases their beneficiaries and donors”, posing a moderate privacy risk (Level 3).

F) Technology & Privacy

The program uses new electronic systems for handling personal information and involves automated personal information analysis, posing a moderate privacy risk (no level assigned).

G) Personal Information Transmission

Personal information is transmitted using wireless technologies with access controls, posing a high privacy risk (Level 4).

H) Potential Risk in the Event of a Privacy Breach

A privacy breach could lead to identity theft and misuse of personal information, causing financial or reputational harm (no level assigned).

Conclusion

The CRA's Charities program involves extensive collection and handling of sensitive personal information. While it primarily affects organizations, the personal data of individuals associated with these organizations is at risk. The program has privacy measures but requires continuous assessment and improvement to mitigate potential privacy risks effectively. It is a positive development that the Charities

Directorate undertakes such initiatives like the PIA, as any failure by it to protect the personal information in its possession could be very serious for affected individuals.

CRA Reminds Charities that T3010 Filings are Due Soon

On June 25, 2024, the CRA provided a reminder to charities on its “[What’s New](#)” page regarding the upcoming June 30 deadline to file T3010 Registered Charity Information Return.

Charities whose fiscal periods end on or after December 31, 2023 must file their T3010 using version 24 or it will be rejected by the CRA. This would mean that your charity will not have filed its T3010 on time and could be revoked for non-filing.

If filing on paper always [download the latest version of Form T3010](#) from the official website.

If you use [My Business Account \(MyBA\)](#) or [Represent a Client](#), the correct version is automatically provided, making it a fast, convenient, and secure option. For charities with fiscal period endings other than December 31, check the [designated webpage for specific filing deadlines](#).

For assistance, consult the [T3010 charity return page](#), the comprehensive guide on [Completing the Registered Charity Information Return](#), or the [T3010 webinar](#) for step-by-step guidance.

MyBA is the most efficient and secure way to file, offering quicker processing and enabling charity registration, return filing, CRA correspondence, and account updates. The [MyBA reference guide](#) and [webinar](#) can help with registration, account access, and authorizing new directors.

The CRA now offers a [document verification service](#) for immediate online account access, bypassing the wait for a security code by mail. For more information on accessing [CRA digital services](#), visit [their website](#). For further assistance, contact the CRA at 1-800-267-2384, available Monday through Friday, 9 am to 5 pm, local time.

4. Tax Court Denies Appeal of Reassessment for Lack of Donative Intent

By [Ryan M. Prendergast](#)

[Bacchus v. The King](#), decided on May 8, 2024, involved the Appellant, Wayne Bacchus, a lawyer, who was challenging notices of reassessment made by the Minister of National Revenue (the “Minister”) in the 2005-2007, 2009 and 2012-2014 taxation years.

While originally assessed as filed for those years, the Minister reassessed him to disallow donation tax credits made to the Global Learning Gifting Initiative (“GLGI”), under ss. 118.1(1) of the *Income Tax Act*

(“ITA”). The Appellant had donated over \$100,000 over this period to GLGI, including both cash donations and gifts-in-kind. He sought to challenge the Minister’s disallowance of the cash donations, specifically on the grounds that the Canada Revenue Agency did not interview him regarding his subjective donative intent, and had unfairly determined his subjective donative intent based on other participants in GLGI, stating that this was a breach of the rules of natural justice and the *Canadian Charter of Rights and Freedoms*.

The issue was whether the Appellant was entitled to donation tax credits for the cash donations. The Minister made the following factual assumptions in the Reply to the Notice of Appeal:

1. GLGI Program was a tax shelter, promoted on the basis that participants would be entitled to receive tax credits, sometimes equal up to 112% of the cash donation;
2. Participants in GLGI were to become capital beneficiaries of a trust and would receive educational courseware that would subsequently be donated to the charities;
3. Participants were automatically approved as capital beneficiaries but did not take possession of the courseware, which had no actual value;
4. The tax receipts which participants received reflected the value of the cash donation and alleged value of the courseware, which had no value, making them inflated tax receipts.

The Minister was of the opinion that participants in GLGI did not have donative intent when they made cash donations to obtain tax credits in excess of the cash donation value, indicating an intent to profit. As the courseware had no value, participants were relying on inflated donation receipts.

The Court found that the Appellant had failed to establish a *prima facie* case that the Minister’s assumptions were incorrect. Given his review of the informational brochures, the Court concluded that the Appellant understood there would be a cash-flow advantage in the scheme to a ratio of 5:1, and that his participation would allow him to receive tax refunds exceeding the value of the cash donations. The Court found that a necessary element of a “gift” (which is undefined by the ITA) requires “impoverishment for the benefit of a qualified donee. If any of these elements are lacking, donative intent will be vitiated.” As the Appellant’s intent was not to impoverish himself, but to gain a benefit, this vitiated the donative intent. In a previous ruling from 2015 the Court had also reviewed the GLGI program and concluded that the alleged gifts failed because of the financial advantage received by participants.

The Court concluded that the appeal should be dismissed. Bacchus stands as a reminder to taxpayers to always be wary of any promise of benefits that are too good to be true through charitable giving programs

or initiatives, even if they are registered with the CRA as tax shelters. Individuals with questions about charitable donations and their subsequent tax treatment should be sure to do so with the guidance of reputable tax and legal professionals.

5. Employment Update

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

Court of Appeal Upholds 24-month Reasonable Notice, \$50K Aggravated Damages

The Ontario Court of Appeal has clarified the requirements for employers to prove that a terminated employee failed to mitigate their damages, and the basis for a claim of aggravated or moral damages, in wrongful dismissal cases. A decision published on May 2, 2024, [*Krmpotic v Thunder Bay Electronics Limited*](#), on appeal from an earlier trial decision, upheld the trial judge's finding of 24 months' reasonable notice, and \$50,000 in aggravated damages. The two employers, Thunder Bay Electronics Limited, and Hill Street Financial Services (the "Employers") appealed the trial decision. The Court of Appeal (the "court") dismissed the Employers' appeal, which argued that there was insufficient medical evidence for the employee, Drago Krmpotic, to claim that he was physically incapacitated following his termination. The court also did not find the trial judge made any error in awarding \$50,000 in aggravated damages, because the manner of dismissal, which breached the Employers' duty of good faith, inflicted additional harm to Krmpotic beyond the "normal distress and hurt feelings resulting from the dismissal." Furthermore, the Employers' appeal that the trial judge erred in finding each of them jointly and severally liable was dismissed based on the evidence that Krmpotic was in fact employed by both of the Employers. As with any employer in Ontario, charities and not-for-profits should be aware of the risks involved when terminating their employees, and this case is a helpful clarification of these important points of Employment Law.

Drago Krmpotic, employed for 29 years by Thunder Bay Electronics Limited and Hill Street Financial Services, was abruptly terminated in 2016 at age 59, shortly after returning from medical leave for back surgery necessitated by workplace injuries. At the time of his termination, Krmpotic was earning \$72,864 in annual salary as a Building Maintenance Supervisor. Although he was offered a severance package of 16 months' salary post-termination, Krmpotic rejected the offer and claimed wrongful dismissal, seeking further damages for mental distress and aggravated/moral damages. The trial judge awarded Krmpotic a 24-month reasonable notice period, acknowledging his loyalty and dedication, and the challenging physical demands of his role. While grounds for mental distress were denied due to insufficient medical

evidence linking his emotional suffering directly to the termination, aggravated damages of \$50,000 were granted for the Employers' handling of the dismissal, which was "the antithesis of an employer's duty" of good faith, according to the trial judge.

The Employers argued on appeal that the trial judge ignored evidence from a doctor's report on Krmptic's physical condition, which noted that Krmptic had "no leg pain, some back stiffness, and was happy post-surgery." While reviewing the trial judge's finding that Krmptic's efforts to mitigate his damages were "scant at best", the Court of Appeal stated that the doctor's report did not comment on "physical capacity" required to perform the work that Krmptic had been employed for. Providing a summary of the current law, the court stated that an employee has a duty to "take reasonable steps to mitigate his damages by searching for comparable alternate employment within the reasonable notice period." The burden of proving that the employee has not mitigated his damages falls on the employer. In this case there was evidence to show that Krmptic could not perform the physical demands of his employment, because he was unable to do similar work that was offered to him by his son for a renovation business in Toronto. The court held that the Employers did not meet the burden of proving that Krmptic failed to mitigate his damages, due to his physical condition.

On the issue of aggravated and moral damages, the court found "no basis for appellate interference with the trial judge's determination". The trial judge had found that the Employers "breached the duty of good faith in the manner of dismissal in a number of ways." Although they told Krmptic that he had been terminated "for financial reasons" the Employers refused to produce financial statements in support of this position at trial. The Employers were "not directly untruthful", according to the trial judge, but they were "neither candid nor forthright." Krmptic was terminated within two hours of returning to work after his back surgery, and the Employers were "misleading, and unduly insensitive" during the termination meeting, according to the trial judge. Reading the trial judge's reasons, the court stated it was "clear" that Krmptic suffered harm "as a result of the manner of dismissal" by "anxiety, depression, fear, poor sleep, frustration, and feelings of helplessness."

In light of this decision, charities and not-for-profits should always treat employees with respect, compassion and honesty, with as much transparency as possible, during the entire termination process and choose the timing of a termination carefully.

6. Privacy Update

By [Esther Shainblum](#) and [Cameron A. Axford](#)

Quebec Releases Anonymization Regulations

On May 15, 2024, the government of Québec adopted a new [Regulation respecting the anonymization of personal information](#) (the “Regulation”). The Regulation establishes specific criteria and terms for the anonymization of personal information in Québec, making it the first regulation in Canada to provide a framework for data anonymization.

On September 22, 2023, the bulk of the provisions in Law 25 came into force, as discussed in the [June 2023 Charity and NFP Law Update](#). Law 25 implemented both the *Act respecting the protection of personal information in the private sector* and the *Act respecting Access to documents held by public bodies and the protection of personal information* which permit organizations to anonymize personal information once the original purposes for its collection or use have been fulfilled. Organizations must follow “generally accepted best practices” and criteria set by regulation to ensure that the information is anonymized in a way that it can no longer be used to identify individuals, either directly or indirectly.

Prior to the recent publication of the Regulation, there was uncertainty about the specific criteria and terms for anonymizing personal information. The Commission d'accès à l'information (CAI), Québec's privacy regulator, had stated that organizations could not anonymize personal information without government regulation. The new Regulation attempts to resolve these uncertainties with further guidelines on the matter.

The Anonymization Regulation applies to private enterprises, public bodies and professional orders in Québec (“Bodies” or “Body”) and requires Bodies to follow a detailed process before, during, and after anonymizing personal information.

Before starting the process of anonymization, the Body must determine the purposes for which it intends to use the anonymized information. Those purposes must be consistent with the purposes for which the personal information was originally collected or used and must be in the public interest or serious and legitimate. The process of anonymization itself must be supervised by a qualified person.

The first part of the process set out by the Regulation requires the Body to remove all personal information that would allow the person concerned to be directly identified. The Body must then carry out an analysis to consider the re-identification risks, including whether datasets can be connected to the same person, whether individuals can be isolated or distinguished within a dataset, and whether there is a risk that other

“reasonably available” information in the public space could be used to identify a person, directly or indirectly. Next, based on this analysis, the Body must establish appropriate anonymization techniques, which must be consistent with generally accepted best practices, and the Body must also establish “reasonable protection and security measures” to reduce the risk of re-identification.

After this stage, the Body must again analyze the re-identification risks. The results of the second analysis must show that “that it is, at all times, reasonably foreseeable in the circumstances that the information produced further to a process of anonymization irreversibly no longer allows the person to be identified directly or indirectly”.

While the residual risks of re-identification need not be zero, the residual risk must be "very low" taking into account: the purpose for which the Body intends to use the anonymized information, the nature of the anonymized information, whether there is a risk that other “reasonably available” public information could be used to identify a person, directly or indirectly, and what measures, efforts, resources and expertise would be required to re-identify the persons.

The Body must “periodically” update this analysis – the frequency of which will be based on the risks previously identified – to ensure that the information remains anonymized. These updates must take into account technological advancements that could allow the re-identification of a person. If the results of the analysis updates are not consistent with the above “very low” risk of re-identification, the information is no longer considered anonymized.

Additionally, certain mandatory details about the anonymization process must be recorded in a register.

The Regulation came into force on May 30, 2024, with the requirement to record certain prescribed information in a register starting on January 1, 2025. It provides a clearer framework for anonymization than the *Quebec Privacy Act* and past CAI guidance but imposes onerous compliance and record-keeping obligations on Bodies operating in Québec. Bodies that operate in Québec should review their data handling practices and update policies and procedures to ensure that they comply with the new requirements. Organizations outside of Québec should expect to see similar guidances and/or regulations in the not-too-distant future.

7. Federal Nonprofit Data Coalition Publishes Open Letter to Government on Bill S-279 (data on registered charities)

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

On May 30, 2024, the Federal Nonprofit Data Coalition (the “Coalition”) [published an open letter](#) (the “Letter”) to all Senators, Members of Parliament and Ministers concerning Bill S-279, *An Act to amend the Income Tax Act (data on registered charities)*. If passed, Bill S-279 would address an important gap in data by requiring the disclosure and reporting of data about the demographic composition of the directors and officers of registered charities as discussed in the [February 2024 Charity and Not-for-Profit Law Update](#).

The Coalition is composed of over a dozen organizations in the charitable and non-profit sector. A [news release from Imagine Canada](#) (a members of the Coalition) describes the mandate of the Coalition as focusing “on advancing the nonprofit sector's priorities in terms of data collected and shared by the federal government.”. The Letter begins by recognizing that nonprofits are integral to Canadian communities, enhancing quality of life and providing indispensable services to support governments as they delivery public policy priorities, particularly in underserved communities. The Letter indicates despite this important role, the nonprofit sector has had a longstanding deficit of data, which is essential for effective policy design and decision-making, and that this data crucial for informed decision-making by governments, funders, researchers, and the nonprofits themselves.

In discussing the origins of the bill, the Letter notes that Senator Ratna Omidvar introduced Bill S-279 to amend the *Income Tax Act*, to address a key data gap by requiring the provision of data about the demographic composition of boards of registered charities in accordance with recommendation #8 from the [Catalyst for Change](#) report by the Special Senate Committee on the Charitable Sector in 2019.

In this regard, recent survey data indicates there is generally a lack of diversity on nonprofit boards, which raises concerns given the leadership and governance roles held by nonprofit board of directors. Data from a one-time survey is inadequate for tracking long-term diversity trends. Bill S-279 would require organizations to report board composition in their annual T3010 information returns, enabling the nonprofit sector to track aggregate trends n board diversity over time. This would align with existing reporting requirements for federally incorporated public corporations and federal initiatives promoting diversity in corporate Canada.

While the Coalition supports the bill’s intent and stated goals, the Letter states that the organization opposes penalties for non-compliance that would risk charities losing their status for failing to provide

this information. The Letter concludes with an intention to propose this and possibly other changes to the bill, as it progresses through the legislative process.

8. AML/ATF Update

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

Canada Lists the Islamic Revolutionary Guard Corps (IRGC) as Terrorist Entity

On June 19, 2024, the Honourable Dominic LeBlanc, Minister of Public Safety, Democratic Institutions and Intergovernmental Affairs, [announced](#) the official listing of the Islamic Revolutionary Guard Corps (IRGC) as a [terrorist entity under Canada's *Criminal Code*](#), effective immediately.

The IRGC is a multi-service primary branch of the Iranian Armed Forces, established by Ayatollah Ruhollah Khomeini in May 1979 after the Iranian Revolution. Its constitutional mandate includes protecting the integrity of the Islamic Republic by preventing foreign interference, thwarting coups, and suppressing movements seen as threatening the Islamic Revolution's ideological legacy. Canada joins Bahrain, Saudi Arabia, Sweden and the United States in its designation of the group as a terrorist organization.

The decision stems from compelling evidence indicating the IRGC's direct involvement or facilitation of terrorist activities. This includes acts carried out in association with recognized terrorist groups like Hezbollah and Hamas.

Under the *Criminal Code* listing, Canadian financial institutions are mandated to freeze any assets linked to the IRGC. It is a criminal offense for individuals, both domestically and internationally, to engage in transactions involving property controlled by designated terrorist groups.

Minister LeBlanc emphasized that the announcement builds on Canada's longstanding efforts to confront threats posed by the Iranian regime and its affiliates. Notably, previous measures have targeted entities supported by the IRGC, such as Hezbollah, Hamas, the Palestinian Islamic Jihad, and the Taliban. Furthermore, recent designations and sanctions under various legislative frameworks have effectively curtailed the influence and operations of Iranian entities engaged in human rights abuses and threats to global peace.

With the addition of the IRGC to the listed terrorist groups under the *Criminal Code*, there are now 77 listed entities.

Minister of Public Safety Publishes Guidance on Criminal Code Exceptions when Providing Aid in Areas Controlled by Terrorist Groups

The anti-terrorist financing provisions of Canada's *Criminal Code* were amended by Bill C-41 on June 20, 2023, allowing humanitarian exceptions and establishing an Authorization Regime for specific activities in terrorist-controlled areas. For nearly a year, charities and non-profits lacked guidance on how to operate under the new law. On June 19, 2024, the Department of Public Safety Canada launched the Authorization Regime and released operational policy guidance to clarify the process for applying under the new exceptions.

For a detailed explanation of the guidance, please see [AML/ATF and Charity Law Alert No. 54](#)

9. Save the Date: Thursday, November 14, 2024

Carters Annual Charity & Not-for-Profit Law Webinar hosted by Carters Professional Corporation will be held on **Thursday, November 14, 2024**. Special Guest Speakers will be The Honourable Ratna Omidvar, C.M., O.Ont., Senator for Ontario & Mr. Bruce MacDonald, President and CEO of Imagine Canada. Details will be posted soon at www.carters.ca.

IN THE PRESS

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

Mondaq featured the following articles on their website in June 2024:

- [Canada's Proposed Foreign Influence Transparency Registry](#) published June 6, 2024, written by Terrance S. Carter, Cameron A. Axford, Urshita Grover, and Martin U. Wissmath
- [Tax Court of Canada Hears Clergy Residence Deduction Appeal](#) published June 7, 2024, written by Jacqueline M. Demczur and Esther S.J. Oh
- [Statistics Canada's Report on Non-Profit Organizations in Canada, 2023](#) published June 7, 2024, written by Urshita Grover
- [Court Refuses to Alter Terms of Charitable Trust](#) published June 7, 2024, written by Jennifer M. Leddy

- [Court Finds Canadian Not-for-Profit Infringed of US Not-For-Profit](#) published June 10, 2024, written by Sepal Bonni

RECENT EVENTS & PRESENTATIONS

The ONCA & Related Governance Issues was presented by Terrance S. Carter and Esther Shainblum at the Governance Professionals of Canada webinar on Wednesday June 26th.

UPCOMING EVENTS

[CSAE Summer Summit 2024](#) will be held from July 10-12 in Kingston, Ontario, hosted by Trillium Network. Esther Shainblum and Terrance S. Carter, from Carters Professional Corporation will be co-presenting on Thursday July 11th from 3:15 pm to 4:15 pm on the topic of “Living with the ONCA – Lessons Learned to Date”.

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 Professional Corporation, 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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