

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

## MARCH 2024

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## PUBLICATIONS & NEWS RELEASES

### 1. Charities Directorate Releases Comprehensive Report on its Activities

By [Jacqueline M. Demczur](#) and [Jennifer M. Leddy](#)

On March 14, 2024, the Charities Directorate of the Canada Revenue Agency (“CRA”) released the [Report on the Charities Program 2021 to 2022](#) (the “Report”). This document provides a summary of the Charities Directorate’s activities during its fiscal period from April 1, 2021 to March 31, 2022. The Report notes that there are 74,615 charitable organizations in Canada, as well as 6,368 private foundations and 4,908 public foundations, for a total of 85,891 registered charities. Charities reported spending \$4 billion on activities outside of Canada.

The Report states that 82% of applicants used online services for submissions in the 2021-2022 fiscal period. During this period, the CRA received a total of 2,375 applications for charity registration, along with 84 applications for registration as an “*other qualified donee*” (“OQD”), with a qualified donee being a registered charity, a registered Canadian amateur athletic association, a registered journalism organization, amongst others. These numbers differ from the previous fiscal period as set out in the [Report on the Charities Program 2020 to 2021](#), specifically during which 1,800 applications were made and with 91% of those being made online. Of those applications made in the 2021-2022 period, 10% were described by the CRA to be of a “high risk/complexity level”, which is comparable to the prior years.

Approval of the application was the most common outcome for those seeking charitable status. Refusal of charitable status was very low, totalling only 1% of applications. This was higher for OQDs, where refusal made up 13% of the applications. The most common reasons for refusal of charitable status were promotion of sport, non-charitable activities, acting as a conduit, lack of direction and control, and lack of information.

According to the Report, the CRA seeks to foster voluntary compliance within the charitable sector, utilizing a risk-based strategy to tailor interventions accordingly. Further to this, the CRA completed 103 virtual Charities Education Program (“CEP”) visits (*i.e.* one-on-one virtual visits with registered charities to enhance their understanding of compliance obligations) and 182 audits in the 2021 to 2022 fiscal period. The outcome of these 182 audits consisted of 81 education letters, 45 compliance agreements, 28 notices of intention to revoke, 7 “no changes”, and 6 penalties/suspensions.

As well, there were 1,720 compliance revocations in the 2021-2022 period, including 974 voluntary revocations, 714 delinquent revocations for failure to file the T3010, and 29 revocations for cause. This

was up from the 2020-2021 fiscal period, which saw 841 compliance revocations, with a similar breakdown for types of revocations. The most common findings in audits of non-compliance in both periods included incomplete/incorrect returns, incomplete/inaccurate donation receipts and inaccurate books/records.

The Charities Directorate also supported the CRA administered subsidy programs, such as the Canada Emergency Wage Subsidy (“CEWS”) and the Canada Emergency Rent Subsidy (“CERS”), with 236,322 approved CEWS applications and 44,302 approved CERS applications. These programs saw a large increase from the earlier 2020-2021 period, which had 138,539 CEWS and 12,307 CERS applications approved.

Among other consultations and stakeholder engagement, including the Technical Issues Working Group and the Federal/Provincial/Territorial Network of Charity Regulators, the Report briefly summarizes the Advisory Committee on the Charitable Sector’s (“ACCS”) work, which was also reviewed most recently in the [October 2022 Charity & NFP Law Update](#). Since its inception, the ACCS has released three reports, with the CRA reviewing each recommendation to assess implementation requirements, lead responsibilities, resource needs, and potential next steps. Notably, the CRA undertook an open call for applications to appoint new committee members, emphasizing inclusivity and diversity in representation. Following this process, nine new members were appointed to the ACCS on April 5, 2022, with the intent of providing a comprehensive and varied perspective within the Committee to address the diverse needs of the charitable sector.

With regard to enquiries from the charitable sector, the Report stated that in the 2021 to 2022 fiscal period, charities primarily requested account updates, such as changes to directors, addresses, legal names, and contact information, which reflects an increasing trend toward utilizing online services for such requests in response to the digital shift. Furthermore, alongside addressing written inquiries, the Charities Directorate’s client service representatives aided charities with various needs over the phone, with common enquiries revolving around online services and My Business Accounts, while also assisting with account modifications and providing guidance on Form T3010, applications, and receipting.

During the 2021 to 2022 fiscal period, the Report indicated that the Charities Directorate received a total of 55,077 telephone enquiries and 12,310 written enquiries. For written enquiries, the service standards aimed for routine responses within 45 days and complex responses within 120 days, both of which were met 99% of the time. In terms of telephone service, the standard was to respond within two minutes, which

was achieved 88% of the time. Additionally, the target of 85% of callers successfully reaching the telephone service was exceeded, with a success rate of 98%.

The Charities Directorate undertook 38 audits between 2008 and March 31, 2022 related to potential terrorist abuse of Canadian charities. The results of these included 14 notices of intention to revoke, 12 compliance agreements, 7 penalties/suspensions, 4 education letters, and 1 pre-registration audit.

The Report provides a helpful snapshot of the activities that the Charities Directorate undertook in its 2021 to 2022 fiscal period. Charities are encouraged to review the Report and its findings in more detail as a means of better understanding the administrative landscape in which they operate.

## 2. Legislation Update

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

### **Standing Committee on Finance Makes Recommendation on Alternative Minimum Tax Regime**

In anticipation of the 2024 Federal Budget, a report of the House of Commons Standing Committee on Finance entitled [Shaping Our Economic Future: Canadian Priorities](#) (the “Report”) was released in February 2024. Following a study of the pre-budget consultations launched in June 2023, the Report sets out 359 recommendations over five broad categories, including support for businesses, support for people, support for communities, climate change and energy policy, and federal fiscal framework and government.

Notably, for the charitable sector, Recommendation 311 states:

Before proceeding with the proposed changes to the Alternative Minimum Tax, determine the impact these changes will have on charitable revenues by conducting an independent economic and financial analysis.

As discussed in our [August 2023 Charity & NFP Law Update](#), the alternative minimum tax (“AMT”) is a way of ensuring that every individual pays at least a minimum amount of tax. *Legislative Proposals Relating to the Income Tax Act and the Income Tax Regulations (Budget 2023 and other proposals)*, released by the Department of Finance on August 4, 2023 proposes to significantly expand the scope of the AMT, which would, in turn, significantly reduce tax benefits to donors, subject to the AMT when those individuals donate publicly listed securities and capital property to charities.

Following this, various organizations voiced concerns and recommendations on the proposed new AMT provisions, as reported in our [September 2023 Charity & NFP Law Update](#). While Recommendation 311 calls on the federal government to consider the impact of the new AMT provisions on the charitable sector, it remains to be seen what, if any changes, will be made to the AMT in the upcoming Federal Budget.

## **Public Safety Canada Updates Guidelines on *Supply Chains Act***

As reported in our [November 2023 Charity & NFP 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. Charities and not-for-profits are not exempted under the Act. Should they fulfill the criteria for being categorized as “entities” within the Act, they must submit annual reports. As reported upon previously, considering the high threshold requirements under the Act, the definition of “entities” will generally only apply to large organizations.

A guidance was released in December 2023 in anticipation of the Act coming into effect. [This guidance was updated](#) by Public Safety Canada on March 7, 2024 (the “Updated Guidance”). The Updated Guidance contains a number of changes from the original guidance, one of which appears to create some uncertainty, as it seems to contradict the Act itself.

Under the Act, applicable entities which produce (defined in section 2 as “manufacturing, growing, extracting and processing of goods”) sell, or distribute goods in Canada or elsewhere, or import goods into Canada, must file reports to the Minister. Entities that control other entities engaged in these activities are also required to file under the Act. However, the Updated Guidance removes the references to “distributing” and “selling”, leaving “producing” and “importing” as the actions which would make an entity responsible to file a report. Despite this change to the Updated Guidance, the Act has not been amended. As the text of the Act has not changed, the law remains the same notwithstanding the wording of the Updated Guidance.

Another change in the Updated Guidance concerns subsidiaries and parent entities. Under the Act, parent entities can make one report that includes information from their subsidiaries which are also caught under the Act. The new Updated Guidance stipulates that, parent companies would use consolidated financial statements to determine if they meet the thresholds set out in the Act. Conversely, subsidiaries must assess if they are caught under the Act without using consolidated statements of the parent company in this determination.

The original guidance stated that reports should be 10 pages long. The Updated Guidance clarifies that this is not a requirement, but only a suggestion.

Finally, the Minister posted [a list of frequently asked questions and answers](#), which is a helpful resource tool.

Organizations, including charities and not-for-profits, are reminded to check with their legal counsel to determine if they are required to file a report under the Act before the May 31, 2024 deadline.

### 3. CRA Responds to Taxpayers' Ombudsperson's Recommendation Regarding Anti-Bias Training

By [Ryan M. Prendergast](#) and [Terrance S. Carter](#)

In a recent update regarding several recommendations made by the Office of the Taxpayers' Ombudsperson (the "Ombudsperson"), the Canada Revenue Agency ("CRA") [responded](#) to suggestions regarding unconscious bias training. As reported on in our [March 2023 Charity and NFP Law Update](#), the Ombudsperson recommended last year in a report titled "[Charity Begins with Fairness: More to Explore](#)" that the CRA needed to implement unconscious bias training for all employees involved in the audit process within the Charities Directorate, citing low completion rates for such training among Review and Analysis Division ("RAD") employees. The recommendation aimed to address a perceived stigma associated with acknowledging biases, suggesting that destigmatizing unconscious bias could enhance efforts to address it effectively within the CRA.

This suggestion followed an inability of the Ombudsperson to comprehensively review the CRA's auditing process, which was under scrutiny after concerns of anti-Muslim bias within the CRA and their treatment of Islamic charities came to light.

The CRA agreed with the recommendation of the Ombudsperson, stating that CRA employees are actively engaging in courses and learning events centered around diversity, inclusion, and bias as part of the organization's broader efforts to promote equity and anti-racism. The Charities Directorate says that it has proactively participated in various related courses offered internally and externally. Specifically, auditors, including those auditing registered charities, are stated as undergoing mandatory training on compliance activities, emphasizing professional judgment, skepticism, and impartiality while safeguarding against unconscious bias. Additional unconscious bias training is available to all CRA employees through the Canada School of Public Service and internal CRA programs.

The CRA has outlined short-, medium-, and long-term actions to foster a culture of respect, empathy, diversity, and inclusion following the Ombudsperson's recommendations. Immediately, mandatory unconscious bias training will be included in performance agreements for all indeterminate CRA

employees, while term employees can access it voluntarily. Specific to the Charities Directorate, short-term actions include making unconscious bias training mandatory for employees involved in charity audits and updating training materials. In the medium term, a new mandatory training suite will be introduced focusing on unconscious bias, cultural competency, and religious literacy. Long-term plans involve offering annual refresher training on key concepts covered in the mandatory training suite.’

The CRA affirmed its dedication to equipping its employees to serve all Canadians with empathy and respect. The Charities Directorate emphasized the completion of a new mandatory training suite covering unconscious bias, cultural competency, and religious literacy for all its employees. Additionally, the Directorate highlighted the importance of completing annual refresher courses, stating that it will ensure its employees maintain this practice.

The CRA’s agreement with the Ombudsperson’s recommendation and the additional steps that have been announced are a very positive development that will help to regain confidence in the role of the CRA as the regulator of charities under the *Income Tax Act*, in particular with regard to audits of charities involving ethnic communities, including the Muslim community.

## 4. Statistics Canada Reports Fewer Donations in 2022

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

On March 14, 2024, Statistics Canada released a new report concerning charitable spending in the 2022 year entitled [Fewer charitable donors, less money donated in 2022](#). As its title suggests, the report states that the charitable sector had received significantly less donations that year.

In 2022, just under 5 million Canadian tax filers, constituting 17.1% of all tax filers, declared charitable donations, marking a slight decrease of 0.3% fewer declarants from the previous year, despite a 3.0% increase in the overall number of tax filers. The total amount donated in 2022 declined for the first time since 2016 (decreasing by 3.1% to \$11.4 billion) despite the prior year’s significant increase of 11.5% in 2021, the largest surge since 2005.

Despite decreases in both the number of donors and total donations, there was a 5.6% rise in median donations to \$380 in 2022. In this regard, there were 1.6% fewer donations of \$499 (or less) and 1.4% more donations ranging from \$500 to \$25,000. In addition, there was a notable decrease in the number of tax filers reporting donations of \$100,000 or more by 12.4% in 2022, after this figure had risen by



approximately one third in 2021, with the total amount donated down by 13.4%. In summary, there were more mid-sized donations, although fewer large donations made in 2021.

The report found that there was an increasing proportion of total donations coming from tax filers with higher income levels. In this regard, the report states that in 2022, 6.2% of tax filers earning below \$40,000 reported making a charitable donation, compared to 39.2% of those earning \$100,000 or more. Despite comprising only 13.0% of all tax filers, individuals earning \$100,000 or more remained the largest contributors to charitable giving, though there was a decrease in total donations from those with an income between \$200,000 to \$499,999.

Conversely, individuals with incomes of less than \$40,000 represented 48.8% of all tax filers, but accounted for only 7.4% of total donations in 2022 (a slight decrease from 8.7% in 2021). The highest income group, earning \$1 million or more annually, reported the highest median donation in 2022, followed by earners making \$500,000 to \$999,999, with both groups contributing over one-fifth (22.5%) of the total donation values reported. The above figures are not surprising, as lower income earners have had less disposable money to meet basic needs given the ongoing increases in costs of living, whereas higher income earners may be less impacted by the higher costs of living.

The report found older tax filers were more likely to make charitable donations. In 2022, 4.8% of tax filers under the age of 25 reported making charitable donations, but as the age of the tax filer rises this proportion rises and peaks at 23.9% for those aged 65 or older. While individuals aged 24 and younger provided 3.2% of the charitable donors, those aged 65 and older contributed significantly more, with seniors accounting for 34.2% of donors and making the highest median donation of \$590.

For further analysis and information concerning donors based on their personal background and provinces of residence, reference may be made to the report.

As Canadians face higher costs and uncertainties in their ability to meet their own day-to-day needs, many have had fewer disposable resources to donate to the charitable sector. This unfortunately comes at a time when the charitable sector's programs to help and support those facing various forms of challenges need it the most. It remains unclear how charities will cope with this new paradigm.



## 5. Employment Update

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

### **Ontario Court Finds Termination Clause Invalid, Employee Receives \$150K in Damages**

Ontario employers, including charities and not-for-profits, may need to update their employment contracts again to ensure the language in termination clauses complies in exacting detail with provincial minimum employment standards legislation. In [Dufault v The Corporation of the Township of Ignace](#), a wrongful dismissal decision published February 16, 2024, the Ontario Superior Court (the “Court”) struck down the termination clause in the fixed-term contract (the “Contract”) between the plaintiff, Karen Dufault (the “Employee”), and the defendant, the Township of Ignace (the “Employer”). The Court found that certain language in both the “for cause” and “without cause” sections of the Contract’s termination clause contravened parts of the *Employment Standards Act, 2000* (ESA) and therefore the entire termination clause was deemed not enforceable. That left the Employee with damages for the whole remainder of the Contract term: 101 weeks’ salary and benefits, for a total award of \$157,071.57.

The Employee was hired in October 2021 as a Youth Engagement Coordinator, which continued for over a year until November 2022, when the Employee signed a fixed-term employment contract with the Employer, with an end date on December 31, 2024. The Employer terminated the Contract early on a “without cause basis” in January 2023, and paid the Employee \$2,884.61 plus some benefits for two weeks’ compensation. At the time of termination, the Employee was earning a base annual salary of \$75,000 plus benefits. Facing a summary judgment for wrongful dismissal, the Employer argued the Contract was clear and they had met their legal obligations by paying the minimum of two weeks’ salary in lieu of notice as required under the ESA. The Court did not agree.

The Contract was found to contravene the ESA in three respects, according to the Court. Firstly, the use of “for cause” in the Contract “conflates grounds for dismissal under the ESA with a common law standard that does not appear in the ESA.” The statutory test for termination without notice is a higher threshold and involves “wilful misconduct” as stated in an ESA regulation (O Reg 288/01), the Court noted. “For cause” or other language that expands the scope of dismissal beyond what is stated in the ESA fails to meet the test and does not justify termination without notice. Secondly, the “without cause” section of the Contract’s termination clause differed from the ESA by providing payment of the Employee’s “base salary” for the notice period, whereas the ESA provides all “regular wages” without any reduction, or a lump sum payment in lieu of notice, which includes commissions. In this case the Court also included vacation pay and paid sick days as part of “regular wages” identified in the Contract. Thirdly, the Contract

stated that the Employer had “sole discretion” to terminate the Employee’s employment “at any time.” That language is incorrect, the Court found, because the ESA requires employment to be reinstated after a job-protected leave of absence, and does not allow termination “in reprisal for attempting to exercise a right” under the ESA. As a result of these contraventions, the Court held the termination clause was unenforceable. Since the Contract was on a fixed term, and there was no valid clause for early termination, the Employer owed the Employee the rest of her salary as if she had completed all of her work until the end date.

Jurisprudence in Ontario “has demanded stricter standards to achieve compliance with the ESA” since 2015, the Court stated, citing precedent case law. The *Dufault* decision is the latest in a line of recent cases since *Waksdale v Swegon North America Inc.* that has made it significantly more difficult for employers in Ontario to terminate employees, with or without cause, while paying out termination amounts limited to the minimum standards required by the ESA. Unless employers can draft termination clauses that are precise and wholly compliant with provisions of the ESA to the satisfaction of judges, a challenging and uncertain endeavour, they may be required to follow common law notice periods — far lengthier, and much more expensive, than the minimums provided under the ESA. It remains to be seen how further judgments will follow this trend — or reverse it — and whether, or how, the Ontario legislature will respond.

## 6. AI Update

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

### **British Columbia Tribunal Finds Representation Made by AI Chatbot Binding on Company**

As AI becomes more accessible to corporate entities, many seek to optimise efficiency by automating processes where possible. A very common example of this is the use of AI “chatbots”, programs on a website which allow visitors to ask questions to an AI interface and receive help as though they were speaking with a human representative.

The efficiency gained by the employ of chatbots is not without potential pitfalls, as the British Columbia Civil Resolution Tribunal’s February 14, 2024 decision in [Moffatt v. Air Canada](#) demonstrates. Here, a customer of the respondent airline sued for negligent misrepresentation after being informed that information he relied on when buying a ticket was incorrect.

Mr. Jake Moffatt was researching flights following the death of his grandmother on November 11, 2022. A chatbot on the website told him that bereavement fares, special discounts given to customers who are

travelling due to the death of a loved one, could be applied retroactively, up to 90 days from the purchasing of the ticket, in addition to providing a link to the website page discussing this topic. Relying on this information, Mr. Moffatt purchased a one-way ticket between Toronto and Vancouver on November 11, 2022, and then on November 16, another one-way ticket, this time back to Toronto from Vancouver, at regular fare, expecting to apply retroactively for the bereavement fare after his return. The following day, he applied for the bereavement fares on a retroactive basis. From December 2022 through to February 2023, Mr. Moffatt was in contact with Air Canada, attempting to receive a reimbursement from the application of the special rate.

Air Canada told him that the chatbot had provided “misleading words” regarding the application of bereavement fares, but pointed out that the webpage which it had linked contained the correct policy. Air Canada ultimately refused to provide the refund.

The tribunal interpreted Mr. Moffatt’s claim against Air Canada as a case of negligent misrepresentation. As a customer, the airline owed him a duty of care. By allowing a chatbot to negligently make an incorrect representation to Mr. Moffatt, the company breached this duty of care. Mr. Moffatt then relied upon that negligent misrepresentation, to his financial detriment.

Air Canada argued that it was not responsible for representations made by its agents, representatives or servants, including the chatbot, and also suggested that the chatbot was its own entity. Both submissions were rejected by the tribunal, which stated “It should be obvious to Air Canada that it is responsible for all the information on its website. It makes no difference whether the information comes from a static page or a chatbot.” The tribunal also took issue with Air Canada’s suggestion that customers would bear the responsibility of having to ensure that information found on the company website was accurate. Finally, Air Canada, while arguing that it was “not liable due to certain terms or conditions of its tariff” failed to provide the tribunal with a copy of the tariff.

The tribunal calculated the difference between the bereavement fare rate and the full price Mr. Moffatt paid to \$650.88 in damages, plus pre-judgment interest and legal fees.

*Moffatt*, while only a tribunal case, should be of concern to any organization that seeks to use AI, including chatbots, to interact with the public, such as in providing information on a topic. Courts may treat statements made by chatbots the same way as representations by individuals speaking on behalf of the organization, which the public can expect to rely on. Charities and not-for-profits should therefore be

mindful that the use of chatbots carries risks, including the production of inaccurate information that can mislead the public.

## **New EU Artificial Intelligence Law Will Impact Canadian Organizations Serving EU Residents**

The European Union (“EU”) has become the first governing body to adopt comprehensive artificial intelligence (“AI”) regulations. On March 13, 2024, the EU Parliament adopted the *Artificial Intelligence Act* (the “Act”), which aims to ensure “safety and compliance with fundamental rights, while boosting innovation.” The Act, like the EU’s *General Data Protection Regulation*, has an extraterritorial component, which applies to certain Canadian organizations. In particular, Canadian organizations that use AI components, such as chatbots, in providing services online to EU consumers will be caught under the Act.

The new rules, which establish obligations for AI based on its potential risks and level of impact, include a ban on certain AI applications that pose threats to citizens’ rights. These banned applications encompass biometric categorization systems based on sensitive characteristics, untargeted scraping of facial images for facial recognition databases, emotion recognition in workplaces and schools, social scoring, predictive policing solely based on profiling individuals, and AI that manipulates human behavior or exploits vulnerabilities.

High-risk AI systems, posing significant potential harm to health, safety, fundamental rights, environment, democracy, and the rule of law, are subjected to clear obligations. These encompass risk assessment and reduction, maintenance of use logs, transparency, accuracy, and human oversight. Potential victims may submit complaints regarding AI systems to consumer protection bodies, to be set up locally by each member state, and receive explanations for decisions affecting their rights.

Transparency requirements are outlined for general-purpose AI (“GPAI”) systems, including compliance with EU copyright law and publishing detailed training content summaries. Stringent measures are imposed on powerful GPAI models to mitigate systemic risks and ensure incident reporting. Moreover, deepfakes – artificial or manipulated images, audio, or video content – must be clearly labeled.

As indicated above, the Act will affect organizations outside of the EU providing online services containing AI elements and accessible to EU consumers. Organizations which use AI in their processes are referred to as “deployers” by the Act, and have a number of obligations under the Act. For example, deployers who utilize “high-risk” AI systems will be required to ensure that human oversight is present in any decision-making process influenced by AI. As well, deployers are required to ensure that the AI

system is accordance with the system provider’s instructions, and that there is general oversight in its application. Fundamental rights impact assessments will generally be required of most organizations.

Canadian charities and not-for-profits that utilize AI and have donors and/or customers in the EU should be aware of the new regulations. Penalties for noncompliance are harsh — 35 million Euros or 7% of total worldwide annual turnover — whichever is higher. While many provisions will take effect two years after the Act comes into force, the regulations pertaining to banned AI practices and associated penalties will take effect six months after the Act comes into force, and generative AI provisions will take effect twelve months after the Act comes into force.

## 7. Privacy Update

By [Martin U. Wissmath](#) and [Cameron A. Axford](#)

### **Ontario Privacy Office Investigates Student Complaint about Exam Monitoring Software**

Universities are within their lawful rights to use software to monitor students during exams taken with computers, but they should take extra measures to protect student data, according to the provincial privacy commissioner. In its [report](#), published February 28, 2024, the Office of the Information and Privacy Commissioner of Ontario (the “IPC”) addressed a complaint concerning McMaster University’s utilization of exam proctoring software under the *Freedom of Information and Protection of Privacy Act* (“*FIPPA*” or the “Act”). This software consists of two components: Respondus LockDown Browser, which restricts users’ computer access, and Respondus Monitor, which scrutinizes audio and video feeds of students during exams to screen for potential cheating. The IPC initiated an investigation to examine McMaster University’s use of this proctoring software. The complainant requested anonymity without the IPC disclosing their identity and complaint to the university. Charities and not-for-profits are not subject to *FIPPA*, however, this complaint highlights the importance of taking precautions to protect personal information when using software and ensure that a best-practice standard is maintained to avoid potential liability with regard to privacy laws.

The IPC investigation found that McMaster University’s administration of exams and appointment of examiners fall within its lawful authority. Online proctoring to maintain exam integrity is deemed an appropriate measure for certain exam types, thus also lawful. Regarding the necessity of personal data collection through Respondus software, the IPC found that Respondus LockDown Browser collects only minimal personal data essential for its functionality. However, Respondus Monitor gathers more sensitive personal information, including biometric data, utilizing AI technology, which raises significant privacy

concerns. Despite this, the collection of personal information by Respondus Monitor on behalf of the university is deemed necessary for effective exam proctoring, thus authorized under subsection 38(2) of the Act.

Nonetheless, the university falls short in providing adequate notice of personal data collection as mandated by subsection 39(2) of the Act. Furthermore, the use of students' personal information via Respondus Monitor does not align with subsection 41(1) of the Act. Additionally, the existing contractual arrangement between the university and Respondus fails to fully safeguard collected personal data and permits Respondus to utilize such data for system enhancement without students' consent, contravening subsection 41(1) of the Act.

Consequently, the IPC proposed a series of recommendations to bring the university into compliance with the Act.

The university was advised to consolidate its notice of collection of personal information related to Respondus Monitor in a clear, comprehensive statement for student accessibility. It should obtain written assurances from Respondus to cease certain data practices and prompt notification of compelled disclosures. Contractual requirements with Respondus should include regular data deletion and confirmation, alongside thorough testing for software removal. Given the heightened risks associated with AI technologies, the IPC further advised that the university implement additional safeguards concerning the use of Respondus Monitor, including algorithmic impact assessments, student consultation, opt-out options, easier flag challenges, and scrutiny of data sources. Prohibitions on unauthorized data use and ongoing monitoring for biases were also recommended. These enhanced protections should be integrated into the university's ongoing utilization of the software and any future agreements with Respondus, according to the Report.

## 8. Career Opportunities at Carters

There are currently two career opportunities available at Carters:

### **Charity Lawyer**

Carters is currently looking for a Charity Lawyer with a minimum of two to four years experience in charity and not-for-profit law with a focus in corporate and tax law to join our team of charity and not-for-profit lawyers. The successful candidate will work on a wide variety of files including those dealing with incorporations, applications for charitable status, gift planning and providing advice on complex

corporate and tax structuring. The successful candidate will be able to work remotely with in person connection being available at either our Ottawa or Orangeville office locations.

## **Civil Litigation Associate**

Carters Professional Corporation is currently looking for a Civil Litigation Associate with three to eight years' experience to service our Toronto office. Experience in general corporate/commercial litigation is fundamental, and other areas, such as charities and estate litigation would be an asset. Strong drafting and research skills, along with substantive court experience, including motions and trial experience are essential.

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

## **IN THE PRESS**

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

[Reminder of Possible T3 Trust Reporting for Charities and NPOs Due April 2, 2024](#) written by Theresa L.M. Man, Jacqueline Demczur and Terrance S. Carter was published by Mondaq Canada on March 11, 2024

[Standing Senate Committee on Human Rights Releases Report on Islamophobia](#) written by Adriel Clayton and Terrance S. Carter was published by Mondaq Canada on February 14, 2024

**Lexpert Rankings** - Five lawyers from Carters Professional Corporation, [Terrance S. Carter](#), [Theresa L.M. Man](#), [Jacqueline M. Demczur](#), [Esther S.J. Oh](#), and [Ryan M. Prendergast](#), have been ranked as leaders in the area of Charities by *The Canadian Legal Lexpert® Directory 2024*.



## **RECENT EVENTS & PRESENTATIONS**

Terrance S. Carter and Robert Hayhoe presented an “Update from Canada” at the American Bar Association (ABA) Tax Exempt Organizations Committee meeting held on January 18, 2024.

[Regulatory Policy Files on our Radar in 2024](#) was the topic of a podcast hosted by Imagine Canada that featured Terrance S. Carter on February 8, 2024.

## **UPCOMING EVENTS**

[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. Terrance S. 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.

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

## LEGAL TEAM

Editor: Terrance S. Carter

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



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



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



[Terrance S. Carter](#), B.A., LL.B, TEP, Trademark Agent – Managing Partner of Carters, Mr. Carter practices in the area of charity and not-for-profit law, and is counsel to Fasken on charitable matters. Mr. Carter is a co-author of *Corporate and Practice Manual for Charitable and Not-for-Profit Corporations* (Thomson Reuters), a co-editor of *Charities Legislation & Commentary* (LexisNexis), a contributing author to *The Management of Nonprofit and Charitable Organizations in Canada*, 5<sup>th</sup> Edition (LexisNexis), co-author of *Branding and Copyright for Charities and Non-Profit Organizations*, 3rd Edition (LexisNexis). He is recognized as a leading expert by *Lexpert*, *The Best Lawyers in Canada* and *Chambers and Partners*. Mr. Carter is a former member of CRA Advisory Committee on the Charitable Sector, and is a Past Chair of the Canadian Bar Association and Ontario Bar Association Charities and Not-for-Profit Law Sections.



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



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



[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 *Charity & Not-for-Profit Law Seminars*.



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



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



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



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



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



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



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



[Esther Shainblum](#), B.A., LL.B., LL.M., CRM – Ms. Shainblum 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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