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Charity & NFP Law Update
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Updating Charities and Not-For-Profits on Recent Legal Developments and Risk Management Considerations

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Sections

Highlights

Publications & News Releases

1. Recent Court Decision Highlights Church Property and Community Contribution Issues

By Terrance S. Carter and Adriel Clayton

In a recent decision dated May 21, 2025, the Supreme Court of Newfoundland and Labrador (the "Court") addressed a dispute over the ownership and sale of the Holy Rosary Church property ("Church" or "Property") in Portugal Cove South on the Southern Avalon Peninsula in Newfoundland and Labrador. The case, *Roman Catholic Episcopal Corporation of St. John's (Re)*, involved the Roman Catholic Episcopal Corporation of St. John's (RCECSJ), whose bankruptcy proceedings have been converted to the *Companies' Creditor Arrangement Act* (CCAA), and which is in the process of selling its assets to raise funds to pay off creditors. While this case concerns the ownership of a Catholic church and a community which is 98% Catholic, it may also be of interest to other faith groups because of its discussion and decision on the property rights of those who contributed funds to a Catholic parish.

The RCECSJ entered CCAA proceedings as a result of the multiple abuse claims that arose out of the Mount Cashel Orphanage in St. John's, NL. The Court of Appeal of Newfoundland and Labrador had found that the RCECSJ was vicariously liable for these claims in *John Doe (G.E.B. #25) v The Roman Catholic Episcopal Corporation of St. John's*, as discussed in our *Church Law Bulletin No. 58*. As referenced above, as part of the insolvency and CCAA proceedings, the RCECSJ is required to liquidate assets to raise funds to pay creditors. One such asset is the Church.

The RCECSJ sought two court orders: one declaring its legal and beneficial ownership of Holy Rosary Church and its right to sell the Property, and another for a permanent injunction to prevent interference with the sale by local residents and the PCS Historical Corporation.

The PCS Historical Corporation and some residents of Portugal Cove South opposed the sale of the Church. They did not claim legal ownership of the Property but claimed that their significant efforts and expense in renovating the Church entitled them to an equitable interest in the Property and to prevent the sale

Evidence presented highlighted the community's deep connection to the Church, which included a community committee and later the formation of the PCS Historical Corporation, which spearheaded fundraising and much needed renovations of the Church between 2015 and 2019. The community expressed strong opposition to the sale, referring to the Church as "our Church" and stating they would stop the sale "by all means possible".

The Court first examined the RCECSJ's claim to legal ownership. While the RCECSJ lacked formal title documents, the Court noted this is not uncommon in rural Newfoundland, where land ownership has historically been less formalized. The RCECSJ's claim was supported by evidence of long, continuous, and exclusive possession of the Property since at least 1956, which could establish ownership through a concept akin to "adverse possession" or "squatters' rights".

Furthermore, the Court found that the RCECSJ's incorporating legislation, *Act to Incorporate the Roman Catholic Bishop of Saint John's*, passed in 1913 (the "1913 Act"), vested in the RCECSJ all land and property legally held or used as property of the Roman Catholic Church and its related religious or educational institutions at that time. Evidence suggested the land may have been used for church or educational purposes near 1913, potentially bringing it under this Act. Based on the evidence of long, exclusive possession and the effect of the 1913 Act, the Court was satisfied that the RCECSJ is the legal owner of the Property.

The Court then considered the PCS Historical Corporation's claim of an equitable or beneficial interest in the Church based on their renovation efforts. While the PCS Historical Corporation claimed to have fundraised over $131,000 for the renovations to the Church, the Court found that the RCECSJ actually

provided the majority of the funds, contributing $93,500 compared to the PCS Historical Corporation's $43,902.05. The RCECSJ's contribution included a $50,000 grant obtained by the parish and funds from within the Archdiocese.

The Court rejected the claim for an equitable interest in the Church under the doctrines of property being held in trust as well as unjust enrichment. With regard to a claim of a trust, the Court found that there was no evidence of a clear intention to create a trust, that there was nobody to maintain the trust, and that the RCECSJ was not aware of the alleged terms of trust involving what was donated.

Concerning unjust enrichment, while the RCECSJ received a benefit (increased property value from renovations) and the PCS Historical Corporation/residents suffered a deprivation (costs and effort), the claim of unjust enrichment failed because the Court found there was a “juristic reason” for the benefit. The Court found the contributions were made with “donative intent” – intentional giving without expectation of remuneration. The community residents, as parishioners, responded to a challenge to rebuild their Church, acting as members of the parish, not signalling they expected compensation or ownership in return. Parishes are expected to fund their operations and maintenance, often through volunteer efforts. The Court concluded that the claim was a form of “strategic revisionism” in response to the RCECSJ’s need to sell assets under court order, noting that the sale was not for the RCECSJ’s enrichment but to pay creditors.

Given the strong and active opposition, including changing locks and preventing access to the site, the Court found that the PCS Historical Corporation and residents had committed or threatened torts, including trespass, nuisance, and interference with economic relations. Their clear statements of intent to continue obstructing the sale demonstrated the likelihood of recurrence. The Court determined that a monetary award would be difficult to enforce and inadequate; only an injunction could restore control and access to the RCECSJ. No equitable considerations prevented the granting of the injunction.

The Court granted a permanent injunction that is broad in scope, restraining the PCS Historical Corporation, its directors, officers, agents, members, and anyone else acting under its instruction or with notice of the order, from unlawfully obstructing or interfering with the RCECSJ, its employees, representatives, and agents from accessing, possessing, and selling the Church.

While the RCECSJ sought costs, the Court declined to award them against the PCS Historical Corporation or residents, acknowledging their passion but emphasizing they were wrong in law and must cease their interference.

This case offers several valuable lessons for churches and other faith groups with regard to contributions from their adherents or other members of the community:

1) Notwithstanding the common practice in rural Newfoundland and Labrador of not always documenting legal ownership, it is paramount to do so, because even long-standing community use and significant contributions may not be counted on to override established evidence of legal ownership. Organizations should ensure property ownership is clearly documented and understood by all stakeholders. When receiving community support, especially for capital projects on property owned by a charity, such as a faith group, the nature of contributions from the community should be clearly defined. Absent a formal trust agreement or clear restrictions on donations, community efforts and contributions may very well be treated, as they were in this case, as unconditional gifts with no expectation of return or equitable interest in the property, even if there is a substantial increase in the value of the property.

2) Courts overseeing insolvency, CCAA, or other similar statutory proceedings have wide discretion, including the power to make orders against third parties interfering with asset realization, to ensure the successful completion of the restructuring or liquidation process.

3) Finally, while fostering community involvement is often vital for faith-based organisations, managing expectations regarding property ownership and disposition of assets, especially

during times of financial distress, is critical. Clear communication about the organization's legal structure and property ownership can help to prevent misunderstandings.

2. CRA Releases Quarterly updates from the Charities Directorate

By Ryan M. Prendergast

On May 14, 2025, the Charities Directorate of the Canada Revenue Agency ("CRA") released its Quarterly updates from the Charities Directorate ("Update"), summarizing key achievements, priorities, and outcomes from the 2024-2025 fiscal year. The Update highlights information on the charitable registration process, the Charities Directorate's interactions with the charitable sector as well as upcoming webinars. Staying up to date with CRA communications helps charities remain compliant, manage risk, and follow best practices in governance.

The year in numbers

According to the Charities Directorate, during the 2024-2025 fiscal year, it prioritized transparency and communication by sending electronic mailing list messages to subscribers, responding to written and telephone inquiries, publishing updates on its Charities and Giving website, as well as delivering webinars on various topics.

Educating the charitable sector

During the 2024–2025 fiscal year, the Charities Directorate states that it developed and published various educational materials on its website including:

- Updated guidance: Revised CG-029, Relief of poverty and charitable registration to reflect new grant rules and affordable housing examples
- Improved compliance resources: Updated its Compliance within the charitable sector web page to explain its approach to compliance and feature updated statistics
- Terrorist abuse awareness: Published new resources for Educating charities about the risks of terrorist abuse
- Improved content: Improved webpages covering T3010 filing, fundraising, penalties and suspensions, and news and events
- Website optimization: Began work to optimize the Charities and giving website

Strengthening transparency and engagement

To strengthen transparency and sector engagement, the Charities Directorate shared compliance insights, published two editions of its Report on the Charities Program, published Report #4 of the Advisory Committee on the Charitable Sector, and launched the 2024 Call for Applications for Canadians to join the Advisory Committee on the Charitable Sector.

Legislative changes

The Update also highlights a legislative proposal by the Department of Finance due to the postal disruption in November 2024 and the Charities Directorate published its Extension of the deadline for making 2024 charitable donations to clarify the change.

Engaging with the charitable sector

The Update states that the Charities Directorate engaged with a wide range of stakeholders through meetings, presentations, webinars, academic discussions, and conferences. Notably, the Charities Directorate participated in the Canadian Bar Association Charity Law Conference where Carters also presented on key legal issues.

Understanding the registration process

The Assessment, Determinations, and Monitoring (ADM) Division of the Charities Directorate is responsible for the registration process, determining whether applicants meet the common law and legislative requirements for registration. The Update outlines key considerations before applying for charitable registration, how to apply to become a registered charity and after submitting an application for charitable registration.

Government of Canada Digital Standards

As part of the CRA's move towards a more accessible and digital-by-default environment, recent improvements include a Document verification service for immediate identity verification and CRA account access, and a Simplified access to your CRA account with a single sign-in to access My Account, MyBA, and Represent a Client.

Webinars for charities and other qualified donees

Charities can access the Charities Directorate's past webinars on its Charities media gallery webpage and can look out for two webinars planned for the coming months on completing a T3010 and Registering for a CRA Account.

To read the full Update and to register for future webinars, visit the Charities Directorate's News and events for charities webpage.

3. Legislation Update

By Terrance S. Carter and Adriel Clayton

3.1. Ontario Bill 14, Support for Seniors and Caregivers Act, 2025

Amendments have been proposed to Ontario's *Fixing Long-Term Care Act, 2021* and *Retirement Homes Act, 2010* through Bill 14, *Support for Seniors and Caregivers Act, 2025*, which was introduced and completed First Reading on May 8, 2025. Proposed amendments to the *Fixing Long-Term Care Act, 2021* include new requirements for long-term care home licensees, such as the establishment of organized programs tailored to dementia care and cultural, linguistic, religious, and spiritual needs. The amendments also create new offences related to resident abuse and neglect, and broaden the Director's authority to require reports from placement coordinators. As well, the role of Medical Director of a long-term care home, which must be a physician, would be redefined as Clinical Director, allowing the position to be held by either a physician or a "registered nurse in the extended class", as defined in the *Fixing Long-Term Care Act, 2021*.

Amendments to the *Retirement Homes Act, 2010* add a new right under the Residents' Bill of Rights, entitling residents to ongoing support from caregivers. The changes also empower specified Ministry officials to issue binding directives and recommendations to licensees regarding the prevention and management of certain infectious diseases, enhancing regulatory oversight and resident protection.

3.2. Ontario Bill 16, Sacred Spaces, Safe Places Act, 2025

Proposed legislation aiming to safeguard access to religious institutions has been introduced in Ontario. Bill 16, *Sacred Spaces, Safe Places Act, 2025* was introduced and completed First Reading on May 8, 2025, and proposes to establish protected access zones and to prohibit specific activities that interfere with entry to religious institutions. A "religious institution", as defined in Bill 16, is "a building or structure, or part of a building or structure, that is primarily used for religious worship, including a church, mosque, synagogue or temple, or a cemetery." If passed, Bill 16 would prohibit activities within designated access zones intended to dissuade or obstruct individuals from entering these institutions, including verbal persuasion or persistent requests not to enter.

Enforcement mechanisms include offences for prohibited conduct in established access zones, civil remedies for affected individuals, and provisions for court-ordered injunctions. Notably, individuals cannot be convicted unless they were aware or notified of the access zone boundaries. The legislation also grants the Superior Court of Justice authority to issue restraining orders and empowers law enforcement to make warrantless arrests in certain circumstances.

3.3. Ontario Bill 23, Protecting Seniors' Rights in Care Homes Act, 2025

Senior citizens living in retirement homes in Ontario may soon have additional protection against exploitative fee increases and cuts to services. Bill 23, *Protecting Seniors' Rights in Care Homes Act, 2025*, which was introduced and completed First Reading on May 14, 2025, proposes amendments to the *Residential Tenancies Act, 2006* (the "RTA"), which governs the rental portion of fees charged by retirement home. Proposed amendments to Part IX of the RTA aim to enhance transparency and tenant protection in care homes, particularly concerning charges for meals and care services. If passed, landlords would be required to ensure these charges align with details disclosed in mandatory information packages under section 140, which has been updated to require more specific content and obligations regarding ongoing accuracy and availability. The new section 141.1 would allow tenants and landlords to enter into agreements for additional care services or meals, and gives tenants the right to reduce or terminate these services post-agreement.

Additionally, proposed section 149.1 introduces controls on how and when charges for care services and meals may be increased, with a regulatory framework enabling limited exceptions. Consequential amendments to other provisions of the Act support these reforms.

Bill 23 also proposes to amend section 49 of the *Retirement Homes Act, 2010* to require that when a retirement home ceases operation, residents are explicitly informed that they retain their rights under the RTA. The closure notice does not amount to a formal notice of termination under the RTA.

4. Launch of Corporations Canada's Not-for-Profit Corporations Assistance Tool

By Theresa L.M. Man

Corporations Canada has introduced a new online assistance tool for not-for-profits (NFPs) incorporated under the *Canada Not-for-profit Corporations Act* (CNCA). The assistance tool is to help an NFP to determine if it is a "soliciting" or "non-soliciting" corporation under the CNCA, based on the income they receive from public sources in their most recent financial year. NFPs must self-identify as being soliciting or non-soliciting when filing their annual return because soliciting corporations have additional requirements under the CNCA.

To be able to use the tool, an NFP must meet four conditions:

1) It must be federally incorporated under the CNCA;
2) It must not have met the definition of "soliciting" in any of its last three financial years because corporations that previously identified as soliciting within the last three financial years will already be subject to ongoing requirements;
3) It must be aware of all sources of income in its most recent financial year; and
4) It must not have received donations or gifts from any corporation or entity in its most recently completed financial year.

The assistance tool asks a series of questions concerning the source and quantum of donations, gifts, grants and similar financial assistance received by the NFP, and then indicates whether the NFP is a soliciting or non-soliciting corporation based on the responses given. NFPs identified as soliciting corporations are then reminded to self-declare their soliciting status int heir next annual return.

5. Manitoba Court Exercises Inherent Jurisdiction to Replace Trustee in Charitable Estate

By Jacqueline M. Demczur & Esther S.J. Oh

The Manitoba Court of King's Bench in *Blustein Estate (Re),* confirmed that a holograph will (explained below) was valid and directed the establishment of a charitable endowment for scholarships under the terms of the said holograph will. While the Public Guardian and Trustee for Manitoba was originally named to administer the trust, the court used its inherent jurisdiction to appoint the Winnipeg Foundation as the trustee, thereby enabling implementation of the testator's desired charitable endowment. The decision highlights the need for a testator's intentions to be clearly expressed, as the court has the authority to modify terms of administration to ensure that charitable gifts are applied toward their intended charitable purpose.

Minnie Blustein passed away in 2017 without a will, but two handwritten notes written in 1972 and 1994 were found among Ms. Blustein's possessions.

Ms. Blustein had been a ward of the Public Guardian and Trustee ("PGT") for several years and remained one up to the time of her death. In this regard, the PGT became responsible for Ms. Blustein's person and property in March 2007 after an order was issued by the Director of Psychiatric Services under s. 61 of *The Mental Health Act*.

Ms. Blustein's parents pre-deceased her, she had no spouse, partner, children or siblings and the PGT was unaware of any family or friends other than a maternal cousin who lives in Ontario. There was a note dated in 1972 which stated that "everything I own should be used for (Jewish children) orphanage in Israel". The 1994 note, entitled "Blustein Family Trust", expressed a wish for her estate to be invested by the "public trustee" with 50% of the interest used for "scholarships for the needy". If these notes had not been admitted to probate, the estate would have been distributed under intestacy laws to cousins, none of whom was known to have had a close relationship with Minnie. The PGT applied to the court for direction regarding Minnie's estate.

The court found that both the 1972 and 1994 handwritten notes were valid holograph wills, as they demonstrated a clear, fixed, and final testamentary intention, and that the later 1994 note revoked the earlier 1972 note/holograph will. The court also found no evidence to rebut the presumption of testamentary capacity at the time the two notes were written, despite Minnie's history of mental illness.

A central issue for the charitable gift was the direction in the 1994 holograph will to use the estate for "scholarships for the needy" through the "public trustee" to invest and to use 50% of the interest. The court acknowledged that while Ms. Blustein's intent to set up a charitable endowment was clear and the PGT can exercise the jurisdiction to administer an estate, the PGT is not authorized to act as the trustee for an ongoing endowment fund. As a result, the court found that the trust, as worded in the 1994 holograph will, could not be implemented. The court noted that where a charitable object is clear, but the implementation process is problematic, then the court could exercise its inherent administrative scheme power to give effect to the testator's charitable intent.

The court also noted that the case did not involve a situation where it was necessary for the court to consider the application of the *cy-près* doctrine (*i.e.* application of the gift to an object "as near as possible" to the testator's intent in the situation where it is impossible or impracticable to carry out the original object). This was because Ms. Blustein's charitable object was clear in the 1994 will. After receiving submissions on potential institutions capable of managing an endowment for needs-based scholarships, the court determined that establishing the endowment with the Winnipeg Foundation in the name of the Blustein Family would best meet Ms. Blustein's intent.

The case reflects the court's commitment to upholding the charitable intent of bequests, even when they are contained in a holograph will. In addition, the case also confirms the court's willingness to exercise its inherent jurisdiction to make necessary modifications related to the administration of a testamentary gift in order that its charitable object is able to be achieved.

6. Beware the "Slop": AI's Hidden Risks for Charities and NFPs

By Cameron A. Axford and Martin U. Wissmath

The rise of generative artificial intelligence has brought compelling opportunities for Canada's charitable and not-for-profit (NFP) sector. From streamlining administrative tasks to producing first drafts of policy documents or grant applications, AI tools are becoming increasingly embedded in day-to-day operations. But as adoption grows, so does a largely unexamined risk: the creeping influence of what some commentators now call "AI slop."

"AI slop" is shorthand for the low-quality, error-prone, or misleading content generated by artificial intelligence systems – generally when those systems are used without oversight, fact-checking, or editing. The term has been used to describe everything from articles filled with hallucinated facts, to AI-generated code riddled with bugs, to quickly produced digital images. This content may look polished and professional at first glance, but its substance often lacks accuracy, nuance, or truth. Worse still, the speed and scale at which AI systems can produce such material can flood decision-makers with volumes of superficially plausible but fundamentally unreliable information. In short, AI slop is content that seems helpful but could undermine organizational integrity if relied upon.

While AI slop poses risks across all sectors, charities and NFPs face a unique set of vulnerabilities. Mission-driven mandates mean that decisions are often value-informed, sensitive, or tailored to complex social and legal contexts. Generic, AI-generated language in mission statements may oversimplify or misrepresent key principles. Resource constraints might tempt organizations to over-rely on AI tools as replacements rather than supplements to human expertise, especially in policy drafting, advocacy, or strategic planning, and high expectations from donors, regulators, and the public leave little room for missteps. A policy based on hallucinated legal standards, or a grant proposal built on fabricated statistics, can severely damage credibility. In addition, governance implications arise when boards rely on AI-generated briefings or planning materials without a clear understanding of the source, validity, or review process behind the content. AI slop introduces not only operational inefficiencies but also potential legal, ethical, and reputational risks – particularly if it makes its way into decision-making at the leadership level.

AI-generated content is not always labelled or obvious, especially when shared second-hand between departments or sourced from third-party consultants. It can appear in a range of organizational documents. For example, HR or privacy policies generated by AI may contain outdated, jurisdictionally incorrect, or legally dubious provisions. Strategic plans drafted with AI assistance might include plausible-sounding but vague goals and performance indicators that lack real alignment with the organization's objectives. Grant applications and reports may be populated with AI-generated needs assessments or outcome metrics that include fabricated data or unverifiable claims. Similarly, advocacy materials based on AI summaries of legislation or court decisions risk introducing factual inaccuracies that lead to faulty assumptions. In each case, the content may appear legitimate and helpful at first glance – but its underlying quality must be assessed.

Charities and NFPs do not need to abandon AI altogether – but they do need to use it wisely. Several practical measures can help to reduce risk as outlined below:

- Organizations should develop internal review protocols to ensure that AI-generated content is always vetted by a qualified human before use. This applies to everything from board materials to public-facing communications.
- Adopting internal AI policies can go a long way in setting expectations and accountability, as discussed in the October 2024 *Charity & NFP Update*. Even a simple policy outlining acceptable uses, review requirements, and prohibited applications – such as generating legal advice – provides necessary guardrails.

- Staff and leadership should be trained to critically evaluate AI outputs. This includes learning how to identify signs of low-quality content and understanding the limitations of predictive text models.
- Sourcing practices should be documented when AI is used in drafting or research. Encourage teams to track sources, add footnotes or hyperlinks, and verify claims independently.
- It's essential to avoid treating AI systems as authoritative. AI tools are simply assistants, not reliable or authoritative source of knowledge. They do not "know" anything – they simply predict based upon large language models. Final judgment must always rest with the people involved.

Boards of directors, in particular, should take a proactive role in overseeing AI usage within their organizations. This includes asking whether AI tools are being used in mission-critical functions, such as donor engagement, volunteer management, program design, and financial oversight, ensuring management has adopted appropriate safeguards and policies, and including digital literacy – especially AI literacy – in board development. In the same way boards would not accept financial statements or legal opinions without understanding their source and validation, they should not accept AI-generated materials at face value.

AI slop is not just a tech problem – it is a governance challenge. As generative artificial intelligence tools become more prevalent in Canada's charitable and not-for-profit landscape, organizations must take care to preserve the quality, accuracy, and ethical integrity of their work. Used responsibly, AI can be a valuable tool. However, if charities rely on unverified outputs, they risk allowing "slop" to shape their policies, decisions, and even their missions. The solution is not to reject the technology, along with the opportunities it presents, but to embrace it with caution and discernment.

7. Employment Update

By Barry W. Kwasniewski and Martin U. Wissmath

7.1. Court of Appeal Upholds Clear ESA-Only Termination Clause, Dismisses Employee Appeal

Ontario employers received welcome confirmation that well-drafted employment agreements limiting termination entitlements to statutory minimums can withstand judicial scrutiny — so long as the language is clear and compliant. In *Bertsch v Datasealth Inc.*, the Ontario Court of Appeal (the "Court") dismissed the employee's appeal and upheld the enforceability of a termination clause limiting entitlements strictly to the *Employment Standards Act, 2000* ("ESA") minimum standards. The May 16, 2025 decision affirms the lower court's ruling, previously covered in our October 2024 *Charity & NFP Law Update*, where the judge found the agreement excluded common law notice without violating the ESA. The key issue before the Court was whether the termination provision was void for ambiguity or statutory non-compliance. The Court held it was not.

The appellant, Gavin Bertsch (the "Employee"), was terminated without cause after 8.5 months of employment as a vice-president earning $300,000 annually. He received four weeks' pay in lieu of notice, which was three weeks in excess of the ESA minimum standards. The employment agreement expressly excluded any entitlement to common law notice and emphasized that only ESA minimums applied "with or without cause." It also included a "failsafe" clause that provided for ESA minimums where the contract might otherwise fall short.

The Employee argued that the termination clause was void and unenforceable because it was ambiguous and could suggest termination without notice for cause falling short of the "wilful misconduct" standard under the ESA Regulation 288/01. He also contended that the language in the employment agreement might mislead an average employee. The Court rejected these arguments.

Applying precedent in *Amberber v. IBM Canada Ltd.*, the Court reaffirmed that ambiguity requires "something more than the mere existence of competing interpretations." It concluded that the termination clause was unambiguous, compliant with the ESA, and validly excluded common law entitlements.

For all employers in Ontario, including charities and not-for-profits, this case underscores that carefully drafted employment agreements remain a reliable tool for managing termination liability exposure.

7.2. Saskatchewan Court Finds Long-Serving Worker Was an Employee Despite 'Contractor' Label

In *Saskatoon Minor Basketball Association v MacDonald*, the Saskatchewan Court of Appeal dismissed an appeal from a not-for-profit sports association that had classified its long-serving executive director as an independent contractor. The April 17, 2025 decision upheld a lower court's award of 22 months' reasonable notice (less three months' working notice) and confirmed that the working relationship was one of employment, not independent contractor. While not binding in Ontario, the judgment may be persuasive as courts across Canada continue to scrutinize employment status in substance rather than form – particularly relevant for Ontario charities and not-for-profits that rely on informal or long-standing contractor arrangements.

Randi MacDonald (the "Employee") had worked for the Saskatoon Minor Basketball Association (the "Employer") for over 16 years, beginning as a part-time administrative assistant and later becoming its executive director. Although the Employee worked from home, invoiced monthly, and was treated as an independent contractor for tax purposes, she worked exclusively for the Employer and performed a broad scope of administrative, operational, and governance-related duties. Her contract was renewed annually but rarely signed. In 2021, amid a restructuring caused by the Covid-19 pandemic, the Employer offered the Employee a three-month role, an expanded position for which she had "no experience or training", or six weeks' severance pay. The Employee accepted the short-term role "without agreeing that this constituted settlement of the matter" and later sued for wrongful dismissal.

The lower court judge found in favour of the Employee and awarded damages reflecting 22 months' reasonable notice. The long notice period was calculated according to the common law, as the judge found the termination clauses in the unsigned employment contracts were invalid, and there was no enforceable agreement to waive the Employee's common law rights or limit her termination notice entitlements to statutory minimums. The Employer appealed, arguing that the judge erred by granting summary judgment, mischaracterizing the relationship, and misapplying the law of mitigation.

The Court of Appeal disagreed. Applying established precedent, the court held that while some indicators pointed to independent contracting – such as Ms. MacDonald's home office and GST remittances – the totality of the relationship showed that she was economically dependent on the Employer, subject to its control, and lacked business risk. The weight of the evidence regarding objective factors such as remuneration, length of relationship, supervision, power imbalance, role, and integration favoured the conclusion that Ms. MacDonald was in fact an employee, and that she was not in business for herself as an independent contractor.

The Court of Appeal also rejected the Employer's argument that the Employee failed to mitigate her damages by not accepting a nine-month role that required new duties and a release of claims. The offer, the court found, was not objectively reasonable and could not negate her entitlement to reasonable notice. The court further upheld the trial judge's $11,000 cost award, finding no error in principle.

Although this decision is from Saskatchewan, Ontario courts may reference out-of-province appellate rulings on employment characterization, especially where summary judgment and long-term service are involved. This case adds persuasive weight to the view that courts will look past tax structures, labels, and unsigned documents to assess the reality of a working relationship.

Charities and not-for-profits across Ontario, as well as in other provinces, should take note: long-term, exclusive contractor arrangements – especially where the individual functions as part of the organization – are increasingly likely to be found as legal employment relationships, not contractor relationships. In such cases, employers may face lengthy common law notice obligations. Reviewing contractor relationships for alignment with employment law remains a prudent risk management strategy.

7.3. Upcoming New Employment Standards Act Requirements include Long-Term Illness Leave

The *Working for Workers Six Act, 2024* (the "Act") received royal assent on December 19, 2024, and introduces further employer obligations under Ontario's *Employment Standards Act, 2000* ("ESA"), building on earlier statutes. Two key measures will take effect in the coming months.

Effective June 19, 2025, the Act adds *Long-Term Illness Leave* to the ESA. This new unpaid statutory leave entitles employees to up to 27 weeks off in a 52-week period, provided they have completed at least 13 consecutive weeks of employment. The leave is available where the employee is unable to work due to a serious medical condition and a qualified health practitioner issues a certificate stating both the condition and the expected duration of the employee's absence from their duties.

A "qualified health practitioner" includes physicians, registered nurses, and psychologists licensed in the jurisdiction where treatment is provided. The Ministry of Labour's Policy and Interpretation Manual confirms that the practitioner determines whether the condition qualifies as "serious," including chronic and episodic conditions.

Effective July 1, 2025, under Ontario Regulation 477/24, employers with 25 or more employees must provide specified information to new employees no later than their first day of work or as soon as reasonably possible thereafter. This includes the legal and business names of the employer, contact details, work location, wage rate, pay frequency, and anticipated initial hours of work.

Employers should review internal practices now to align with these upcoming statutory requirements.

8. The Requirement to Demonstrate Use in Trademark Enforcement Proceedings

By Sepal Bonni and Cameron A. Axford

As discussed in the March 2025 *Charity & NFP Law Update*, long-awaited changes to Canada's *Trademarks Act* (the "Act") and Regulations came into effect on April 1, 2025, with implications for trademark enforcement. Among the most consequential reforms is an amended provision that requires trademark owners to demonstrate use of a mark in Canada (or "special circumstances" excusing non-use) within the first three years of registration before a court will award any relief. This change poses a significant shift that charities and not-for-profits (NFPs) should be mindful of.

Under the new subsection 53.2(1.1) of the Act, a party initiating enforcement under sections 19 (exclusive rights), 20 (infringement), or 22 (depreciation of goodwill) must show that their trademark has been used in Canada if the registration is less than three years old. Alternatively, the owner must demonstrate special circumstances excusing non-use. This use requirement prevents enforcement based solely on a registration without use, and ensures that only trademarks actively used in the marketplace can form the basis of enforcement actions during this initial period.

This is a departure from prior law, which allowed trademark owners to initiate Federal Court proceedings based on a registered mark without demonstrating use – regardless of how recently the mark had been registered. It also closes a strategic loophole: previously, owners of newly registered but unused marks could assert their rights while avoiding scrutiny under section 45, which only allows non-use cancellations after three years.

For many charities and NFPs, this amendment raises practical concerns. These organizations often register marks proactively for future programs, fundraising campaigns, or long-term initiatives that may take time to roll out. In such cases, if enforcement is necessary during the early life of the registration, the absence of use could now preclude legal action – potentially leaving important assets unprotected.

In light of these developments, charities and NFPs should review their trademark portfolios to determine whether recently registered marks are actively in use, and where they are not, ensure proper use commences promptly. It is also prudent to maintain detailed dated records of the trademark use in Canada for each mark, as this information may become critical in the event of a trademark dispute.

9. Privacy Update

By Esther Shainblum and Martin U. Wissmath

9.1. Canada Launches Consultation on Children's Privacy Code to Enhance Online Protections

Canada's federal privacy regulator is seeking feedback to develop a new code that would strengthen online privacy protections for children. On May 12, 2025, Privacy Commissioner Philippe Dufresne announced an exploratory consultation to inform the development of a children's privacy code aimed at strengthening the protection of young people's personal information in the digital world. This initiative seeks input from child advocacy groups, businesses, parents, educators, and other stakeholders to ensure the code reflects the best interests of children.

The proposed code aims to provide clear, practical guidelines for organizations handling children's personal information, ensuring products and services are designed with high privacy standards and empowering children to exercise their privacy rights. Feedback can be submitted via email to cpvp-opcconsultation1@priv.gc.ca until August 5, 2025.

Commissioner Dufresne emphasized that championing children's privacy is a strategic priority for his office, with the ultimate goal of creating a safer, more transparent online environment for children. This initiative aligns with the OPC's broader strategic priorities: protecting and promoting privacy with maximum impact; addressing and advocating for privacy amid technological change; and championing children's privacy rights.

Organizations that engage with children or families online should anticipate heightened expectations for privacy protections. The forthcoming code may influence how charities and not-for-profits design digital platforms, collect data, and communicate with young users. Proactively aligning practices with the code's principles can help these organizations maintain trust and demonstrate their commitment to safeguarding children's privacy.

More information on the exploratory consultation for the children's privacy code is available on the Office of the Privacy Commissioner's website.

9.2. Alberta Court of King's Bench Rules Alberta PIPA is Partially Unconstitutional

In our *January 2025* *Charity & NFP Law Update*, we reported on the B.C. Supreme Court's decision in *Clearview AI Inc. v. Information and Privacy Commissioner for British Columbia*, which upheld a privacy order against a U.S.-based company that sells facial recognition services. The Alberta courts have now rendered a decision regarding the same controversial entity. In *Clearview AI Inc v Alberta (Information and Privacy Commissioner)*, 2025 ABKB 287, released May 8, 2025, the Alberta Court of King's Bench (the "Court") held that sections 12, 17 and 20 of Alberta's *Personal Information Protection Act* (PIPA) and PIPA Regulation 7(e) violated Clearview's freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms*.

In February 2021, in a joint report with the privacy commissioners of BC and Quebec, the Alberta Information and Privacy Commissioner (the "Commissioner") determined that Clearview's activities breached privacy statutes in BC, Alberta and Quebec. Clearview collected personal information – including facial images and biometric data – without consent by scraping images from the internet for purposes that were not reasonable under PIPA. In December 2021, the Commissioner issued an order requiring Clearview to stop offering facial recognition services in Alberta, to stop collecting, using, and disclosing the personal information already collected from individuals in Alberta and to delete what it had already obtained (the "Order"). Clearview challenged both the Commissioner's jurisdiction and the constitutionality of the underlying legislative provisions.

The Court found that the way PIPA works is "constitutionally problematic". This is because PIPA's "belt and suspenders approach", imposes both a consent requirement for collection, use and disclosure of publicly available personal information as well as a prohibition on collection, use and disclosure except for purposes that are reasonable. The PIPA Regulation also defines "publicly available" very narrowly, limiting the exception to magazines, books, newspapers and similar media. The Court found that the combined effect of these provisions was that

> "…an organization that intends to use personal information that is publicly available on the internet for purposes that are reasonable may not do so without the consent of the individual …Where obtaining individual consent is impractical, this amounts to a complete prohibition on collection, use, and disclosure of personal information publicly available on the internet even for purposes that are reasonable".

PIPA and the Regulations were therefore overbroad and could limit use of publicly available personal information by regular search engines, for which there was no justification.

The Court's remedy for the unconstitutionality was (after finding that the list of publicly available publications listed in PIPA Regulation 7(e) was outdated and too restrictive,) to strike down the words "including, but not limited to, magazines, books, and newspapers". As the Court stated at paragraph 149,

> This leaves the word 'publication' to take its ordinary meaning which I characterize as 'something that has been intentionally made public.' Personal information and images posted to the internet without being subject to privacy settings are publications and use of such personal information and images is not subject to a consent requirement.

In other words, personal information posted online without privacy settings qualifies as "publicly available" and thus consent is not required for collection, use or disclosure under PIPA, provided that such collection, use, and disclosure of personal information are for purposes that are reasonable. Ultimately upholding the Commissioner's characterization of Clearview's conduct as unreasonable and the Order as enforceable, the Court ordered Clearview to report back within 50 days on the good faith steps it takes to comply with the Order.

The decision confirms that even publicly available data must be used for a reasonable purpose under Canadian privacy laws. For charities and not-for-profits, this highlights the importance of maintaining a clear, current privacy policy that explains not just how data is collected, but why. A well-crafted policy helps demonstrate lawful, purpose-aligned data use, which is important to ensure compliance and to preserve public trust.

10. Mandatory *Supply Chains Act* Reporting Deadline Approaching for Applicable Entities

By Urshita Grover and Cameron A. Axford

Entities that may be subject to the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the "*Supply Chains Act*") are reminded that their annual report must be submitted to Public Safety Canada by May 31, 2025. The Act, which came into force on January 1, 2024, requires reporting

entities to publish annual reports detailing the steps taken in the previous financial year to prevent and reduce the risk of forced and child labour in their supply chains and operations.

As discussed in our November 2024 *Charity & NFP Law Update*, the *Supply Chains Act* applies to large Canadian organizations – which could include certain large charities and not-for-profits – if they meet specific thresholds related to revenue, assets, or number of employees. The November 2024 *Charity & NFP Update* reporting on the Guidance from Public Safety Canada clarified important aspects of the legislation, including how "assets" are defined, what constitutes "importing," and how "employees" are counted. While few charities and not-for-profits will meet the threshold to qualify as reporting entities under the *Supply Chains Act*, those that do must ensure they are fully compliant.

Reporting entities required to report must submit a completed online questionnaire, a standalone report approved by their governing body, and appropriate attestation. While the *Supply Chains Act* emphasizes transparency rather than enforcement, failure to file a timely and accurate report could result in penalties. For more information on the background and applicability of the Act, reference can be made to our earlier coverage in the January 2024 and October 2024 *Charity & NFP Law Update*.

11. UN Invites Submissions on the Human Rights Impact of Counter-Terrorism and Sanctions Measures

By Terrance S. Carter, Nancy E. Claridge and Sean. S. Carter

Two United Nations Special Rapporteurs have issued separate calls for input as part of ongoing efforts to examine the human rights implications of certain state practices. The first focuses on the use of administrative measures in the context of counter-terrorism and violent extremism; the second concerns access to justice and redress for human rights violations resulting from unilateral sanctions and over-compliance. While these initiatives may be of particular interest to legal and civil society actors operating internationally, they also reflect broader trends in international human rights discourse. These developments may be relevant to charities and not-for-profits, particularly those operating in sectors affected by security-related or financial restrictions. The following summarizes both calls for input.

The UN Special Rapporteur on counter-terrorism and human rights is preparing a report to be presented to the UN General Assembly in October 2025. In this context, the Special Rapporteur has asked for input concerning the use of "administrative measures" imposed outside the criminal justice system. These include various restrictions that may affect individual rights, such as control orders, curfews, home detention, travel restrictions, electronic monitoring, and limits on communication or association. Other measures under review include administrative detention, denial or revocation of passports or citizenship, listing of terrorist organizations, and constraints on public space and assembly.

The Rapporteur's office is seeking examples and analysis regarding the use of such measures, particularly where they may affect rights without adequate procedural safeguards. The inquiry also extends to issues, such as legal definitions and standards of proof, the necessity and proportionality of restrictions, and whether available remedies comply with due process standards. Of interest as well is the role of courts in reviewing these measures and whether any misuse has occurred – such as their application to civil society actors, human rights defenders, or journalists.

Stakeholders are invited to submit comments by June 1, 2025 to hrc-sr-ct@un.org. Submissions will be published unless a request for confidentiality is made.

The Special Rapporteur on unilateral coercive measures has issued a separate call for input related to the development of new Guidance on accountability, redress, and access to effective remedy. This project builds on prior reports identifying the legal and practical challenges faced by individuals and organizations affected by unilateral sanctions, their enforcement, or over-compliance by enforcing parties.

The complexity of sanctions regimes, the use of vague or overlapping terms, and the hesitancy of legal professionals to take on sanctions-related cases are all highlighted as barriers. Regarding legal professionals, additional disincentives to challenge unjust use of sanctions include fear of penalties and reputational concerns. According to the Rapporteur, over-compliance with sanction regimes can also have significant humanitarian and legal consequences for individuals and entities who are not the direct targets of sanctions, complicating their ability to seek remedies.

The forthcoming Guidance by the UN Special Rapporteur aims to outline standards for responsibility and redress, referencing relevant treaty law, customary international law, and previous normative frameworks, such as the Guiding Principles on Sanctions, Business and Human Rights, a document which seeks to clarify the complex challenges that arise from UN Security Council sanctions, unilateral sanctions by states and regional bodies, and the enforcement or over-compliance with those sanctions. Input on the forthcoming Guidance is being sought on a number of issues, including appropriate terminology, methodologies for assessing damages caused by sanctions, allocation of responsibility, and available avenues for dispute resolution.

The Special Rapporteur has encouraged legal professionals and lawyers' associations, particularly from sanctioning States, to provide input, recognizing that their perspectives are helpful in deepening the understanding of how unilateral coercive measures, their enforcement, and instances of overcompliance intersect with fundamental principles of access to justice, redress, and effective remedy.

Responses are to be submitted by 30 May 2025 at 18:00 (Geneva time) to hrc-sr-ucm@un.org and will be publicly posted unless a request is made for confidentiality.

While these initiatives originate within the UN human rights system, they will be of interest to Canadian charities and not-for-profit organizations that operate internationally or in sectors affected by counter-terrorism or sanctions regimes. Restrictions on funding, movement, or association, as well as the legal and financial compliance frameworks that accompany such measures, can affect an organizations' operations, partnerships, and access to services.

In the Press

Charity & NFP Law Update – April 2025 (Carters Professional Corporation) was featured on Taxnet Pro™ and is available online to those who have OnePass subscription privileges.

Law360 Canada published an article on May 8, 2025, Navigating Borders: AI, data sovereignty, charity donor privacy in a shifting landscape, written by Cameron A. Axford, associate at Carters, and Martin U. Wissmath, also an associate at Carters.

Recent Events & Presentations

Carters hosted its first Spring Webinar since 2021, on **May 7th from 12:00 pm to 1:00 pm ET**, titled Copyrights and Trademarks in a Virtual Universe: What Charities and NFPs Need to Know and it had over 320 registrants. An on-demand video replay is available here, and the Webinar Handout can be accessed and printed from here.

The Ontario Bar Association's Charity & Not-for-Profits Law Program hosted a webinar on the topic of Understanding Member Rights & Remedies Under ONCA: A Practical Guide on Wednesday May 14th and Ryan Prendergast, a partner at Carters, participated as a program speaker.

Upcoming Events

Carters will be hosting a second Spring webinar on **Tuesday June 3rd from 12:00 to 1:30 pm**, on the topic of Key Legal and Operational Issues for Donor Advised Funds and we are excited that we currently have over 550 registrants! Please click on the link to get more information and to register.

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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*.

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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.

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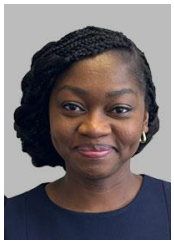

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Acknowledgements, Errata and other Miscellaneous Items

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