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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

January 2026

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Legal & Accounting Issues for Endowments: What Charities Need to Know
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Publications & News Releases

1. Carters is Celebrating its 25th Anniversary, Plus "Save the Date" for a Hybrid Seminar

Carters Professional Corporation is very pleased to be celebrating its 25th anniversary as a law firm. First opened on January 2, 2001, in Orangeville, Ontario, Carters has grown from a team of 10 people (3 lawyers, an articling student, and 6 staff) to a team of 42 people (17 lawyers, an articling student and 24 staff) with offices in Orangeville, Ottawa and Toronto.

The mission of Carters is the same today as it was in 2001, which is to build an excellent law firm recognized as one of the top charity and not-for-profit law firms in Canada, as well as to provide a wide range of essential adjunct legal services to both its local, national and international charity and not-for-profit clients, in addition to its other local and regional clients. In so doing, Carters continues to provide a "one stop" place for legal services as part of its innovative, proactive, and integrated approach to the practice of law. Read more here: LINK

SAVE THE DATE for Thursday, November 12, 2026! Come celebrate our 25th Anniversary with us by joining the Carters team at the return of the in-person Carters Annual Charity & NFP Law Seminar/Webinar on Thursday, November 12, 2026. This year's Seminar/Webinar will be held in a hybrid format, with both an in-person session for all presentations taking place in the Greater Toronto Area, together with the option to join the Seminar as a live Webinar remotely through live-streaming of the in-person session. More details to come – Stay tuned!

2. Legislation Update

By Terrance S. Carter and Adriel N. Clayton

2.1. Changes to Federal In-House Lobbying Registrations in Effect

A new, revised threshold for federal lobbying registrations is now in effect and may impact charities and not-for-profits that carry out lobbying activities by requiring more organizations to register under the federal *Lobbying Act*. The revised threshold was initially announced by the Commissioner of Lobbying through an Interpretation Bulletin released on July 16, 2025 (the "New Bulletin"), which came into effect on January 19, 2026, replacing the previous interpretation bulletin from 2009.

Under the 2009 bulletin, the Commissioner of Lobbying interpreted the phrase "significant part of the duties" under paragraph 7(1)(b) of the *Lobbying Act*, which sets out filing and registration requirements, such that organizations were generally required to register where the total amount of time spent by all paid employees carrying out lobbying work equalled 20% or more of the working hours of one employee. According to the backgrounder, this threshold "allowed for a substantial amount of in-house lobbying to go unreported and contributed to less transparency".

The New Bulletin revises how the term "significant part of the duties" is interpreted and applied. Under the revised interpretation, the registration threshold will be met where employees collectively spend eight or more hours within any consecutive four-week period communicating with federal public office holders about the subject matters listed in paragraph 7(1)(a) of the *Lobbying Act*. Time spent preparing for meetings, drafting correspondence or submissions, and undertaking related grassroots communications on those same subject matters is included in the calculation, and the hours of multiple employees are aggregated. Communications relating solely to the awarding of federal government contracts do not count toward the threshold. Once the threshold is met, the organization's most senior paid officer must file an in-house registration return within two months from the date the threshold is met.

2.2. New Digital Technologies Accessibility Regulations under the *Accessible Canada Act*

Regulations designed to improve digital accessibility have been published, with most provisions coming into force on December 5, 2027. The federal Regulations Amending the Accessible Canada Regulations (the "Regulations") under the *Accessible Canada Act* were published in the Canada Gazette on December 17, 2025, and introduce new compliance obligations aimed at removing and

preventing barriers in digital technologies used by persons with disabilities. Certain obligations, particularly those affecting mobile applications and digital documents, will come into force on December 5, 2028.

The Regulations apply to federally regulated public-sector entities and to federally regulated private-sector organizations that averaged 100 or more employees over the preceding three-year period, with more extensive requirements for organizations with 500 or more employees. As a result, most charities and not-for-profits will not likely be captured. However, the Regulations may be relevant primarily for larger organizations in federally regulated sectors. Smaller federally regulated private-sector entities are generally exempt. Applicability and compliance timelines depend on an organization's size, sector, and activities, and some obligations do not apply to certain sectors, such as transportation, broadcasting, and telecommunications.

At the core of the new framework is the introduction of a dedicated "Information and Communication Technologies" section, which requires covered organizations to ensure that new or updated web pages, mobile applications, and certain digital documents conform to a prescribed national accessibility standard for information and communication technologies. In addition to technical conformance requirements, organizations must publish and maintain accessibility statements, conduct or obtain conformity assessments for certain digital assets, and provide accessibility training to employees involved in the development, maintenance, or procurement of digital technologies. Records of training, assessments, and accessibility statements must be retained for prescribed periods, and non-compliance may result in administrative penalties.

Further information on digital accessibility, including the amended regulations, is available in the *Guidance Overview of Regulatory Amendments: Digital Technologies Phase 1*.

2.3. Public Safety Canada Launches 2026 *Supply Chains Act* Reporting Portal and Updated Guidance

Public Safety Canada has opened the reporting portal for the 2026 compliance cycle under the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the "*Supply Chains Act*"), with reports due by May 31, 2026. This follows the *Supply Chains Act's* enactment on January 1, 2024 and continues the federal government's efforts to increase transparency around forced labour and child labour risks in global supply chains. As discussed most recently in the *November 2025 Charity & NFP Law Update*, the high threshold for qualifying as an "entity" under the Act means that only a limited number of charities and not-for-profits will be subject to these reporting obligations.

Alongside the opening of the portal, Public Safety Canada has also released an updated guidance and a revised online questionnaire. While the substantive reporting requirements remain unchanged, the updated materials provide additional clarity on completing the questionnaire, attestation and signature requirements, and the treatment of "very minor" supply chain dealings. As with previous reporting years, affected organizations must disclose information relating to their structure, supply chains, policies, risk-management and due diligence processes, training, remediation efforts, and assessments of effectiveness, all of which are made publicly available through Public Safety Canada's online catalogue.

3. CRA Retiring Fax Lines

By Jennifer M. Leddy

The Canada Revenue Agency ("CRA") announced on January 7, 2026, that it will "soon" retire the Charities Directorate fax line as part of its transition to digital-by-default services. Charities that currently submit documents by fax, including the annual T3010 Registered Charity Information Return, will need to transition to the CRA's online services to continue meeting their filing and compliance obligations.

The CRA's online portal allows charities to file returns, submit documents, make account changes, and send written enquiries securely through a CRA account. To support the transition, the CRA has made available resources on its website.

According to the CRA, fax submissions are slow, resource-intensive, and pose security risks because they require manual processing. Online services offer instant confirmation of receipt, the ability to track submissions, no fax or mail delays, and greater convenience. The CRA encourages charities that have not yet registered for CRA online services to do so promptly to avoid disruptions as fax services are phased out.

4. Ontario Court Upholds By-Law Amendments that Changed Membership Criteria

By Esther S.J. Oh and Urshita Grover

In *Barrie & District Association of Realtors v. Information Technology Systems Ontario*, the Applicant, Barrie & District Association of Realtors ("BDAR"), a local not-for-profit association of real estate agents and brokers in the Barrie and District area, brought an application under section 191 of the Ontario *Not-for-Profit Corporations Act, 2010* (ONCA), which in general terms, permits a complainant to request the court to make an order directing the corporation or its representatives to comply with the ONCA, regulations or governing documents or restrain the corporation and its representatives from acting in breach of the same.

BDAR challenged the validity of a by-law amendment relating to criteria for maintaining membership (the "By-law Amendment") adopted by the board of Information Technology Systems Ontario (ITSO), a separate not-for-profit corporation (NFP) governed by the ONCA, of which BDAR was a member association. As a result of the By-law Amendment, member associations were required to "[m]aintain the same corporate structure and control as when the Member Association first became a Member Association, unless notice of the proposed change is provided to the Board and approved by the Board." Where there was a change in corporate structure or control, ITSO's board retained the right to decide whether or not the association would remain a member association.

Through ITSO, member associations, including BDAR, pool multiple listing service (MLS) data into one large database and pay fees to ITSO to enable their respective members to access the pooled data. The By-law Amendment was adopted after BDAR decided to integrate with the Toronto Regional Real Estate Board (TRREB), which ITSO viewed as a competitor MLS data provider.

BDAR brought this application, arguing that the By-law Amendment (i) amounts to a retroactive breach of ITSO's contractual obligations to BDAR (as described later in this article), (ii) was impermissibly vague and inconsistent with section 48 of the ONCA (which states the by-law must set out the conditions required for being a member of the corporation), and (iii) was enacted in bad faith for the purpose of targeting BDAR (given its recent integration with the TRREB). In its decision released on June 9, 2025, the Ontario Superior Court of Justice dismissed the application and rejected each of the arguments from BDAR.

The court confirmed that judicial review of internal corporate governance decisions is warranted in narrow circumstances. In this regard, the court stated that absent a breach of statute, non-compliance with governing documents, a denial of procedural fairness, or evidence of bad faith, courts will not substitute their judgment for that of a NFP's board, and even then, "courts will only intervene when a legal right of sufficient importance, such as a property or contractual right, are at stake." As the court noted, "[b]oard decisions, including those of not-for-profit corporations, are owed deference by the court because the directors are in a far better position to make decisions in the best interests of the corporation."

The court held that ITSO's By-law Amendment did not retroactively breach its contractual relationship with BDAR, noting that members enter into a contractual relationship with an association on the understanding that the relationship will be regulated by by-laws that may be amended. The court held that BDAR's membership had not been retroactively terminated, as the By-law Amendment allows the Board to approve a change in corporate structure and control after it has occurred.

The court did not find the By-law Amendment to be impermissibly vague because the doctrine of vagueness does not apply to a private corporation's by-laws. The court explained that section 48 of the ONCA requires by-laws to set out the conditions for "being a member", but does not require that every discretionary factor considered by a board be enumerated in the by-laws. The By-law

Amendment adequately set out the conditions for maintaining membership and explicitly granted the board authority to approve changes in corporate structure and control, which was sufficient to comply with section 48 of the ONCA.

The court noted that while the By-law Amendment was prompted by BDAR's integration with a competitor, the court accepted that ITSO's board was responding to legitimate competitive concerns about a non-member competitor exerting influence over ITSO's governance. In that regard, the court stated that acting to address those concerns, even where the amendment was directed at a specific situation, did not amount to bad faith.

For charities and NFPs, this decision underscores that boards retain broad discretion to amend by-laws and membership provisions contained in by-laws, provided the boards act within their statutory authority and follow required procedures set out in an existing by-law. This decision also affirms the approach taken by courts in previous case law in which courts have shown significant deference to internal governance decisions and will intervene only in limited and clearly defined circumstances.

5. Ontario Securities Commission Grants Securities Law Relief to Toronto Foundation

By Jacqueline M. Demczur and Jefe Olagunju

In a November 12, 2025 decision, the Ontario Securities Commission ("OSC") granted an Application for relief from registration and prospectus requirements under the *Securities Act* (Ontario) to Toronto Foundation, allowing the Toronto Foundation to pool and invest funds from qualified charities without registration. While defined in more detail in the decision, "qualified charities" means registered charities, together with not-for-profits (NFPs) exclusively focused on public benefit, which are primarily located and operating in Ontario ("Qualified Charities").

Toronto Foundation is a community foundation and registered charity that pools donations of donors to create a permanent endowment fund from which they make grants to charities and NFPs. Along with donor-advised funds and discretionary granting programs, Toronto Foundation wanted to offer administrative and pooling services to Qualified Charities to allow participating charities to invest their funds alongside its own funds. This would allow such Qualified Charities to benefit from professional investment management and enhanced governance at a lower cost, which smaller organizations typically would be unable to access on their own.

Given this service involved the investment of funds, sharing of returns and rights that could be considered "securities", Toronto Foundation applied for an exemption order under subsection 74(1) of the *Securities Act*, seeking relief from the registration or prospectus requirements under the *Act*. Toronto Foundation argued that: (1) it is benefitting the charitable sector by providing such services; (2) its services would reduce risks by allowing Qualified Charities to access professional advisory services and knowledge at a lower cost; (3) as a registered charity, it has adopted and adheres to policies, procedures and practices governing its business and operations; and (4) its outsourced Chief Investment Officer ("OCIO"), who makes decisions about the funds held and invested, has considerable internal investment infrastructure and expertise.

The OSC granted the relief and accepted that Toronto Foundation's activities were not commercial capital-raising or discretionary portfolio management in the traditional sense, but rather a registered charity providing a cost-saving service to increase accessibility as well as strengthen the charitable sector as a whole. In granting the relief, the OSC imposed a number of conditions, including, among others, that Toronto Foundation: (1) not require, recommend or advise any Qualified Charity to enter into a pooling agreement; (2) not engage in providing other discretionary portfolio management to any Qualified Charity other than the administrative and pooling services; (3) provide its Qualified Charity clientele with written statements disclosing the nature of the service that it is providing; and (4) maintain detailed books and records showing that the Qualified Charity is the beneficial owner of the funds in question at all times.

For Qualified Charities, this decision represents a meaningful step forward. It provides regulatory clarity and increased access for those Qualified Charities who wish to pool funds and access

professional investment management with a well-established community foundation without having to give up ownership of their property.

This option may also be one that other community foundations may wish to consider seeking in order to expand the type of services that they can offer registered charities in their particular geographic area. However, it is important to be aware that this decision is very fact-specific and is grounded in Toronto Foundation's robust governance and use of professional advisory services. The OSC's decision to grant Toronto Foundation relief from OSC registration and prospectus requirements expires 5 years after the date of the decision.

6. Ontario Court Enforces Negotiated Settlement Despite Unsigned Minutes of Settlement

By Barry W. Kwasniewski and Martin U. Wissmath

"Subject to documentation" language will not, on its own, stop a binding settlement from forming once there is acceptance of the essential terms. Settlement negotiations in wrongful dismissal matters often conclude by email, with formal minutes to follow. In *Johnstone v. Loblaw*, released August 18, 2025, the Ontario Superior Court of Justice enforced a settlement following a without-cause termination, despite the employee's refusal to execute the minutes of settlement. For charities and not-for-profits, the decision is a practical reminder that settlement authority and email wording can effectively conclude a matter, even where formal documentation follows later.

The plaintiff, Mr. Johnstone (the "Employee"), was employed for just over seven years before his employment was terminated without cause shortly after he relocated in 2022 from Winnipeg to Ottawa for work. The defendant, Loblaws Companies Limited (the "Employer"), terminated the Employee's employment in April 2022 and offered a severance package that included seven months' salary continuance and benefits. Settlement discussions followed through legal counsel, with the parties exchanging offers over several weeks that addressed notice, benefits, legal fees, reference letters, and housing-related issues connected to the Employee's relocation. Ultimately, the Employer offered eight months' salary continuance, a contribution to legal fees, and employment confirmation and reference letters. The Employee's counsel responded by email confirming instructions to accept the proposal, "subject to mutual agreement on the supporting documentation." Draft minutes of settlement were later provided, but the Employee did not sign them and subsequently commenced an action seeking wrongful dismissal damages and additional compensation related to losses arising from the Employee's uncompleted purchase of a home following termination.

The court was asked to determine whether the parties had entered into a binding settlement agreement and, if so, whether the settlement and release barred the Employee's claims relating to housing-related losses following termination. While an "agreement to later agree" on an essential provision is not enforceable, the court stated,

> The parties must have had a meeting of the minds, which is clear to an objective reasonable bystander. Where an agreement is not reduced to a single document but is as a result of a series of negotiations, the court should consider in combination what the parties have said, done, or written. The agreement on essential terms must be clear, able to be determined with reasonable certainty, and not too vague to be enforced.

It is not necessary for documentation to be completed in order to have a binding settlement, the court found.

According to the court in this case, the essential terms — including the eight-month period for reasonable notice, continuation of benefits, legal fee contribution, and the provision of a standard release — had been agreed upon. The court placed weight on an email from the Employee's lawyer confirming acceptance of the Employer's most recent proposal, holding that it objectively demonstrated an intention to be bound to the terms of settlement.

The court rejected the argument that later concerns about housing, relocation expenses, or performance ratings were merely matters of "supporting documentation." Instead, they were attempts

to renegotiate essential terms after agreement had been reached. “Buyer’s remorse,” the court stated regarding the Employee, “a change of heart, or even growing concern about his ability to close his house purchase do not entitle him to renege on a settlement.” The court also dismissed the argument that the release should be interpreted narrowly to permit separate claims for housing-related losses, finding that those issues had been expressly negotiated as part of the settlement discussions and fell within the scope of the release.

The settlement was enforced and the action dismissed in its entirety. For charities and not-for-profit employers, the decision serves as a caution that settlement negotiations with terminated employees can crystallize into binding agreements even before formal documents are executed. Clear acceptance language, particularly where legal counsel confirms instructions to accept, will carry significant weight, and courts are unlikely to permit parties to reopen negotiations by characterizing unresolved concerns as documentation issues once the essential terms have been settled.

7. CRA Technical Interpretation on Deemed Trust Reporting for Certain Non-Profits

By Theresa L.M. Man and Adriel N. Clayton

The Canada Revenue Agency (“CRA”) released CRA View 2025-1057461E5, a technical interpretation addressing trust reporting, on December 29, 2025. The technical interpretation addresses a question that the CRA was asked about T3 trust reporting obligations of non-profit organizations whose main purpose is to provide dining, recreational, or sporting facilities, as well as who the trustee, settlor and beneficiaries of the deemed trust would be.

By way of background, a club, society or association that meets the requirements under paragraph 149(1)(l) of the *Income Tax Act* (“ITA”) for non-profit organizations (“NPOs”) is exempt from income tax. However, under subsection 149(5) of the ITA, if the main purpose of the NPO is to provide dining, recreational or sporting facilities for its members, then the property of the NPO is deemed to be held by a trust (“Deemed Trust”) and a *T3 – Trust Income Tax and Information Return* must be filed. The Deemed Trust will be taxable on the income earned from property as well as on the taxable capital gains on the disposition of property, held in the Deemed Trust, and not used to provide such services.

This CRA document clarifies a number of trust filing issues in relation to the T3 filing by such a Deemed Trust that arose in the context of this type of NPOs, in light of the application of the new trust reporting requirements in the ITA.

Firstly, the Deemed Trust constitutes a “second taxpayer” (separate and apart from the NPO), is subject to tax under Part I of the ITA in accordance with the rules in subsection 149(5), and the NPO’s property is deemed to be property of the Deemed Trust.

Secondly, the Deemed Trust must file a T3 Return. The reasons for CRA clarification are complicated.

- For background, under section 150 of the ITA, (i) trusts are required to file trust returns pursuant to paragraph 150(1)(c); (ii) paragraph 150(1.1)(b) provides that a trust need not file if it has no tax payable, taxable capital gain or disposition of capital property; and (iii) subsection 150(1.2) provides that an express trust can get certain filing relief under subsection 150(1.1) only if any of the paragraphs (a) to (p) apply.

- The CRA indicates that since a Deemed Trust is a trust other than an express trust, subsection 150(1.2) does not operate to prevent the potential application of subsection 150(1.1). Accordingly, a Deemed Trust would be required to file a T3 Return pursuant to paragraph 150(1)(c) unless any of the exceptions in paragraph 150(1.1)(b) apply.

Thirdly, when such a Deemed Trust files a T3 Return, it must include Schedule 15 with the T3 Return to provide beneficial ownership information, unless the Deemed Trust is a trust listed in any of paragraphs 150(1.2)(a) to (o).

- In this regard, subsection 150(1.2) sets out a list of trusts that are relieved from filing a T3 Return under subsection 150(1.1), where paragraph 150(1.2)(e) specifically provides that a

trust that "is a club, society or association described in paragraph 149(1)(l)" is exempt from filing T3 Returns.

- Since such a Deemed Trust is subject to the subsection 149(5) rules, subsection 149(5) does not deem the trust to be organized and operated exclusively for social welfare, civic improvement, pleasure or recreation (which are requirements to be an NPO). In other words, a Deemed Trust is not deemed to be an NPO described in paragraph 149(1)(l). As a result, since the Deemed Trust is not deemed to be an NPO, it is therefore not a trust described in paragraph 150(1.2)(e).
- Accordingly, subsection 204.2(1) of the Income Tax Regulations applies to the Deemed Trust, which must file Schedule 15 when it files the T3 Return, unless it meets one of the other exceptions in paragraphs 150(1.2)(a) to (o).

Fourthly, the Deemed Trust is deemed to exist pursuant to subsection 149(5), which deems particular person(s) to be the trustee(s) of the trust having control over the trust property. However, subsection 149(5) does not deem the trust to have a settlor or beneficiaries, nor does it identify any particular person as such. A Deemed Trust therefore does not have a settlor or beneficiaries.

Lastly, the Schedule 15 must include the required information in respect of each person deemed to be a trustee of the Deemed Trust pursuant to paragraphs 149(5)(b) and (c), which provide that where the NPO is a corporation, the corporation is deemed to be the trustee of the Deemed Trust; and where the NPO is not a corporation, its officers are deemed to be the trustees.

The complex trust reporting rules have been, and are continuing to undergo, complex and convoluted amendments since 2022. It is helpful to the non-profit sector for the CRA to provide clarity on the T3 trust reporting requirements for property income of NPOs whose main purpose is to provide dining, recreational, or sporting facilities.

8. Provincial Regulator Weighs in on AI Transcription Tools After Hospital Privacy Breach

By Esther Shainblum and Martin U. Wissmath

In a letter dated October 27, 2025, the Information and Privacy Commissioner of Ontario (the "IPC") addressed a self-reported breach ("Breach") by an Ontario hospital under the *Personal Health Information Protection Act* ("PHIPA"). The Breach involved the inadvertent recording of personal health information by an artificial intelligence ("AI") transcription tool during virtual hepatology rounds attended by hospital physicians (Reported Breach HR24-00691). The Breach illustrates the potential privacy risks posed by unapproved AI tools.

During a virtual hepatology rounds meeting held on September 23, 2024, the rounds were automatically recorded and transcribed by Otter.ai, an AI-powered meeting transcription tool ("AI Tool") that had not been approved for use by the hospital. Although the physician associated with the AI Tool account had left the hospital more than a year earlier, two security failures had allowed the AI Tool to access the meeting: (1) the former physician had used his personal email address instead of his work email address in the meeting group, contrary to hospital policy and (2) the meeting organizer never removed the physician from the calendar invite after he left the hospital.

As a result, the AI Tool used the invitation sent to the departed physician's personal email address to join the meeting without notice, to record it and to generate a transcript, which captured the personal health information of seven hospital patients including their names, sex, diagnoses and treatment information. The AI Tool then emailed the transcript to the meeting participants, bringing the Breach to the hospital's attention. The hospital reported the breach to the IPC and then took steps to contain the Breach and to prevent future similar incidents including: cancelling the invitation sent to the AI Tool to prevent it from attending future meetings; identifying meeting attendees and requiring them to delete the transcript from all systems and devices; directing the removal of the AI Tool and similar tools from any devices associated with the hospital; blocking AI scribe tools on its network; and updating training and policies to expressly prohibit the use of unapproved AI applications. It should be noted that 12 meeting participants also appeared to have left the hospital and never responded to the hospital. The hospital also took steps to notify the affected patients or their estates, where applicable.

In addition to the containment and remediation steps taken by the hospital, the IPC made several additional recommendations. These included requiring the hospital to directly request the AI Tool to delete the personal health information collected from the September 23, 2024 meeting and updating its privacy breach protocol to require the hospital to directly contact other third party vendors in case of future similar incidents; update the hospital's Acceptable Use Policy to prohibit the use of non-hospital approved devices to conduct hospital-related work; strengthening offboarding processes to revoke individuals' access to systems and calendar invitations once they have left the organization; mandating virtual meeting "lobbies" where PHI is discussed to manually approve each participant, and enhancing AI governance and accountability frameworks.

This Breach clearly underscores the need for all charities and not-for-profits that handle personal information and/or personal health information to carefully manage and govern the use of AI convenience tools to mitigate the significant privacy risk they create. Charities and not for profits should implement robust Acceptable Use Policies as well as rigorous access controls, offboarding, and meeting practices in order to avoid similar incidents.

9. Proposed Foreign Influence Transparency Regulations: What Charities and Non-Profits Need to Know

By Terrance S. Carter and Cameron A. Axford

Background and Policy Rationale

The federal government has released proposed Foreign Influence Transparency and Accountability Regulations (the "Regulations"), intended to operationalize the *Foreign Influence Transparency and Accountability Act* (FITAA), explained in *Charity & NFP Law Bulletin No. 527*. Together, the Act and Regulations would establish a public registry of certain foreign influence activities in Canada, overseen by a new independent Foreign Influence Transparency Commissioner (the "Commissioner"). The stated objective is to strengthen national security and protect democratic institutions by increasing transparency around attempts by foreign principals to influence Canadian political and governmental processes. While the regime is framed primarily as a response to covert or non-transparent foreign interference, its scope may extend to a wide range of individuals and organizations, including charities and not-for-profits that engage internationally, undertake policy advocacy, or collaborate with foreign partners. The proposed Regulations are currently subject to public consultation, with submissions due by February 2, 2026, providing an opportunity for sector stakeholders to assess and comment on their potential impacts.

While diplomacy and international engagement are legitimate and often beneficial, the government has expressed concern that undisclosed or covert foreign influence can undermine public confidence, distort decision-making, and compromise Canada's sovereignty.

Scope of the Registration Requirement

Central to the proposed regime is a mandatory registration requirement. Individuals and entities would be required to register with the Foreign Influence Transparency Commissioner if they enter an "arrangement" with a foreign principal for the purpose of influencing Canadian political or governmental processes. Although the Regulations do not prohibit such arrangements, they make transparency the central compliance obligation. Registration would be required regardless of whether the influence activity is conducted directly, indirectly, or through intermediaries, provided the statutory thresholds are met.

Information Disclosure Obligations

The Regulations set out detailed information disclosure requirements for registrants. This includes identifying information for individuals (such as names, addresses, and citizenship) and for entities (including legal name, address, and incorporation details). Registrants must also disclose information about the foreign principal, including their name, address, website, and the basis on which they qualify as a foreign principal under the Act. In addition, registrants must provide specifics about the

arrangement itself, including start and end dates, any compensation or benefits received, and the stated purpose of the influence activity.

Registrants must further report on the nature of the influence activities undertaken. This may include communications with public office holders, dissemination of information through media or digital platforms, or the provision of money, goods, or services intended to influence decision-making.

Ongoing Reporting and Update Requirements

Ongoing update obligations are another key feature of the proposed framework. Registrants would be required to update their information within 15 days of any material change. Even in the absence of changes, registrants must confirm every five consecutive months that the information on file remains accurate. These continuing obligations underscore that registration is not a one-time event, but an ongoing compliance responsibility.

Public Registry and Information Sharing

The Regulations also establish the framework for a public registry, which would be maintained by the Commissioner and made accessible to the public. Information would be retained for 20 years after an arrangement ends. The Regulations contemplate limited exemptions from public disclosure where there are reasonable grounds to believe that publication could threaten personal safety or where information is suspected to be false or misleading. The Commissioner would also be empowered to receive information from other government bodies, including the Canadian Armed Forces and institutions subject to the Privacy Act, and to share information as necessary to carry out their mandate or support security-related investigations.

Compliance and Enforcement Framework

The Regulations also establish a compliance and enforcement framework, including an Administrative Monetary Penalty (AMP) regime overseen by the Commissioner. Penalties may range from modest amounts to as much as $1,000,000, depending on factors such as compliance history, the seriousness of the violation, whether it was intentional, and the person's ability to pay. The Commissioner would also have the discretion to enter into compliance agreements, potentially reducing or eliminating penalties where corrective conditions are met. In cases of serious or egregious non-compliance, criminal penalties –including fines of up to $5,000,000 or imprisonment for up to five years – may apply.

Implementation Timeline

The Regulations are intended to come into force concurrently with FITAA. An interim registration process using Government of Canada online forms would be implemented initially, with a fully integrated IT system expected to be operational by the end of 2026.

Implications for Charities and Not-for-Profits

For charities and not-for-profits, particularly those engaged in international collaboration, policy advocacy, or public communications touching on governmental processes, the proposed regime raises important questions about scope, administrative burden, and reputational impact. While transparency is a legitimate policy objective, sector stakeholders may wish to consider whether the definitions and reporting requirements appropriately distinguish between benign international engagement and activities that genuinely pose a risk of foreign interference.

Consultation

The ongoing consultation period – open until February 2 – provides a critical opportunity for charities and not-for-profits to assess how the Regulations may apply in practice and to provide informed feedback before the framework is finalized.

10. UN Guidance on Counter-Terrorist Financing and Human Rights: Implications for Charities and Non-Profits

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

Context

In November 2025, the United Nations Global Counter-Terrorism Coordination Compact published a Guidance Note titled Ensuring Respect for Human Rights while Taking Measures to Counter the Financing of Terrorism. The document was developed jointly by several UN working groups. Its release reflects a growing international recognition that counter-terrorist financing frameworks – while essential to global security – have, over the past two decades, generated significant and often unintended consequences for civil society, humanitarian actors, and non-profit organizations (NPOs). Following the attacks of September 11, 2001, international efforts rapidly shifted from general anti-money laundering to targeted combatting the financing of terrorism (CFT) regimes. Over time, however, these measures were increasingly criticized for being overbroad, inconsistently applied, and, in some cases, misused to suppress legitimate civic activity. The Guidance Note responds to these concerns and draws on stakeholder consultations launched in 2020 to clarify how states can meet their security obligations while remaining compliant with international human rights, humanitarian, and refugee law.

CFT Laws are Subject to International Human Rights Standards

The Guidance Note underscores that counter-terrorist financing measures remain fully subject to international human rights standards. Even when acting in the name of security, states are bound by the principle of legality, requiring CFT laws to be clear, precise, and foreseeable. Overly broad or vague definitions of terrorism or terrorist financing increase the risk of arbitrary or discriminatory enforcement. Any limitation on rights must meet four cumulative requirements – legality, necessity, proportionality, and non-discrimination – meaning that CFT measures must be prescribed by law, genuinely required to address a legitimate security objective, proportionate to the risk involved, and applied without targeting protected groups.

Privacy

The Guidance Note highlights privacy risks arising from the collection, analysis, and sharing of financial intelligence within CFT regimes. While Financial Intelligence Units (FIUs) play a critical role in countering terrorist financing, their activities must comply with the right to privacy under Article 17 of the International Covenant on Civil and Political Rights. The Guidance Note cautions against indiscriminate data collection and information sharing practices that lack clear legal limits or effective oversight. To address these concerns, states are encouraged to implement strong data protection safeguards, limit the use of personal data to defined and legitimate purposes, and establish independent oversight mechanisms to prevent misuse and abuse.

Legal Proceedings

The Guidance Note also affirms that fair trial guarantees apply fully within CFT frameworks, whether proceedings are criminal, administrative, or regulatory in nature. Individuals accused of terrorist financing offences – or subject to preventive measures such as asset freezing – must be afforded due process protections, including the presumption of innocence, access to legal counsel, and the right to challenge decisions before an independent and competent authority. The Guidance Note further underscores the obligation of states to allow access to frozen funds for basic living expenses and extraordinary needs, such as medical care, to avoid violating economic and social rights.

Civil Society

Of relevance to charities and non-profits, the Guidance Note emphasizes the importance of protecting civic space and recognizes the essential role that NPOs play in humanitarian relief, social welfare, and human rights work. It cautions that treating the sector as inherently high-risk under CFT regimes has often resulted in disproportionate regulatory burdens, financial exclusion, and constraints on legitimate advocacy. The document strongly endorses a risk-based approach, urging states to identify only those

areas of the sector that are genuinely vulnerable to terrorist abuse rather than imposing blanket restrictions. It also highlights the need for meaningful consultation with civil society actors to ensure that CFT measures are proportionate and effective.

The Guidance Note further addresses the intersection between CFT measures and humanitarian action, reaffirming that impartial humanitarian assistance is protected under international humanitarian law and should not be criminalized. Building on Security Council Resolution 2664 (2022), it supports humanitarian carve-outs that allow the provision of goods and services necessary to meet basic human needs, even where sanctions or asset freezes apply. The document also notes that gender-neutral CFT policies can have disproportionate impacts and encourages states to adopt more inclusive, data-informed approaches to risk assessment.

Private Sector

Finally, the Guidance Note considers the role of the private sector, particularly financial institutions, under the UN Guiding Principles on Business and Human Rights. Banks and other entities are encouraged to manage terrorist financing risks through targeted mitigation rather than wholesale termination of relationships with NPOs. States, in turn, are urged to establish independent oversight bodies to monitor data protection and accountability practices within the private sector.

Takeaways

For charities and non-profits, the Guidance Note offers an important reference point rather than a source of binding obligations. It reflects a growing international consensus that CTF measures must be grounded in the rule of law and respect for human rights. Boards and senior management may find the document useful when engaging with regulators, financial institutions, and policymakers, particularly on issues of proportionality, risk-based regulation, and access to financial services. As CFT regimes continue to evolve, the Guidance Note reinforces the need to ensure that security measures do not undermine the legitimate humanitarian and social objectives that charities and Not-for-Profits exist to advance.

11. Jurisdictional Ruling Opens Door for Canadian Copyright Claims Against AI Companies

Cameron A. Axford and Martin U. Wissmath

In *Toronto Star Newspapers Limited v. OpenAI Inc.*, decided on November 7, 2025, the Ontario Superior Court of Justice issued a significant motion ruling relating to jurisdiction, allowing Canadian news media organizations to pursue claims against U.S.-based artificial intelligence development company, OpenAI, which develops and operates ChatGPT, and its various legal entities ("OpenAI") in Ontario. While the decision does not address the merits of the underlying allegations, it represents an important development in the evolving legal landscape governing artificial intelligence (AI), copyright, and cross-border enforcement. At its core, the ruling confirms that Canadian courts may have jurisdiction to hear claims arising from the development and commercialization of AI systems where there is a meaningful connection to Canada, even if key aspects of the technology are developed or operated abroad.

The plaintiffs, a group of major Canadian news media organizations including the *Toronto Star*, *The Globe and Mail*, and the *CBC*, allege that OpenAI built and trained its large language models, including ChatGPT, by misappropriating their proprietary content without authorization or compensation. According to the claim, OpenAI accessed and copied content from the plaintiffs' websites and digital platforms to train its AI models, reproduced copyrighted works without permission contrary to the *Copyright Act*, circumvented technological protection measures and breached online terms of use that prohibit commercial exploitation of content, and commercially exploited the resulting models by offering subscription-based AI products and services to individual and enterprise users in Canada, including through partnerships with third parties like Microsoft. The plaintiffs characterize these activities as giving rise to claims for copyright infringement, breach of contract, and unjust enrichment.

OpenAI brought a preliminary motion seeking to set aside service of the claim and stay the proceedings, arguing that Ontario was not an appropriate forum and that Canadian courts lacked

jurisdiction over the dispute. OpenAI contended that Canadian copyright law is territorially limited and cannot apply to alleged acts occurring outside Canada, such as model training on servers located in the United States, that the Ontario court lacked both subject matter and personal jurisdiction over the defendants, and that the United States was a more appropriate forum for resolving novel legal questions relating to AI development.

Justice Kimmel rejected most of OpenAI's jurisdictional arguments and permitted the action to proceed in Ontario against the principal operating and parent entities. The Court emphasized that subject matter jurisdiction is a threshold inquiry and that, as a court of general jurisdiction, the Ontario Superior Court has authority to hear claims sounding in copyright, contract, and unjust enrichment unless expressly removed by statute. The Court declined to entertain OpenAI's substantive arguments about the territorial scope of the *Copyright Act* at this preliminary stage, holding that such issues go to the merits of the claim rather than the court's jurisdiction to hear it.

In considering personal jurisdiction, the Court applied the "real and substantial connection" test and found a sufficient connection between Ontario and six of the ten named defendants. In particular, the Court accepted that there was a good arguable case that certain OpenAI entities carried on business in Ontario by collecting data from Canadian servers and offering AI services to Ontario users, that alleged copyright infringement occurred in Ontario through the transmission and reproduction of content within the province, and that contractual relationships may have arisen through OpenAI's access to Ontario-based websites and alleged breach of online terms of use.

The Court also rejected OpenAI's argument that the United States was a clearly more appropriate forum. In doing so, it noted that the claims are governed primarily by Canadian and Ontario law, that the plaintiffs are Canadian entities whose alleged losses were suffered in Canada, and that modern litigation tools reduce the practical burden of cross-border proceedings. As a result, Ontario was not displaced as the appropriate forum for the dispute.

The motion was granted with respect to four OpenAI-related entities that were not shown to be directly involved in the core activities alleged in the claim, such as certain startup and investment entities. However, the motion was dismissed for the six principal operating and parent companies, including OpenAI OpCo, LLC and OpenAI, Inc., allowing the action to proceed against them in Ontario.

Although the case arises from the news media sector, the decision has broader implications for Canadian charities and not-for-profits whose content may be used in the development of AI systems. It underscores that foreign AI developers may be subject to Canadian legal proceedings where there is a meaningful connection to Canada, including through data collection, contractual terms, or commercial activities. For charities and not-for-profits that publish original content, educational materials, or research online, the decision highlights the importance of clear website terms, governance policies, intellectual property protection and an understanding of how organizational content may be accessed and used in the AI ecosystem. The case will now proceed to be determined on its merits, and further developments will be closely watched by organizations operating in data-rich and digitally accessible environments.

12. *Charities Legislation & Commentary*, 2026 Edition

The 2026 *Charities Legislation & Commentary*, co-edited by Terrance S. Carter, M. Elena Hoffstein and Professor Adam Parachin, was published on December 15, 2025, and is now available.

This annual publication is an essential resource for those navigating federal and Ontario statues governing charitable organizations. The latest edition of *Charities Legislation and Commentary* addresses approximately 145 statutes and 75 regulations to help researchers and practitioners understand the numerous, complex and sometimes unexpected legislative requirements applicable to charities.

The 2026 Edition discusses new and upcoming *Income Tax Act* developments, including with respect to the recent cancellation of the proposed increase to the capital gains inclusion rate. The authors also review recent border control initiatives and new proposed changes to Canada's anti-money laundering regime contained in omnibus Bill C-2, *Strong Borders Act*, such as proposed restrictions to cash

donations, with consideration to their implications for charities operating internationally. New commentary is also provided on trust reporting concerning filing exemptions for the T3, Trust Income Tax and Information Return, as well as on the updated guidance on forced child labour in supply chains.

In the Press

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

Recent Events & Presentations

Beacon Endowment Solutions hosted an event entitled "Equip Your Charity for Long-Term Success" on Wednesday November 26, 2025 at the Cisco Toronto Innovation Labs. Terrance S. Carter spoke on the topic of The Legal Fundamentals of Endowments.

Upcoming Events

Carters 2026 Winter/Spring Webinar Series

Complimentary Registration for all webinars

Legal & Accounting Issues for Endowments: What Charities Need to Know
Tuesday, February 10th, 2026 12:00 – 1:30 pm EST
Speaker: Terrance S. Carter & Danzel Pinto
Click to Get More Information and to Register

No Good Deed Goes Unregulated: Governance, Conflicts, and Compensation
Wednesday, March 25th, 2026 12:00 – 1:00 pm EST
Speaker: Ryan Prendergast
Click to Get More Information and to Register

Contract Essentials for Charities and NFPs
Tuesday, April 7th, 2026 12:00 – 1:00 pm EST
Speakers: Barry Kwasniewski and Esther Shainblum
Click to Get More Information and to Register

T3010 Filing Time! Ten Tips on Completing the T3010
Tuesday, May 5th, 2026 12:00 – 1:00 pm EST
Speaker: Theresa Man
Click to Get More Information and to Register

Advising Clients on the ONCA after the Transition Period: Practical Advice and Tips
Tuesday, May 5th, 2026 12:00 – 1:00 pm EST
Speaker: Jacqueline M. Demczur
Click to Get More Information and to Register

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

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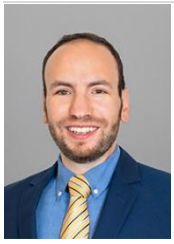
Nancy E. Claridge, B.A., M.A., LL.B. – Called to the Ontario Bar in 2006, Nancy Claridge is a partner with Carters practicing in the areas of corporate and commercial law, anti-terrorism, charity, real estate, and wills and estates, in addition to being the assistant editor of *Charity & NFP Law Update*.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

Jacqueline M. Demczur, B.A., LL.B. – A partner with the firm, Ms. Demczur practices in charity and not-for-profit law, including incorporation, corporate restructuring, and legal risk management reviews. Ms. Demczur has been recognized as a leading expert in charity and not-for-profit law by *Lexpert, The Best Lawyers in Canada* and *Chambers and Partners*. She is a contributing author to Industry Canada's *Primer for Directors of Not-For-Profit Corporations* and has written numerous articles on charity and not-for-profit issues for the *Lawyers Weekly*, *The Philanthropist* and *Charity & NFP Law Bulletin*, among others. Ms. Demczur is also a regular speaker at the annual *Church & Charity Law Seminar*.



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

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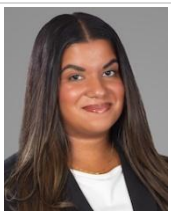

Salina Nathoo, B.A., J.D., Student-at-Law – Salina graduated magna cum laude from the Dual Juris Doctor program at the University of Windsor, Faculty of Law and the University of Detroit Mercy, School of Law in 2025. During her time in law school, Salina served as a Student Attorney at Detroit Mercy Law's Family Law Clinic, preparing pleadings and representing clients before the Wayne County Circuit Court. She also worked for the Alcohol and Gaming Commission of Ontario, conducting legal research and drafting. Prior to attending law school, Salina earned her Honours Bachelor of Arts from York University, majoring in Criminology and Law and Society.

Acknowledgements, Errata and other Miscellaneous Items

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