



OBA Proposal to add Charity and Not-for-Profit Law as an Area of Practice

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I. Introduction

Every year, lawyers in Ontario are required by the Law Society of Ontario (the “**LSO**”) to file a report in respect of the licensee’s professional business, and other activities related to the licensee’s practice of law or provision of legal services during the preceding year.”¹ This is known as the Lawyer Annual Report (the “**LAR**”).

Section 5, question 1(b) of the LAR asks lawyers to indicate their “**Areas of Practice**” as follows:

Describe that portion of your law practice most directly relating to Ontario, by indicating the approximate percentage of time devoted by you while resident in Ontario in 2019 to each area of law listed below:

Aboriginal Law	____%	ADR/Mediation Services (see Notes 5 & 6 above)	____%
Administrative Law	____%	Bankruptcy & Insolvency Law	____%
Civil Litigation - Plaintiff	____%	Civil Litigation - Defendant	____%
Construction Law	____%	Corporate/Commercial Law (see Note 5 above)	____%
Criminal/Quasi Criminal Law	____%	Employment/Labour Law	____%
Environmental Law	____%	Family/Matrimonial Law	____%
Franchise Law	____%	Immigration Law	____%
Intellectual Property Law	____%	Municipal Law	____%
Real Estate Law (see Notes)	____%	Securities Law	____%
Tax Law	____%	Wills, Estates, Trusts Law	____%
Workplace Safety & Insurance Law	____%	Other Law	____%

The LAR further specifies that the percentages indicated by the lawyer must total “100%”.

¹ LSO Professional Regulation Committee, Report to Convocation, September 29, 2018. [Online](#).



Charity and not-for-profit law is a discrete area of practice which does not fit within any of the 22 areas listed above, requiring lawyers to who practice in this area to attempt to artificially allocate their practice over other practice areas.

The Charity and Not-for-profit Law Section of the Ontario Bar Association (“**OBA**”) proposes that charity and not-for-profit law be recognized by the LSO as an area of practice in the next LAR. This proposal will set out the distinguishing features of charity and not-for-profit law, and will indicate how adding this practice area will promote the protection of the public and access to justice.

II. The OBA’s Charity and Not-for-Profit Law Section

Established in 1907, the OBA is Ontario’s largest voluntary legal advocacy organization, representing lawyers, judges, law professors and students from across the province, on the frontlines of our justice system and in no fewer than 40 different sectors. In addition to providing legal education for its members, the OBA provides input and expert advice on a broad range of topics that affect the administration of justice in Ontario, including submissions to the LSO, in the interest of the profession and in the interest of the public. This proposal has been developed by the OBA’s Charity and Not-for-Profit Law Section (the “**Section**”), which is comprised of over 200 members who regularly represent a broad range of clients in Ontario’s charitable and not-for-profit sector.

In developing this proposal, the Section has considered the practice areas already recognized by the LSO, and any overlap that might exist with charity and not-for-profit law. The Section considered the practice experience of both a practitioner in private practice and a lawyer acting in-house for a registered charity or not-for-profit corporation. The Section also considered the gaps that exist for charity and not-for-profit law lawyers in completing the LAR with its current identified practice areas, and argues that it would be a significant benefit to the charitable and not-for-profit sector and to the public to have charity and not-for-profit law be recognized as a distinct area of practice by the LSO.

III. What is Charity and Not-for-Profit Law?

Charity and not-for-profit law is a discrete area of practice that deals with all aspects of the unique laws, policies, jurisprudence, and practice affecting charities and other types of not-for-profit entities. Charity and not-for-profit law has evolved into a distinct and specialized area of practice: long-gone are the days where a charitable board could rely on the general practitioner sitting on the board to advise on all legal matters.



The landscape of Ontario's charitable and not-for-profit sector is varied, and each of its components require specialized legal services and knowledge.

Charity and not-for-profit law lawyers provide legal advice to registered charities, not-for-profit corporations, and unincorporated associations, each of which may require specialized knowledge and advice. Charity and not-for-profit clients include (among others) charitable organizations, private and public foundations, charitable trusts, universities, schools, daycares, hospitals, social clubs, amateur athletic associations, trade and industry associations, co-operatives, housing associations, religious organizations, museums and other art institutions, music/theatre organizations, cultural, ethnographic, and environmental organizations, ratepayer organizations, professional regulatory bodies, as well as individuals involved in the sector. Many of the clients in the sector are national and international organizations, and advising them requires cross-border knowledge. There is a growing body of Ontario jurisprudence on the specific rights and obligations of members of a charity or not-for-profit corporation, which is distinct from shareholders' rights in the for-profit context.

Practicing in the area of charity and not-for-profit law requires knowledge and understanding of the sector-specific legislation, including the *Canada Not-for-profit Corporations Act*, the *Corporations Act* (Ontario), the *Not-for-profit Corporations Act, 2010* (Ontario), the *Trustee Act*, the *Charities Accounting Act* ("**CAA**"), the *Religious Organizations' Lands Act* ("**ROLA**"), and the *Income Tax Act* (Canada), as well as the regulatory guidelines of the Charities Directorate of the Canada Revenue Agency, and the Ontario Public Guardian and Trustee. Additionally, charity and not-for-profit law touches on areas of public law, administrative law, and constitutional law.

Charity and not-for-profit lawyers often have backgrounds in trusts and estates, corporate/commercial and/or tax, and develop expertise in advising charitable and not-for-profit clients. Lawyers who practice in charity and not-for-profit law may further specialize within the area. Some sub-specialties of charity and not-for-profit law are focused on litigation, and others are more corporate/commercial or tax-related in nature. For this reason, charity and not-for-profit law lawyers can be litigators, solicitors, or both.



IV. Charity and Not-for-Profit Law as a Unique and Recognized Practice Area

A. Charity and not-for-profit law is fragmented across practice areas and the “Other Law” option

Charity and not-for-profit law lawyers practice under a number of subspecialties that include corporate and commercial law, real property, tax law, estate planning, trusts, litigation, privacy law, employment and labour law, and intellectual property law. Importantly, some of the specialized knowledge required to practice charity and not-for-profit law is not captured by any of the subsections.

I. LSO’s current LAR

Based on the current version of the LAR, a charity and not-for-profit law practice could include work that touches on at least nine practice areas:

1. Corporate: governance advice regarding constating documents (articles, letters patent, bylaws, board policies); member/director rights and obligations; director and officer’s liability and conflicts of interest.
2. Commercial: contracts; commercial transactions.
3. Employment/Labour Law: labour and employment matters.
4. Tax Law: Charitable registration and non-profit status under the *Income Tax Act*; compliance with CRA Charities Directorate; HST requirements. Many non-charity and not-for-profit law tax practitioners are unfamiliar with the specifics of advising charitable and not-for-profit clients; the law, policy, and practice are unique to charities and (separately) to non-profit organisations.
5. Estates: estate planning including charitable gifting; estate litigation involving charitable beneficiaries in testamentary documents.
6. Trust Law: Charitable trusts; unincorporated associations with trustees; investments by trustees.
7. Real Property Law: commercial leasing; buying and selling of property; ROLA.
8. Intellectual Property Law: trademark registration; copyright; protections of charitable intellectual property.
9. Litigation: CAA Section 13 consent orders; member or director disputes; commercial contract disputes.

II. Charity and not-for-profit law cannot be subsumed by LSO’s enumerated practice areas



Given the wide variety of practice areas that is included in a charity and not-for-profit law practice, it is extremely difficult for many charity and not-for-profit law lawyers to estimate the percentage of time spent providing services in each of the LSO's current enumerated categories. Therefore, many charity and not-for-profit law lawyers are left with choosing the vague "Other Law" option.

It is the Section's view that that even though charity and not-for-profit law touches on a variety of areas of practice that are already enumerated in the LAR, charity and not-for-profit law lawyers have special expertise on the application of each of these areas in the charity and not-for-profit law practice area. Further, taking into account the specialized charitable and not-for-profit legislation and regulations, the legal services provided by charity and not-for-profit lawyers cannot be adequately described by the existing areas. Charity and not-for-profit law should be recognized as a distinct and unique area of practice in the LAR.

B. The Section is preparing an application to be a recognized practice area by the LSO's Certified Specialist Program

The Section is in the process of preparing an application to the LSO to have charity and not-for-profit law recognized as a Certified Specialty. The specialist certification in charity and not-for-profit law would enable charity and not-for-profit law lawyers to hold out that they are skilled advisors of charity and not-for-profit law, and would recognize that the issues facing the charitable and not-for-profit sector represent a unique area unto itself requiring specialized skills and knowledge.

V. Protection of the Public and the Promotion of Access to Justice

The charitable and not-for-profit sector in Canada is significant, and requires sophisticated and specialized advice from its advisors. Nationally, Canadian charities account for more than eight per cent of Canada's GDP and make up more than 10 per cent of Canada's workforce, or 1.4 million people. In Ontario, there are nearly 50,000 not-for-profit corporations, which does not include those federally incorporated not-for-profit corporations with head offices in Ontario or the many unincorporated associations.

It is important that lawyers are identified as having experience and knowledge in charity and not-for-profit law to ensure access to justice for the clients of the sector and the members of the public. Identifying lawyers who have specialized knowledge in charity and not-for-profit law is fundamental to ensuring clients are able to obtain a lawyer qualified to address the distinct and complex legal issues that face the charitable and not-for-profit sector.



For example:

- Charities and not-for-profit organizations may enter into a broad range of commercial agreements and negotiations, requiring legal counsel that can skillfully navigate the various specialized legislation affecting such agreements and negotiations.
- Charities may turn to lawyers for assistance with setting up a social enterprise or with questions regarding their investment powers.
- Individual clients may seek advice on setting up private foundations to benefit various communities.
- Organizations may consult legal counsel on how they may register with the LSO as civil society organizations to employ lawyers and paralegals to deliver legal services through their organizations directly to their own clients.

It is essential that a lawyer representing these types of clients has the ongoing up-to-date knowledge, skills, and experience to handle these unique issues.

The LSO's Law Society Referral Service ("LSRS") currently requires a client to identify a category of law in Step 4 of the LSRS, to enable the LSO to match an appropriate lawyer to address the client's needs. However, charity and not-for-profit law is not listed, which does not accurately reflect the unique and varied practice of charity and not-for-profit law, or assist members of the public in finding an appropriate lawyer to meet their needs. While some facets of charity and not-for-profit law may be capable of categorization in other areas of practice, the charitable and not-for-profit sector will be better served if charity and not-for-profit law is recognized as a distinct area of practice by the LSO. The recognition of charity and not-for-profit law in the LSRS will better facilitate access to justice by referring clients to appropriate lawyers who specialize in charity and not-for-profit law.

VI. Conclusion

Charity and not-for-profit law is an evolving field, increasing both in scope and complexity. The OBA currently has over 200 charity and not-for-profit law members across Ontario, and many more practitioners for whom charity and not-for-profit law forms a segment of their practice. Legal associations like the OBA, and indeed the LSO itself, continue to offer professional development programs directed towards lawyers looking to deepen their knowledge of charity and not-for-profit law. Many law schools across Canada are also offering charity and not-for-profit law courses, masters' degrees, and other certificate programs.

The recognition of charity and not-for-profit law by the LSO as an area of practice will properly reflect the unique area of law in which charity and not-for-profit law lawyers



practice on a day to day basis. It would also assist the public, and particularly the charitable and not-for-profit sector, in finding specialized and skilled legal advisors who can best serve their needs. The OBA appreciates the opportunity to provide this proposal and looks forward to an opportunity to discuss it further with the LSO.