

## LEGAL RISK MANAGEMENT CHECKLIST FOR ONTARIO-BASED CHARITIES

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### A. INTRODUCTION

The operations of charities are subject to an increasingly complex regulatory framework as well as the possibility of litigation occurring as a result of their operation is an ever-present reality. The exposure of charities to liability goes further than the loss of charitable assets, possibly leading to the insolvency or

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winding up of a charity. Directors of charities may also face legal actions against themselves personally by donors, members, third parties and governmental authorities for breach of their fiduciary duties or even breach of trust in failing to adequately protect or apply the assets of a charity. Given these increased risks of potential liability to both charities and their directors, there is an increasing need to protect charitable assets from lawsuits on a proactive basis.

The purpose of this legal risk management checklist for charities is to provide an outline of some of the more important issues that directors, officers, and executive staff of a charity, whether incorporated or not, may want to consider in ensuring due diligence in the operation of the charity.<sup>1</sup> As it is impossible to adequately address all issues faced by charities, this checklist provides only a general overview of the many considerations that charities and their boards of directors may need to be aware of to both identify and manage legal risks, as well as a starting point for charities when consulting with their legal counsel.

## **B. IDENTIFICATION AND MANAGEMENT OF LEGAL RISKS**

1. Is separate charitable status needed or even practical?
  - a) Are donation tax receipts required?
  - b) Can the organization become an operating division and be subject to the direction and control of the board of an existing charity as an alternative to seeking its own charitable status?
  - c) Can the organization handle the significant mandatory reporting requirements necessary to achieve and maintain charitable registration as required by the *Income Tax Act* (Canada)?
  - d) Business donors may not always require charitable receipts if there is a sponsorship opportunity with possible advertising expense deductions available
2. General overview of organizational and legal documentation
  - a) Identify the existence and location of key organizational documents
    - Develop an inventory of key documents
    - Maintain a central location for key documents
  - b) Identify key organizational documents for an unincorporated charity
    - Constitution and amendments, if applicable
    - Policy statements and procedures, if applicable
    - Minutes of board of directors' and members' meetings
  - c) Identify key organizational documents for a corporate charity

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<sup>1</sup> For not-for-profits, a separate *Legal Risk Management Checklist for Ontario-Based Not-for-Profits* is also available at <http://www.carters.ca/pub/checklist/NFP-Checklist.pdf>.

- Letters patent (articles of continuance), supplementary letters patent (articles of amendment) and restated articles of incorporation, if applicable
  - By-laws and special resolutions
  - Mission statement, if applicable
  - Membership covenant, if applicable
  - Minutes of board of directors' and members' meetings
  - Directors', members', officers', debt and land ownership registers, if applicable
  - Copies of government filings
  - Governance policies, *e.g.* conflict of interest and confidentiality policies
- d) Identify other key legal documents
- Leases/subleases, deeds, and mortgages
  - Agency, partnership, association, contracts for service and joint venture agreements
  - Intellectual Property license agreements
  - Business names, trademarks, and domain name registrations
  - Charitable registration number, T3010's, and correspondence from the Canada Revenue Agency ("CRA"), including the CRA letter granting charitable registration
  - Membership agreements in federated, national and international structures
  - Operational risk management policies, *e.g.*, vulnerable persons and volunteer policy statements
  - Insurance policies, including a historical record of insurance policies
  - Privacy policies
  - Anti-spam policies
  - Investment policies

### 3. Review of key documents for an unincorporated charity

- a) Are the objects clearly stated in the constitution and are they exclusively charitable?
- b) Has there been "mission drift" from the original charitable purposes?
- c) Do constitutional documents correctly reflect how the organization is actually structured and operated?
- d) Has the current copy of the constitution been filed with the appropriate government agencies, *e.g.* with the CRA and the Ontario Public Guardian and Trustee for charities operating in Ontario?

### 4. Review of key documents for an incorporated charity

- a) Review of letters patent or articles of incorporation
  - Is the name in the letters patent or articles of incorporation the correct name of the charity and is it consistent with the charitable objects or purposes of the charity?

- Has there been “mission drift” from the original charitable objects or purposes?
- Are its objects or purposes exclusively charitable in nature?
- Are the activities carried out by the charity authorized by its charitable objects or purposes?
- Is the dissolution clause complementary to the charitable objects or purposes?
- b) Review of supplementary letters patent or articles of amendment
  - Have all supplementary letters patent or articles of amendment been identified?
  - Has there been a change of corporate name?
  - Has there been a change of charitable objects or purposes?
  - What is the effect of a change of objects or purposes upon existing charitable property and is there a need to exclude the standard “after acquired property” clause for Ontario corporations?
- c) Letters patent of amalgamation or articles of amalgamation
  - Are the charitable objects or purposes the same or similar?
  - What are the terms of the amalgamation agreement?
  - Is the existing charitable property held in trust for the charitable objects or purposes of the previous charitable corporations?
- d) Does the charity have historical records of all by-laws?
- e) Are the by-law provisions clearly defined and properly passed?
- f) Review of corporate by-law provisions for basic terms
  - Do the provisions conflict with the letters patent or articles of incorporation or continuance concerning objects, purposes, or dissolution?
  - Do the provisions reflect the actual organization and operational structure of the organization?
  - Does the by-law reflect changes to applicable corporate legislation?
  - Is there an adequate indemnification provision for the directors?
  - Has the indemnification provision been authorized in accordance with the regulations under the *Charities Accounting Act* (Ontario)?
  - Are the by-law amendment procedures consistent with corporate legislation?
- g) Was the initial corporate organization of the charity properly done?
- h) Was there a documented transfer of assets and liabilities on incorporation?
- i) Are the records of board decisions and/or membership meetings complete?
- j) Was there adequate board and/or members’ authorization for indebtedness, if applicable?
- k) Have corporate records been properly maintained, such as consent to be directors and applications for membership?
- l) Where are the corporate records kept?
- m) Have necessary corporate filings and registrations been kept up to date?

- Ontario Corporations:
  - ♦ Initial Return/Notice of Change (Form 1)
  - ♦ *Business Names Act* (Ontario) registrations
- Federal Corporations:
  - ♦ Annual Return (Form 4022) – Canada
  - ♦ Extra-Provincial Initial Return/Notice of Change (Form 2) – Ontario
  - ♦ *Business Names Act* (Ontario) registrations
- Does the charity operate in any other provinces or territories? If so, there may need to be registration as an extra-provincial corporation in other provinces or territories, together with applicable business name registrations.
- Does the charity fundraise in any other provinces or territories? Provinces, such as Alberta and Prince Edward Island have legislation which require fundraising entities to register under their respective Acts.
- Incorporation under the *Canada Not-for-profit Corporations Act* does not exempt an organization from extra-provincial registration requirements.
- n) Has there been loss of corporate status for failure to maintain government filings?
- o) Is the charity aware of the importance of proper use of corporate name and operating names?
- p) Has the charity (if an Ontario corporation) reviewed the Ontario *Not-for-Profit Corporations Act, 2010* (“ONCA”) as applicable, and assessed what changes will need to be made to its constating documents as part of its ONCA transition?
  - On October 19, 2021, the ONCA came into force. Ontario charitable corporations have three years from that date, i.e. until October 18, 2024, to amend their corporate documents to transition under the new legislation.
  - After the three-year transition period, corporate provisions which are inconsistent with the ONCA’s requirements (with a few exceptions) will be deemed to be amended to the extent necessary to comply with the ONCA.
- 5. Has the charity developed and implemented operational and risk management policy statements, where applicable, on:
  - a) Abuse prevention;
  - b) Acceptable use of technology resources;
  - c) Accessibility and equity;
  - d) Anti-terrorism and money laundering;
  - e) Anti-trafficking;
  - f) Authorization procedures (*e.g.* due diligence as a requirement of obtaining or delegating authority for a decision or action);
  - g) Board succession planning, recruitment, and orientation;
  - h) Brain and spinal injury prevention and management (when working with youth sports);
  - i) Bullying;

- j) Child protection;
- k) Code of conduct;
- l) Collection of personal information (particularly with respect to children);
- m) Confidential and proprietary information;
- n) Conflicts of interest;
- o) Consent to collection, use, disclosure and processing of personal information;
- p) Consent to treatment (where applicable);
- q) Crisis management plan;
- r) Data and privacy breaches;
- s) Disbursements;
- t) Donor recognition;
- u) Electronic record-keeping;
- v) Environmental stewardship;
- w) Fiscal management;
- x) Fitness to work for staff and volunteers;
- y) Fundraising;
- z) Gender / gender equality;
- aa) General health & safety in the workplace;
- bb) Gift and sponsorship acceptance;
- cc) Human resources and recruitment;
- dd) Infectious diseases (*e.g.* COVID-19) and measures against infection diseases (*e.g.* when masks must be worn, vaccination requirements, *etc.*);
- ee) Intellectual property;
- ff) Investments;
- gg) Mandatory reporting for large organizations regarding avoiding the use of forced or child labour;
- hh) Protocol for domestic and foreign volunteer projects;
- ii) Protocol for reporting, escalating, investigating, mitigating and resolving issues;
- jj) Provision of goods and services to people with disabilities;
- kk) Public policy dialogue and development activities, including lobbying;
- ll) Public relations;
- mm) Record retention and disposal;
- nn) Research & ethics;
- oo) Sexual violence;
- pp) Social media;
- qq) Third party use of the charity's facilities;
- rr) Volunteer conduct and volunteer recruitment (including application forms and agreements);
- ss) Vulnerable persons;
- tt) Whistleblowing and fraud prevention; and

uu) Workplace violence and harassment (including sexual harassment) prevention.

6. Is there a training program in place to equip staff to react to the situations and policy statements listed above? (e.g. Have staff been trained on how and when to report a potential wrongdoing?)
7. Is the content and effectiveness of policies evaluated and reviewed on an annual basis, or as appropriate?
8. Is the charity aware of provisions in the *Income Tax Act* (Canada) regarding public policy dialogue and development activities and, as needed, revised its applicable policies?
9. Has the charity reviewed its lobbying policy and registered where required by the *Lobbying Act* (Canada) and/or *Lobbyists Registration Act* (Ontario)?
10. Has the charity conducted an up-to-date inventory of its charitable assets, including intellectual property, i.e. trademarks and copyright?
11. Are there any independent contractors or employees and, if so, are all provisions in their respective contracts in accordance with applicable legislation?
12. Is there a system in place to track funds from individual donors?
13. Are surplus cash flows invested and protected for undesignated use? How?

## C. UTILIZING MULTIPLE CHARITABLE CORPORATIONS

1. Should the charity consider utilizing multiple charitable corporations for its high-risk activities in order to better manage those risks?
2. Should a provincial or national charity that consists of member organizations be structured as an umbrella association of multiple corporations (federated model) or as a single corporation?
3. Should the charity consider establishing and utilizing a parallel foundation for either fundraising purposes or better management of charitable assets?
4. Has appropriate consideration been given to balancing inter-corporate relational provisions with regard to multiple corporations, including issues involving the possibility of cross-over liability?
5. Has appropriate consideration been given to implementing effective inter-corporate relational provisions through contracts and/or licensing agreements as an alternative to overt corporate governance control?

## D. BOARD MANAGEMENT ISSUES

1. Who is a director?
  - a) What are the qualifications and procedures (i.e. election rules) to be elected a director and have all of those qualifications and procedures been met by each director, including the “ineligible individual” requirements under the *Income Tax Act* (Canada)?
  - b) Are there conflicting qualifications to be a director in the articles, by-laws, and board policies?
  - c) Is the register of directors being maintained at least on an annual basis and are any changes among the directors or their addresses being sent to the relevant government authority?
2. Is the charity able to identify which group is in charge of the charity?

- a) Where does the *de facto* control of the charity lie? Is it with a board, a committee, or the executive staff?
  - b) Is the authority of the board recognized by the membership?
  - c) Is the authority of the board and the liability faced by the board recognized and acknowledged by senior management?
- 3. Are the lines of authority between the board and the executive staff clearly defined?
  - 4. Is there a constructive relationship of mutual respect and co-operation between senior management and the board?
  - 5. Does the board meet on a regular basis with all directors in regular attendance (and by electronic means, where permitted)?
  - 6. Has an audit committee been established to review financial statements and the auditor's report?
  - 7. Are there overlapping board memberships that require a more nuanced conflict of interest policy?
  - 8. Is there adequate communication of board responsibilities to existing, new, and future board members?
    - a) Has the charity created a board binder of all corporate documents, as well as an explanation of the general operations of the corporation as a charity and the board of directors' legal duties and liabilities?
    - b) Does the organization provide regular updates on changes in the law to board members?
  - 9. Are the individuals who are authorized to enter into contracts as signing officers on behalf of the charity clearly identified in their official capacity instead of as individuals?
  - 10. Are there policies in place to address board succession planning, recruitment, and orientation?

## **E. REDUCING THE BOARD'S EXPOSURE TO LIABILITY**

- 1. Are the directors aware of their duties with respect to ensuring:
  - a) The objects or purposes of the charity are properly carried out and the charity's activities comply with their objects or purposes?
  - b) The charity's financial stability and overall performance?
  - c) Proper hiring and supervision of management and staff?
  - d) Employees are paid wages for services performed and/or vacation pay?
- 2. Do any directors receive direct or indirect remuneration or other financial benefit from the charity in contravention of their fiduciary duties?
- 3. For incorporated charities, are any of the directors or any "connected" persons to a director receiving payments from the charity in contravention of regulations under the *Charities Accounting Act* (Ontario) and the Ontario Public Guardian and Trustee's related Guidance, *Payments to Directors and Connected Persons*?
- 4. Do the governing documents authorize the charity to indemnify its existing and former directors and officers in accordance with applicable corporate legislation and regulations under the *Charities Accounting Act* (Ontario)?



5. Is there corporate authority to acquire directors' and officers' liability insurance in accordance with the requirements of the *Charities Accounting Act* (Ontario)?
6. Has the board delegated excessive responsibility to executive staff by restricting itself to policy decisions only without ensuring careful and ongoing supervision?
7. Should the charity consider reducing the size of the board to limit the number of people who are exposed to liability as directors?
8. Is the charity effectively making use of committees as an alternative to a large board of directors?
9. Do the directors occasionally need to receive independent legal advice due to the possibility of liability exposure?
10. Should the charity consider implementing an advisory board to complement the board of directors without a corresponding exposure to liability?
11. Has the charity established a comprehensive due diligence review procedure by establishing and utilizing the appropriate legal risk management checklist?
12. Has a legal risk management committee of the board been established or its functions added to the duties of another committee, such as an audit committee?
13. Are the directors and officers aware of their fiduciary responsibilities at law in operating the charity?
14. Are the directors and officers exercising due diligence in relation to the charity by remaining knowledgeable about its operations and ensuring its assets are properly protected?
15. Are new and existing directors and officers receiving proper orientation and training?
16. Are the directors ensuring that applicable employee source deductions are being remitted to avoid personal liability, including under the *Income Tax Act* (Canada), *Canada Pension Plan* and *Employment Insurance Act* (Canada), as well as GST/HST amounts pursuant to the *Income Tax Act* (Canada) and *Excise Tax Act* (Canada)?

## **F. INSURANCE CONSIDERATIONS / RISK TRANSFER**

1. Has the charity maintained a historical record of its insurance coverage in the event of a future claim, together with copies of the original policies?
2. Is there occurrence-based or claims-made insurance coverage for sexual abuse?
3. Has the charity provided full written disclosure each year of all risks to its insurer to avoid denial of coverage?
4. Does the charity request regular written reports from its insurance broker on existing coverage, exclusions from coverage and recommendations to enhance coverage?
5. Is there a regular review of the adequacy and extent of general liability coverage and property insurance, as well as employment benefits and practices liability?
6. Is there directors' and officers' liability coverage in place and is it reviewed on a regular basis to ensure its adequacy?
7. Does there need to be special insurance endorsements to extend insurance coverage to "out-of-the-ordinary" activities, *e.g.* third party use of facilities, incidental medical malpractice; "no-fault" injuries

or accidents; non-owned vehicles; activities of volunteers and agents in foreign countries; social media, cyber attacks and data breaches; and errors and omissions (*i.e.* professional services) including counselling?

8. Has the charity considered obtaining the services of an independent insurance consultant or specialist to conduct a risk management review of the charity's operations and policies from an insurance perspective to determine the adequacy of insurance coverage?
9. Has the charity developed and administered effective liability shields in the form of informed consents, disclaimers, releases, waivers and indemnities for program participants, as necessary, as part of a volunteer agreement?
10. Are volunteers included as "additional named insureds" to provide them with coverage if they are named in a lawsuit and for personal legal defense costs?

## **G. THIRD PARTY USE OF CHARITABLE PROPERTY**

1. Is the charity aware of the potential liability exposure in permitting third parties to use its property?
2. Has the charity developed and implemented a facility use policy and license agreement with appropriate releases of the charity and indemnification provisions?
3. Does the charity require evidence of liability insurance from third party users of its facilities?
4. Has the organization provided written notice to its insurer concerning the use of its property by third parties?
5. Does the charity charge appropriate fair market rental fees to users of these properties that are not charities?
6. Does the organization have the corporate authority to allow third party use of its property?
7. Does the third party use constitute an unrelated business prohibited by the *Income Tax Act* (Canada)?
8. For charities with lifestyle requirements, has consideration been given to compliance with the *Human Rights Code* (Ontario), including the exception available to special interest organizations?

## **H. REAL PROPERTY ISSUES**

1. Property Owned by the Charity
  - a) Has an environmental assessment been conducted to determine the extent of possible liability exposure for the organization in relation to future acquisitions as well as existing properties?
  - b) Are there trust provisions in old trust deeds or title documents? If so, are they being complied with? Should they be varied by a court?
  - c) Has the charity addressed and rectified encroachments with neighbouring lands?
  - d) Are municipal zoning and legal non-conforming uses being complied with?
  - e) Has the charity reviewed its municipal property tax assessment for accuracy and to determine both classification and valuation? If so, has there been a request for reconsideration or appeal of assessment?
  - f) Has the charity leased its lands and have the terms of the lease been reviewed for possible liability concerns?

- g) Does the charity maintain a register of its ownership interests in land showing the identity of each property and the dates the corporation acquired it and, if applicable, disposed of it, in accordance with the ONCA?
- h) Does the charity own property with a cultural heritage value or interest that is therefore subject to the *Ontario Heritage Act*?
- i) If the charity has fuel oil storage tanks either above or below ground, is it aware of, and compliant with, the requirement for upgrading or removal pursuant to Ontario Regulation 213/01, *Fuel Oil*, under the *Technical Standards and Safety Act, 2000* (Ontario)?
- j) Have accommodations been made for people with disabilities in accordance with the Accessibility Standards for Customer Service and the Integrated Accessibility Standards in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*, and have the appropriate accessibility reports been filed?

## 2. Property Leased from Third Parties by the Charity

- a) Does the lease include personal guarantees or indemnities?
- b) Has access to adequate parking been ensured?
- c) Has the extent of tenant expenses under a net lease arrangement been limited?
- d) Has the possible right to sublet and assign the lease, with a release, been ensured?
- e) Have the issues of environmental liability for both the landlord and tenant been adequately addressed?
- f) Has there been careful monitoring of the date by which an option to renew the lease must be exercised?
- g) Has the amount of rent on renewal been made subject to arbitration?
- h) Has there been an attempt to obtain a covenant from the landlord to prohibit offensive uses of adjoining leased premises?
- i) Does the lease include a clause requiring restoration of leased premises at the end of the lease?
- j) Does the lease include a clause permitting the landlord to unilaterally relocate the tenant?
- k) Has there been an attempt to obtain a right of first refusal to lease adjoining leased premises?
- l) Does the lease need to be registered on title?
- m) Have accommodations been made for people with disabilities in accordance with the Accessibility Standards for Customer Service and the Integrated Accessibility Standards in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005* and have the appropriate accessibility reports been filed?
- n) Is the arm's length landlord responsible for all leasehold improvements, or where the charity is undertaking leasehold improvements, has the charity negotiated with the landlord for reimbursement or cost-sharing of the improvements in accordance with the requirements of CRA for charities?

## I. INTELLECTUAL PROPERTY & ONLINE CONTENT ISSUES

- 1. Do the directors and executive staff of the charity recognize that trademarks, internet domain names, and copyright are essential assets of an organization that need to be protected and managed?

2. Does the charity need to register any of its key names and/or logos as trademarks?
  - a) Identify trademarks, including domain names and social media hashtags
  - b) Protect trademarks by registration
  - c) License and enforce trademarks
  - d) Use trademarks in conjunction with appropriate markings of either a <sup>TM</sup> or an <sup>®</sup>, as applicable
  - e) Ensure that any third parties using trademarks enter into a trademark licensing agreement
3. Has the charity protected its trademarks by securing multiple corresponding domain names?
4. Has the charity removed all copyrighted material owned by any other organizations from its website?
5. Who owns the copyright for publications of the charity and is it properly identified with a notice of copyright protection, *i.e.* ©?
  - a) Does the copyright material produced by employees, independent contractors, and/or volunteers need to be registered, assigned, or licensed?
  - b) Has the designer of the organization's website assigned the copyright for the website design?
6. Does the charity have a social media, computing, and use of technology policy statement that:
  - a) Prohibits employees and volunteers from using the trademarks, logos, copyrighted material or other intellectual property in any non-work related social networking and blogging activities?
  - b) Prohibits employees and volunteers from using the charity's email address in their personal profiles on social networking sites?
  - c) Provides a set of rules and standards to govern how individuals employed by or associated with the charity should conduct themselves online and be held accountable by the charity? Do these rules outline what internet harassment is?
  - d) Outlines prohibited activities during an election, such as using a charity's account to endorse a candidate on social media?
  - e) Outlines how its public platforms which allow for discussions will be monitored, and the standards and removal process for inappropriate tweets (including comments which support or oppose a political party or candidate during an election period)?
7. If the charity has 50 or more employees, does its internet websites and web content conform with the World Wide Web Consortium Web Content Accessibility Guidelines 2.0?
8. Is there "opt-in" consent regarding terms and conditions on the charity's website to protect the organization and its board of directors from liability?

## **J. PRIVACY CONSIDERATIONS**

1. Has the charity's management or board of directors ever taken steps to assess or analyze any risks to personal information?
2. Do all employees receive training about the charity's privacy policy and their privacy obligations, including the handling, retention and destruction of data and personal information?
3. Has the charity named a privacy officer?

4. Does the charity have appropriate physical, technical and administrative safeguards in place to protect personal information against loss or theft as well as unauthorized access, disclosure, copying, use or modification?
5. Does the charity have robust contracts with third party service providers and contractors to control their access to and use of personal information and require them to use appropriate safeguards to protect personal information?
6. Does the charity store or process personal information outside of Canada (*e.g.* cloud computing)? If so, are donors/clients advised of that when their personal information is collected?
7. Does the charity obtain donor/client consent before any collection, use or disclosure of personal information?
8. Does the charity have mandatory cybersecurity and privacy awareness and training and education for its employees and volunteers, including educating and training employees and volunteers to be extra-vigilant against phishing scams, and to comply with privacy policies?
9. Does the charity have clear privacy breach and security incident response protocols in place?
10. Does the charity take privacy and cyber security measures to protect personal information, such as:
  - a) Setting up a virtual private network for employees and volunteers accessing work data remotely?
  - b) Restricting access to personal information on a need-to-know basis?
  - c) Avoid storing personal information on portable devices and removable media and, if unavoidable, encrypting personal information and other sensitive data on portable devices and removable media?
  - d) Having robust contracts with third-party service providers, and ensuring adequate and trustworthy IT support is available?
  - e) Regularly backing up data and updating software, and requiring the same from the employees?
  - f) Requiring employees to fortify passwords and ensure their Wi-Fi connection is secure, along with storing work devices safely and securely, without access to anyone?
  - g) Taking all reasonable steps to protect information from unauthorized uses and disclosures while in the hands of third-party service providers?
  - h) Implementing notification procedures for when a breach of security safeguards (at either the charity or a third party working for the charity) creates a real risk of significant harm to an individual?
11. Is the charity aware of and complying with any federal privacy legislation (*e.g.* PIPEDA, *etc.*) that may apply to its circumstances and activities?
12. If the charity is or plans to operate extra-provincially, is it aware of and complying with any provincial privacy legislation that may apply to its circumstances and activities?
  - a) Alberta - *Personal Information Protection Act*
  - b) British Columbia - *Personal Information Protection Act*
  - c) Ontario – *Personal Health Information Protection Act, 2004*
  - d) Quebec - *An Act respecting the protection of personal information in the private sector (Québec Privacy Act)*

13. Has the charity developed a privacy policy that protects the personal information and privacy rights of donors, employees, volunteers, clients and other stakeholders?
  - a) Is the policy clear about what personal information is collected, for what purposes it will be used, who has access to it, and how and when it will be disposed of?
  - b) Does the policy describe how consent will be obtained from individuals?
  - c) Does the policy describe under which circumstances any personal information may be disclosed?
  - d) If applicable, does the policy set out all reasonable steps the charity will take to protect personal information from unauthorized uses and disclosures while information is in the hands of a third-party processor?
14. If applicable, does the policy use clear and accessible language to disclose that information may be stored in another jurisdiction? Does the policy advise stakeholders that information may be accessed by authorities in that jurisdiction? Does the charity have adequate cyber insurance coverage to protect it against cyber-crime, fraud and privacy breaches?
15. Does the charity utilize an “opt-in” consent method regarding privacy on its website?

## K. EMPLOYMENT AND VOLUNTEER MATTERS

1. Are individuals being paid as employees or independent contractors and, if they are paid as independent contractors, is it in accordance with CRA’s requirements?
2. Are there written employment contracts with all employees and are these up to date?
  - a) Does the employment contract have an enforceable termination clause?
3. Is there a volunteer agreement and application form to be used with volunteers?
4. Has the charity developed and implemented appropriate policies and practices for hiring, disciplining and terminating employees and volunteers?
  - a) Is there compliance with applicable human rights legislation in the hiring process?
  - b) Has the charity developed and implemented a policy concerning accommodation for employees who are members of a disadvantaged group identified in the *Human Rights Code* (Ontario)?
  - c) Do employees and volunteers, especially those who deal with children, need to be screened, including criminal record checks, and supervised in accordance with an appropriate sexual abuse policy statement?
  - d) For religious charities that require employees and volunteers to sign Lifestyle Statements, have these statements been reviewed to ensure compliance with the *Human Rights Code* (Ontario), including the exception available to special interest organizations?
  - e) If needed, has a vulnerable sector check been conducted by applicable employees and volunteers in compliance with the *Child, Youth and Family Services Act, 2017* (Ontario) and the *Police Record Checks Reform Act, 2015* (Ontario)?
5. Is there a need to develop and adopt policy statements and/or manuals for managing employees, as well as volunteers, in relation to conduct and performance structure?
  - a) Has the charity developed and implemented a policy concerning sexual harassment?

- b) Has the charity developed and implemented a policy concerning workplace violence and harassment prevention?
  - c) Has the charity developed and implemented a policy concerning social media, computing, and the use of technology, including the electronic monitoring of employees?
  - d) Has the charity developed and implemented a drug, alcohol and cannabis/fitness to work policy for employees and volunteers?
  - e) Is there need for a discipline procedure for employees and/or volunteers?
  - f) Is the charity aware of and addressing ownership issues regarding intellectual property created by the employees and volunteers, such as assignment of copyright and waiver of moral rights?
  - g) Is the charity aware of and complying with applicable statutory requirements, such as pay equity, employment standards, human rights legislation, privacy legislation, and occupational health and safety prerequisites?
6. Are the charity and its board of directors exposed to liability with regards to the actions of its employees or volunteers?
- a) Have the charity and its representatives (*i.e.* directors, officers and all others who act on behalf of the charity) taken every reasonable precaution to ensure the safety of workers, volunteers, and the public?
  - b) Have the charity and its representatives complied with federal and provincial occupational health and safety legislation?
  - c) Have the charity and its representatives established a safety committee or equivalent program or system?
  - d) Have all reasonable steps been taken to ensure that the committee, program, or system is effective on an ongoing basis?
7. Are the charity and the board exposed to potential criminal liability under section 217.1 of the *Criminal Code* (Canada) to take reasonable steps to prevent bodily harm to any person arising from the work or tasks the board directs them to perform?
8. Has the charity undertaken an occupational health and safety audit conducted by an experienced workplace safety consultant?
9. Has the charity developed and implemented appropriate policies and practices regarding the termination of employees and complied with appropriate provincial and/or federal legislation?
- a) In relation to wrongful dismissal, is the charity aware that punitive damages may be awarded in a case where the employer's conduct was harsh, vindictive, reprehensible and malicious?
  - b) Does the charity draft termination clauses in its employment contracts to limit its potential liability to the minimum allowable under employment standards legislation?
10. Has the *Employment Standards Act, 2000* (Ontario) been complied with?
11. For charities that have hired construction services, has the charity obtained a Workplace Safety and Insurance Board ("WSIB") clearance certificate from the contractor or the subcontractor before any construction work begins to ensure registration with the WSIB and good standing with respect to payment of its WSIB premiums?
12. Has the charity implemented policies on effective confidentiality and conflict of interest?

13. Has the charity developed job descriptions for the different employment and volunteer positions?
14. Has the charity properly managed the performance and expectations of older employees to avoid potential wrongful dismissal or human rights claims by them?
15. Does the charity have interns (unpaid individuals being trained for employment) and, if so, do they meet any of the exemptions from minimum wage and other entitlements under the *Employment Standards Act, 2000* (Ontario)?
16. Does the charity have a policy setting out the expectations for staff working remotely and, if so, does it clarify working hours and overtime requirements to comply with the *Employment Standards Act, 2000* (Ontario) and the *Digital Platform Workers' Rights Act, 2022* (Ontario)?
17. Has the charity taken steps to ensure that the *Competition Act* (Canada) has been complied with regarding wage fixing and no-poaching agreements?

## **L. FUNDRAISING ACTIVITIES**

1. Does the charity comply with the requirements of the CRA's Guidance CG-013, *Fundraising by registered charities*?
2. Has the charity complied with fundraising legislation in other provinces, specifically Alberta, Prince Edward Island and Saskatchewan?
3. Has provincial fundraising legislation, where applicable, been complied with as well as the guideline on fundraising published by the Ontario Public Guardian and Trustee?
4. Have fundraising programmes been reviewed by legal counsel?
5. Are donors' rights to require accountability respected, particularly rights under the *Charities Accounting Act* (Ontario)?
6. Are sponsorship arrangements properly documented?
7. Has the charity developed and implemented a gift acceptance policy?
8. Do the charity's fundraising activities comply with the applicable corporate objects or purposes and powers of the charity?
9. Has the charity developed an appropriate standard of conduct for fundraising in accordance with sample fundraising codes established by umbrella organizations, such as the Association of Fundraising Professionals or Imagine Canada?
10. Does the fundraising venue meet proper health and safety standards where applicable?
11. If the fundraising event involves catered food, has the caterer assumed the responsibility of safe food preparation?
12. If the fundraising event involves non-catered food, are the employees and volunteers knowledgeable about the potential for food spoilage and contamination? Are any permits or licences required to provide food service?
13. If the fundraising event involves service of alcohol, is the duty of care to prevent intoxication and protect intoxicated individuals being met?



14. Does Canada's Anti-Spam Legislation ("CASL") apply to the charity? If so, is the charity aware of the prohibition against sending unsolicited "commercial electronic messages" ("CEMs")?
- a) Has the charity implemented a compliance program to demonstrate due diligence regarding CASL, including:
    - Maintaining and reviewing an up-to-date policy
    - Being able to prove compliance
    - Continuous monitoring and improvement
  - b) Is the charity aware of the rules regarding express and implied consent regarding CEMs?
  - c) Barring consent from the receiver, does the charity ensure that the "primary purpose" of its message is to raise funds for the charity?
15. Has the charity developed a privacy policy in compliance with PIPEDA that protects the personal information of donors, employees, volunteers and clients, if applicable?
16. Has the charity taken steps to ensure that the *Competition Act* (Canada) has been complied with regarding possibly misleading fundraising information, or calls to donors as telephone solicitation?
17. Is the charity involved in telemarketing, and if so, is it complying with the do-not-call requirements applicable to charities under s. 41.7 of the *Telecommunications Act* (Canada)?
18. Does the charity have a policy dealing with cause-related marketing arrangements in accordance with the requirements of CRA?
19. Does the charity accept donations in cryptocurrency?
- a) If so, have appropriate policies and procedures in accordance with CRA requirements for donations in-kind been adopted and implemented?
  - b) If the charity is also a reporting entity under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), is it aware of its reporting requirements for virtual currency?
20. Is the charity carrying out any online fundraising activities through the charity's own website or a third-party platform? If so, have the appropriate Terms and Conditions of Use been adopted and implemented to protect donors as well as the charity?
21. Is the charity collecting payment information from donors? If so, has the charity adopted and implemented appropriate device use and cybersecurity measures for protecting this information?

## M. FISCAL MANAGEMENT ISSUES

- 1. Are all salaries, benefits and statutory deductions being paid by the charity on a timely basis with appropriate reports to the board of directors?
- 2. Is the charity required to register for GST/HST purposes?
- 3. Is the charity operating with a deficit and, if so, for how long?
- 4. How is the deficit being funded?
- 5. Has a sinking fund been established to retire debt of the charity?

6. Are investments being offered to the public without appropriate exemptions for the distribution of securities?
7. Is there an audit committee in place?
8. Is the charity ensuring compliance with audit requirements imposed under applicable corporate legislation, such as the CNCA, including record keeping requirements?
9. Are charitable funds being used to fund separate business operations of the charity?
10. If the charity is a private foundation, is it aware of the excess corporate holding regime concerning limitations on the ownership of shares?

## **N. INVESTMENT ISSUES**

1. What investment powers apply to the investment of surplus funds of the charity?
  - a) Prudent investor rule under the *Trustee Act* (Ontario) will generally apply
  - b) However, specific investment powers may sometimes apply as contained in:
    - Letters patent, supplementary letters patent, articles of incorporation or articles of amendment;
    - Incorporating legislation;
    - Endowment and gift agreements; or
    - Testamentary gifts
2. Does the charity need and/or have an investment policy?
  - a) Documenting compliance with prudent investor rule
  - b) Establishing requirements for delegation of investment decision-making
  - c) Prohibiting sub-delegation of investment decision-making, except for mutual and pooled funds as is now permitted by amendments to the *Trustee Act*
  - d) Proper management of endowed funds
  - e) Diversifying the investment of trust property to an extent that is appropriate to the requirements of the trust, and general economic and investment market conditions
3. Is the charity aware that CRA allows both public and private foundations to incur debt for the purpose of acquiring investments?
4. Is the charity engaged in “social investments” under the *Charities Accounting Act* (Ontario)? If so, is the charity able to distinguish them from “program-related investments” under CRA’s Guidance CG-014, *Community economic development activities and charitable registration*? Is the charity in compliance with the Guidance on *Charities and Social Investments* released by Ontario Public Guardian and Trustee?
5. Does the charity need a disbursement policy in relation to investment proceeds?

## **O. DONOR RESTRICTED TRUST FUNDS**

1. Are there donor restricted trust funds being held by the charity?

- a) Building funds
  - b) Endowment funds (perpetual)
  - c) Special project funds
  - d) Scholarship funds
  - e) Legacy “ten year gifts” that may have been given in the past under the *Income Tax Act* (Canada)
- 2. Are restricted funds being used only in accordance with applicable restrictions?
  - 3. Has a breach of trust occurred as a result of restricted funds being used in whole or in part for general operational purposes or are being borrowed against?
  - 4. Are restricted funds segregated from operating funds?
  - 5. If not, is there compliance pursuant to the regulations under the *Charities Accounting Act* (Ontario) to co-mingle restricted funds for investment purposes?
  - 6. Is the board of the charity aware of the consequences of breach of trust for failing to comply with restricted funds?
  - 7. Do the charity’s gift agreements with donors include a power in favour of the charity to vary a restricted gift?
  - 8. Is the charity investing endowed funds on a “total return” basis (realized capital gains being included as part of income) in violation of the terms of the endowed gifts?

## **P. MAINTAINING CHARITABLE REGISTRATION**

- 1. Does the charity know what charitable objects/purposes it has on file with CRA?
- 2. Has the charity ensured that its charitable activities are being undertaken in accordance with its charitable objects/purposes?
- 3. Is the legal name of the charity and/or its operating name consistent with the records of CRA?
- 4. Is the charity aware of the CRA’s electronic filing system under the Charities IT Modernization Project (“CHAMP”) that may now be used for filing purposes?
- 5. Has the charity filed all of its governance documents with CRA, including letters patent, supplementary letters patent, articles of incorporation/continuance/amendment and by-laws, as applicable?
- 6. Does CRA have the current head office address of the charity?
- 7. Is the charity aware of the applicable rules concerning the issuance of donation receipts?
- 8. Do all of its charitable receipts include the name and website address ([canada.ca/charities-giving](http://canada.ca/charities-giving)) of CRA?
- 9. Does the charity submit its annual information return (Form T3010 *Registered Charity Information Return*) to CRA within six months of the financial year end of a charity in order to avoid loss of charitable status?

10. Does the board of directors, the charity's accountant/auditor, and legal counsel review and approve the annual information return (Form T3010 *Registered Charity Information Return*) for the charity before it is filed each year?
11. Does the charity submit its annual report on qualifying disbursements (*Form T1441 Qualifying Disbursements: Grants to Non-Qualified Donees (Grantees)*)?
12. Does the charity comply with split receipting and anti-tax shelter provisions of the *Income Tax Act* (Canada)?
13. Is the charity aware of the intermediate sanctions and penalties for infractions?
14. Is the charity aware of the CRA's Guidance CG-013, *Fundraising by registered charities*, and the need to track its fundraising ratio each year?
15. Is the charity aware of their ability to engage in public policy dialogue and development activities, and the associated reporting requirements?
16. Does the charity follow the CRA requirements for "related business" as set out in the CRA's Policy CPS-019, *What is a related business?* Are charitable funds being used to fund separate business operations of the charitable organization?
17. Has the charity adopted a gift acceptance policy, including scope/purpose of the policy, duties of the charity and board, donor rights/fundraising policies, general gift acceptance principles, donor recognition issues, and a list of accepted gifts?
18. Are agency, joint venture relationships, contractual transfer arrangements, or qualifying disbursements with non-qualified donees (which may be "grantee organizations" under the *Income Tax Act* (Canada)), both inside and outside of Canada, properly documented and implemented in accordance with either the CRA's Guidance CG-002, *Canadian registered charities carrying on activities outside of Canada* or any forthcoming CRA guidance about the new qualifying disbursement regime?
19. Are the charity's books and records maintained in accordance with the requirements of the *Income Tax Act* (Canada)?
20. Does the charity maintain electronic records on a foreign database in contravention of CRA requirements?
21. Is the charity prepared for an audit by CRA? Has it addressed any issues raised by past CRA audits through education letters and/or compliance agreements with CRA?
22. Is a member of the board of directors, a trustee, officer or equivalent official, or any individual who otherwise controls or manages the operation of the charity an "ineligible individual" under the *Income Tax Act* (Canada)?
23. Has the charity been properly calculating and meeting its annual disbursement quota obligations? If not, does the charity have a disbursement quota surplus that it can utilize to address a shortfall in a particular year?

## **Q. NATIONAL AND/OR INTERNATIONAL RELATIONSHIPS**

1. Are relationships with national organizations and/or subsidiary chapters adequately documented with specific reference to controlling trademarks in Canada?

2. If operating in the province of Quebec, is the charity compliant with language requirements set out in *An Act respecting French, the official and common language of Québec*, including intellectual property and employment concerns?
3. Are relationships between national and international organizations adequately documented in order to effect an international operation?
4. Is the charity in compliance with the CRA's Guidance CG-002, *Canadian registered charities carrying out activities outside Canada*?
5. Is there a need for an international umbrella organization?
6. Has the ownership of trademarks and/or copyrights been determined and documented through license agreements?
7. Has any security assessment for disclosing personal information outside of Canada included an assessment of the legal framework for the jurisdiction where that personal information would be disclosed?
8. If operating in the United States, is the charity aware of requirements under the *Foreign Agents Registration Act* (United States)?

## **R. ANTI-TERRORISM/MONEY LAUNDERING LEGISLATION/FOREIGN CORRUPTION ISSUES**

1. Does the charity carry on operations that may require it to be in compliance with anti-terrorism/money laundering legislation, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada)?
  - a) International operations
  - b) Domestic operations
2. Has the charity undertaken appropriate due diligence procedures in complying with anti-terrorism legislation?
  - a) Development of an anti-terrorism/money laundering policy statement
  - b) Development of resource materials on anti-terrorism/money laundering legislation
  - c) Requiring disclosure statements for board members and staff
  - d) Evaluating all charitable programs for compliance
  - e) Requiring disclosure statements from affiliated charities, third party agents and/or partners and conducting appropriate inquiries
  - f) Determining when to make inquiries of donors
  - g) Conducting due diligence internet searches on directors, officers, and agents
  - h) If the charity is operating in a geographic area controlled by a listed terrorist group, has it applied to the Public Safety Minister for authorization?
3. Are directors aware of risks associated with failing to comply with anti-terrorism/money laundering legislation?
  - a) Loss of charitable status
  - b) Personal liability in civil law

- c) Possible criminal law sanctions
- 4. If the charity is working in the U.S. or in conjunction with U.S. charities in conflict zones, is it aware of the impact of the *Patriot Act* (United States) and other international anti-terrorism legislation on its programs and operations?
  - a) Does the charity investigate significant ownership interest in any organizations it works with domestically and abroad?
  - b) Does the charity conduct due diligence for any subcontractors it hires for work domestically and abroad?
- 5. Does the charity comply with anti-bribery prohibitions under the *Corruption of Foreign Public Officials Act, 1998* (Canada)?
  - a) Is the charity caught by the broader definition of “business” that does not require a “for-profit” element?
  - b) Is the charity refraining from making “facilitation payments”?
- 6. Does the charity have any close associations with foreign or domestic politically-exposed persons?
  - a) If the charity also carries on a related business which meets the definition of a “money services business” under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), is it aware of its additional compliance and reporting obligations?
- 7. If the charity is making payments through the U.S. banking system or selling goods of U.S. origin or with U.S. content, is it aware of the impact of the *Foreign Corrupt Practices Act* (United States) on charities with U.S. affiliations?
- 8. Is the charity in any way controlled or managed by a director, trustee, officer, or similar official who currently or at a point in the past governed a listed terrorist entity?
- 9. If the charity is receiving money through crowdfunding platforms, is it aware that personal identifying information about the sender and recipient, and even intended purposes of the crowdfunded donations, will be recorded and transmitted to FINTRAC if it meets certain monetary thresholds?

## **S. CRISIS MANAGEMENT ISSUES**

- 1. Does the charity have an existing committee or group that can develop a crisis management plan? If so, is the group diverse enough to consider the full range of crises that the charity might face?
- 2. Is the charity overly dependent on another organization? Could the relationship between the organizations be terminated with little or no warning?
- 3. Does the charity have contingency plans in the event of the following circumstances?
  - a) Death or injury of a key individual
  - b) Loss of access to the use of facilities and equipment
  - c) Disrupted or significantly diminished operations
  - d) Cash flow problems
  - e) Cyber attacks and data breaches, including breaches of personal information
  - f) Loss of crucial information

- g) Intense media scrutiny
  - h) Irreparable damage to a charity's reputation
  - i) Unexpected financial shortfalls and/or fraud (especially cyber fraud)
  - j) Novel or ongoing public health emergencies, such as the COVID-19 pandemic (see below)
  - k) Harm to beneficiaries, staff, volunteers, *e.g.* those who work in dangerous situations such as conflict areas
4. Does the charity's crisis management plan outline how to:
- a) Quickly convene board or executive meetings as necessary?
  - b) Develop an effective communication strategy to notify all applicable stakeholders?
  - c) Address employee issues, such as continuing to pay wages?
  - d) Legally access restricted funds, when necessary as a last resort?
  - e) Notify and cooperate with regulators?
  - f) Develop a reserve fund to offset cash flow issues during a crisis?
  - g) Notify insurers as necessary?
  - h) Conduct an internal investigation or engage an external investigator?
5. Can some of the liability risk associated with a possible crisis be covered by specialized insurance?
6. Does the charity have a back-up plan in place for service options in the event of a cyber security attack?



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