
**CANADIAN SOCIETY OF ASSOCIATION EXECUTIVES (CSAE) –
TRILLIUM CHAPTER – WINTER SUMMIT**

Legal Update 101: What You Need to Know

Hamilton – February 25, 2011

**KEY LEGAL COMPLIANCE ISSUES
FOR CHARITIES AND NOT-FOR-PROFITS**

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<p>CARTERS BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p>CANADIAN SOCIETY OF ASSOCIATION EXECUTIVES (CSAE) – TRILLIUM CHAPTER – WINTER SUMMIT Hamilton – February 25, 2011</p>
<p>Key Legal Compliance Issues for Charities and Not-For-Profit Organizations</p>	
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<p>OVERVIEW</p> <ul style="list-style-type: none"> • The need for due diligence in addressing compliance issues • Differences between charities and non-profit organizations • Different types of legal forms • Maintaining charitable registration • Maintaining non-profit status • Gathering documents • Review of key organizational and legal documents • Utilizing multiple corporations • Board management issues
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<ul style="list-style-type: none"> • Reducing board liability • Insurance considerations • Third party use of property • Real property issues • Intellectual property issues • Employment and volunteer issues • Fiscal management issues <p>Note: For more detail, see Checklists, Articles and Newsletters at www.charitylaw.ca, www.churchlaw.ca and www.antiterrorismlaw.ca</p>
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A. THE NEED FOR DUE DILIGENCE IN ADDRESSING COMPLIANCE ISSUES

- Charities and not-for-profit organizations collectively make up an essential part of Canadian society and its economy
- Charities and not-for-profits constitute the third sector of the economic engine of Canada i.e. not including universities or hospitals, the sector employs 7.2% of Canada's workforce
- 161,000 charities and not-for-profits in Canada – CRA only keeps a record of the number of registered charities (about 82,000 in 2008)

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- Charities and not-for-profits are facing fundamental changes and challenges in delivering their services to the public, in part because of a more litigious society
- In facing these challenges, they must become familiar with a vast array of legal requirements, e.g. corporate law, trust law, tax law, multiple corporate and international structures
- To comply and avoid exposure to legal liability, they must exercise due diligence in addressing legal compliance issues

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- Why charities and not-for-profits experience difficulties in complying with legal requirements?
 - Complicated corporate and charitable requirements
 - Increasingly complicated tax issues
 - Increased fundraising/funding demands
 - Due diligence required in charitable receipting
 - Inherent risks in operations, e.g. sexual abuse of children
 - Determining appropriate investment policies
 - Incomplete corporate records
 - Privacy issues involving donors/funders, employees and volunteers
 - Frequently inadequate contractual documents

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- Possible consequences from deficiencies in compliance issues include
 - Revocation of charitable status or loss of non-profit tax-exempt status
 - Loss of corporate status
 - Unauthorized activities
 - Confusion in corporate operations
 - Allegations of breach of trust and/or legal actions by donors and/or the Ontario Public Guardian and Trustee for charities
- Pro-active (not passive) due diligence needed in order to anticipate and avoid legal problems before they occur
- What follows is an overview of key considerations, not exhaustive

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B. DIFFERENCES BETWEEN CHARITIES AND NON-PROFIT ORGANIZATIONS

- See CRA website at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplvng/rqstrtn/rqht-eng.html> for detailed comparison

1. Charities - key concepts

- At common law a charity includes organizations established for one or more of the following recognized charitable purposes:
 - Relief of poverty
 - Advancement of education
 - Advancement of religion
 - Other purposes beneficial to the community recognized by the courts

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- Under the ITA – as one of the categories of “qualified donees”
 - Includes a “registered charity”
 - Not defined in the ITA, CRA uses the definition at common law
 - Charitable organizations, public foundations and private foundations
 - Also includes list of other entities, e.g. registered Canadian amateur athletics associations (RCAAA); municipal, provincial and federal governments; United Nations and its agents; prescribed universities

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- Advantages of being a charity
 - Does not pay tax on income or capital gains
 - Can issue charitable donation receipts to donors
 - A gift for income tax purposes permits donor to receive a partial benefit (split-receipting)
- Disadvantages of being a charity
 - Must go through a registration process
 - Subject to more regulatory oversight
- Legal forms for a charity
 - Unincorporated associations
 - Charitable trusts
 - Corporations

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2. Not-for-profit organizations – key concepts

- “Non-profit” and “not-for-profit” (“NPOs”) are used interchangeably and generally refer to organizations whose profits are not passed on to their members
- Include voluntary recreational clubs (hence the difficulty in keeping track of their numbers), e.g. book clubs, chess clubs, cubs and scouts, sports clubs, etc.
- Other examples include service clubs, trade associations, professional associations, etc.
- Recent CRA views create much uncertainty for NPOs and substantially limit their revenue-generating capacity

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- Advantages of being NPOs
 - NPOs do not pay tax on income or capital gains, unless its main purpose is to provide dining, recreation or sporting facilities
 - Broader possible purposes than a registered charity – any purpose other than profit
 - NPOs have far more freedom to operate vis a vis tax rules in the ITA than registered charities, i.e. non-profits can carry out political activities without limitation
 - No requirement to register with CRA and many do not even file a tax return

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- Disadvantages of being NPOs
 - Registered charities can issue donation receipts, NPOs cannot
 - Unlike business corporations, NPOs cannot distribute earnings to members in the form of dividends or otherwise and there are limits on the nature of commercial activities that can be carried on
 - NPOs cannot carry a substantial surplus on its books from year to year (other than reasonable reserve), but a registered charity can carry a surplus (e.g. endowments)

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- Legal forms for NPOs
 - Unincorporated associations
 - Corporations
 - But probably not trusts
- Our focus in this presentation is on NPOs (with some references to registered charities)

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C. DIFFERENT TYPES OF LEGAL FORMS

- Charities and not-for-profits as unincorporated associations
 - Not a legal entity
 - Generally used for starting up a charity or not-for profit in its early stages
 - Flow through liability to members

The diagram shows a dashed circle representing an unincorporated association. Inside the circle, the word 'executive' is at the top, followed by 'members' and three rows of five small circles (representing individuals). An arrow labeled 'third party claims' points from the left towards the dashed circle.

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- Charities as charitable trusts
 - A trust is a relationship between trustees and beneficiaries involving the separation of legal and beneficial ownership of property
 - Available for charitable organizations, public foundations and private foundations
 - Trustees are exposed to liability

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- Charities and not-for-profits as corporations
 - Separate legal entities
 - Members are not exposed to liability
 - Directors may be still exposed to personal liability from fiduciary and management responsibilities

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D. MAINTAINING CHARITABLE REGISTRATION

- Registered charities must comply with the requirements under ITA and Charities Directorate's policies
- Failure to do so may result in intermediary sanctions or revocation of charitable status
- Consequences of losing charitable registration
 - Cannot issue official donation receipts for gifts
 - No longer qualifies for exemption from income tax
 - Must transfer all its remaining property to an eligible donee or be subject to a revocation tax equal to the property's full value

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- Requirements that charities must comply with:
 1. Devoting resources (funds, personnel, and property) to charitable activities
 2. Filing annual Form T3010, Registered Charity Information Return, with CRA on time
 3. Maintaining the basic requirements of charitable status
 - Exclusively charitable purposes within one or more of four categories
 - No income to its members for their personal benefit (except reasonable salaries or the reimbursement of out-of-pocket expenses)
 - Organization must be resident in Canada
 4. Meeting the disbursement quota requirement

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5. Keeping adequate books and records
6. Ensuring official donation receipts are complete and accurate when issued
7. Controlling and directing the use of all its resources (funds, personnel, and property)
8. Maintaining its status as a legal entity
9. Informing CRA of changes to the charity's mode of operation or legal structure (e.g. governing documents, relocation of head office, etc.)
10. Charitable organizations and public foundations avoiding being re-designated as a private foundation
11. Complying with CRA's other requirements for charities, e.g. fundraising, political, business activities; activities outside of Canada; benefiting the public

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E. MAINTAINING NON-PROFIT STATUS

- To qualify as an NPO, organization must meet all 4 criteria under paragraph 149(1)(l) of the ITA throughout any taxation year in order to maintain tax-exempt status
 1. Not be a charity
 2. Be organized exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit
 3. Be operated exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit
 4. Not distribute or otherwise make available for the personal benefit of a member any of its income

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- It is a question of fact that can only be determined after a review the purposes and activities of the NPO
- Being incorporated as an NPO does not mean that the organization is an NPO for tax purposes
- See CRA *IT-496R, Non-Profit Organizations*
<http://www.cra-arc.gc.ca/E/pub/tp/it496r/README.html>

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- Consequences of losing NPO status if it qualifies for tax exemption as an NPO under the ITA
 - Automatically becomes a taxable entity
 - A deemed year end for the corporation is created and corporation deemed to have disposed of and reacquired all of the corporation's assets for fair market value [paragraph 149(10) if the ITA]
 - It also affects the corporation's ability to carry forward losses and other balances or reserves
 - Members of an unincorporated NPO would become responsible for any taxable income in the organization (CRA Document 2010-036970)
 - Document 2010-035583 provides a recent discussion

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1. Must not be a charity
 - If CRA considers an organization to be a "charity" as defined in subsection 149.1(1), then it cannot qualify in that period as a tax-exempt NPO
 - No explicit opinion from CRA is required and no ruling would be issued because it is always a question of fact (Document 2009-03299)
 - If an NPO is denied charitable registration, this does not automatically mean that it is not a charity

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2. Must be *organized* for non-profit purposes

- NPOs must be organized exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit
- When determining the purpose for which an association was organized, the instruments creating the association will normally be reviewed, including letters patent, articles of incorporation, memoranda of agreement, by-laws, etc
- Rarely an issue

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3. Must be *operated* for non-profit purposes

- NPOs must in fact be *operated* exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit
- This is the criteria that is the subject of the most uncertainty for NPOs
- CRA is generally of the view that an NPO can engage in commercial activities and earn an unintentional profit, but if it would be unable to undertake its not-for-profit activities but for its profitable activities, the organization cannot be an NPO because it has a profit purpose (Document 2009-033731)

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- Recent CRA views create much uncertainty for NPOs and substantially limit their revenue-generating capacity
- While these views are open to challenge on the basis that they contradict existing jurisprudence, NPOs seeking to comply will have to look closely at its revenue-generating activities and take proactive measures to ensure that they are not caught offside the CRA's recent administrative positions

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- a) Carrying on a trade or business
 - ITA does not specifically prohibit an NPO from earning a profit or engaging in commercial activities
 - IT-496R lists some characteristics considered by CRA when determining whether an activity is a trade or business
 - a) Is it a trade or business in the ordinary meaning, e.g. operated in a normal commercial manner?
 - b) Are its goods or services restricted to members and their guests?
 - c) Is it operated on a profit basis rather than a cost recovery basis?
 - d) Is it operated in competition with taxable entities carrying on the same trade or business?

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- If an activity generates a profit:
 - The activity cannot be the principal activity and the income must be used by the NPO to carry out its non-profit purposes (Document 1998-97046)
 - The earning of income must not be an operating motivation and not be the focus of the activity (Document 2004-006045)
 - Must be a causal relationship between the activity and the exempt purpose (Document 2002-01538)
- Profit must be unintentional, unanticipated and incidental to carrying out the NPO's exempt purposes, even if the profits are used to fund its non-profit activities (Document 2009-033731)
- Can compete against taxable entities (Document 2009-033731)

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- b) Accumulating excess income
 - IT-496R - May earn income in excess of its expenditures and that the excess may result from the activity for which it was organized or from some other activity
 - One-time capital gain from disposing of property is acceptable (Document 2010-035802)
 - If a material part of an excess is accumulated each year greater than the NPO's reasonable needs to carry on its non-profit activities, the NPO will be considered to be operating for a profit
 - There is a general view that an amount equal to 6 to 12 months operating costs would be reasonable

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- Whether the amount is reasonable is based on the needs of the NPO - including future anticipated expenditures and the amount and pattern of receipts from various sources (e.g., fund raising, membership fees, training course fees)
- May require more than the current and prior year to accumulate the funds needed to acquire capital property that will be used to achieve its declared exempt activities
- May accumulate members' contributions over a period of years to fund future capital projects (Document 2009-033731)
- If reserve would likely result from carrying on activities with a margin, getting to a reasonable reserve may be impossible

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c) Earning investment income

- Case law - merely earning passive investment income is acceptable, unless the earning of such income is both an operating motivation and a focus of its activity
- However, IT-496R provides that an NPO will be considered to be operating for profit if it has excess assets held in long-term investments to produce property income or in a term deposit regularly renewed each year
- Example (Document 2010-036605) – an NPO cannot invest a substantial amount of cash donation to provide income (to be used for its non-profit activities), unless the income-generating assets will be used to meet its non-profit objects within a reasonable time

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d) Carrying on a trade or business through a wholly owned subsidiary

- Can carry on income-generating activity and may derive income from a taxable subsidiary (provided that there is a causal relationship between the profit making activity and the exempt purpose of the organization) (Document 2002-0153887)
- Can hold all of the shares of the capital stock of a taxable corporation (Document 2001-0093245)

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4. Must not distribute income to members

- An NPO must not distribute or otherwise make available for the personal benefit of a member any of its income unless the member is a RCAA
- No part of the income of an NPO, whether current or accumulated, can be paid to a member, nor may it declare and pay dividends out of income
- An NPO may fail to comply with this requirement on a winding-up, dissolution, or amalgamation resulting in tax liability
- Certain types of payments will not, in and by themselves, disqualify an NPO, such as reasonable salaries, wages, fees or honorariums for services rendered to the NPO

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- Income tax filing requirements
 - Where an NPO is a corporation – T2 Corporation Income Tax Return (or a T2 Short Return for eligible corporations) filed within 6 months from the end of the corporation's taxation year
 - NPOs whose main purpose is to provide dining, recreational or sporting facilities for its members - an *inter vivos* trust is deemed to have been created for its property income and T3 Return filed within 90 days from the end of the deemed trust's taxation year (if there is property income or has disposed of capital property that is not used directly in the course of providing dining, recreational or sporting facilities to its members)

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- NPOs must also file Form T1044 information return within 6 months after year end if
 - Has more than \$10,000 in taxable dividends, interest, rentals or royalties received or receivable in the fiscal period;
 - Has more than \$200,000 in assets at the end of the preceding fiscal period; or
 - Had to file an NPO information return for a preceding fiscal period
- An NPO that is a RCAA does not need to file Form T1044, but must file Form T2052 information return within 6 months of its fiscal year end
- Certain NPOs may not need to file any forms for a particular taxation year if none of the above apply

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- CRA's NPO Risk Identification Project is gathering information to determine the level of non-compliance, significant data gaps that may require mandatory filing of forms, and whether more robust legislation are necessary
- Questions to ask:
 - Does the organization continue to meet the definition of a non-profit organization under the ITA?
 - Are the organization's objects sufficient to ensure that it is not a charity, e.g. by including in its objects a disqualifying clause such as lobbying for legislative change?

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- Does the organization earn a profit from a particular activity? If so, what is the margin or is it based on zero-based budgeting?
- Does the organization maintain reserves in excess of a reasonable level acceptable to CRA?
- Be careful about how capital projects are funded, CRA suggests this may only occur through increased member fees
- Does the organization carry out revenue activity within a taxable entity? If so, governance issues will need to be carefully considered
- Is the organization filing all required income tax forms?

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F. GATHER DOCUMENTS

- Identify and locate key organizational & legal documents
 - Develop an inventory of key documents
 - Maintain central location for key documents
- Does the organization maintain these records?
 - Governance records
 - Financial records
 - Operational records
- Does the organization have appropriate records management, retention and destruction policies?

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- Governance records
 - Constatng documents – constitution, articles of incorporation, letters patent, trust deed, and all amendments
 - By-laws and all amendments
 - Directors & members' records, minutes, registers
 - Membership records, covenant and mission statement
 - Various registrations and filings – e.g. business names, extra-provincial registrations, corporate and other government filings, etc.
 - Charitable status registration
 - Up-to-date minute book

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- Financial records
 - Accounting records and source documents, e.g. financial statements, journals, ledgers, invoices, receipts, bank deposit slips, etc.
 - Donation related records, e.g. duplicate donation receipts, pledges, endowment agreements, etc.
 - Investments, annual reports, audit records
 - Charitable registration documents, T3010s, Information Return Summary and correspondence from CRA
 - CRA previous audits, rulings, letters
 - Tax registrations, e.g. GST, HST, provisional sales tax

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- Operational records - Varies depending on type of organization, examples include:
 - Real property title documents, leases, mortgages
 - License agreements
 - Trademark, patent, copyright, domain name registrations
 - Insurance policies and related documents
 - Personnel and volunteers records
 - Contracts, funding agreements, grant agreements, MOUs, affiliation agreements
 - Correspondence (including emails)
 - Stewardship, fundraising and donor relations
 - Policies and procedures

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G. REVIEW OF KEY ORGANIZATIONAL AND LEGAL DOCUMENTS

- Review of key documents for an unincorporated association
 - Are the objects clearly stated in the constitution and are they charitable or not-for-profit in nature?
 - Do constitutional documents correctly reflect how the organization is actually structured and operated?

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- Review of key documents for an incorporated organization
 - Review of letters patent
 - Is the name in the letters patent the correct name of the organization and is it consistent with its objects?
 - Are the objects consistent with the activities that the organization intends to conduct?
 - For non-profits, are there any non-charitable objects?
 - For charities, are objects exclusively charitable?

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- For non-profits, is the dissolution clause complementary to the objects or does it provide for distribution to its members?
- For charities, does the dissolution clause provide for distribution to other charities?
- Does it contain other unusual provisions?
- Review of supplementary letters patent
 - What has been changed, e.g. name, objects, dissolution clause?
- Were by-law amendments adopted in accordance with the legal requirements?

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- Review the current corporate by-law for basic terms, such as whether the by-law
 - Conflicts with letters patent concerning objects or dissolution?
 - Reflects the actual organization and operational structure of the organization?
 - Complies with requirements of corporate statute?
 - Reflects good governance practice?
 - Contains adequate indemnification for directors?
- Does the organization have historical records of all of its by-laws?

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- Was initial organization of the corporation properly adopted? Was there a documented transfer of assets and liabilities on incorporation?
- Are the records of board decisions and/or membership meetings complete? Who are the directors and members? Were directors properly elected?
- Were AGMs held?
- Does the organization need to continue itself under either the new *Canada Not-for-Profit Corporations Act* or the new *Ontario Not-for-Profit Corporations Act*?

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- Are necessary corporate filings and registrations up to date?
 - Ontario - Initial Notice and Notice of Change
 - Federal - Annual Summary
 - Business (trade/operating) name registrations
 - For charities –reporting to Ontario Public Guardian and Trustee
- Does the organization operate and/or fundraise in any other provinces? Are extra-provincial registrations up to date? (federal corporations in Ontario)
- Is there proper use of corporate name and operating names?

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H. UTILIZING MULTIPLE CORPORATIONS

- Different types of multiple corporations that can be implemented
 - Parallel operating organizations
 - Parallel charitable foundations
 - Umbrella organizations
 - Parallel NPOs for charities
 - Parallel charities for NPOs
- Should the organization consider using multiple corporations for its high risk activities in order to reduce liability exposure and protect assets?

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- Should a charity utilize a parallel NPO to engage in non-charitable activities?
- Should an NPO utilize a parallel charity to engage in charitable activities?
- Is the relationship between a parallel NPO and a parallel charity properly structured so that the charitable status would not be jeopardized?
- Has appropriate consideration been given to balancing control of multiple corporations with issues involving the possibility of cross over liability?
- Has appropriate consideration be given to implementing effective control through contracts and/or licensing agreements as an alternative to overt corporate control?

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I. BOARD MANAGEMENT ISSUES

- Are the directors aware of their duties, e.g. statutory duties, fiduciary duties, etc.? For example:
 - Provide directors with a board binder of all organizational documents and the board of directors' legal duties and liabilities
 - Provide regular updates on changes in the law to directors
 - Provide orientation and training to new directors
- Does the board meet on a regular basis and do directors regularly attend?
- Are there clearly defined lines of authority between the board and the executive staff?

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- Who is in charge of the organization? E.g. where does the de facto control of the organization lie? Is it with a board, a committee or executive staff? Is board authority recognized by the membership?
- Has the board delegated too much responsibility to executive staff by restricting itself to policy development only without a careful and ongoing monitoring and review of policy implementation?
- Is there an audit/finance committee to review financial statements and the auditors' report?
- Is there a risk management committee?
- Does the board have a comprehensive due diligence review process – e.g. by establishing and utilizing a legal risk management checklist?

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J. REDUCING BOARD LIABILITY

- Has the organization adequately indemnified its directors and officers
- Has the organization obtained directors' and officers' liability insurance ?
- For charities
 - Do any directors receive direct or indirect remuneration? If yes, all board members may be jointly and severally liable for such remuneration,
 - Has the indemnification been authorized in accordance with the *Charities Accounting Act*?
 - Has the board authorized the acquisition of directors' and officers' liability insurance in accordance with the *Charities Accounting Act*?

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- Has the organization considered reducing the size of the board to limit the number of people who are exposed to liability as directors?
- Is the organization incorporated to protect members from personal liability?
- Is the organization effectively making use of committees as an alternative to a large board of directors?
- Should the organization consider implementing an advisory board to complement the board of directors without creating a corresponding exposure to liability?

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K. INSURANCE CONSIDERATIONS

- Does the organization have a historical record of its insurance coverage in the event of a future claim?
- Has the organization provided full written disclosure on a regular basis of all risks to its insurer to avoid denial of coverage?
- Does the organization request regular written reports from its insurance broker on existing coverage, exclusions from coverage and recommendations to enhance coverage?
- Does the organization know whether it has occurrence-based or claims-made insurance coverage for sexual abuse?

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- Is there a regular board review of the adequacy and extent of comprehensive general liability coverage and property insurance?
- Is there a regular review of directors' and officers' liability coverage?
- Is there coverage for "out of the ordinary" situations, e.g. activities of volunteers and agents in foreign countries or non-owned automobiles?

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L. THIRD PARTY USE OF PROPERTY

- Is the organization aware of potential liability exposure in permitting third parties to use its property?
- Has the organization developed and implemented a third party facility use agreement with appropriate releases and indemnification?
- Does the organization require evidence of liability insurance from third party users of its facilities?
- Has the organization provided written notice to its own insurers concerning the use of its property by third parties?
- For charities - Does the organization charge appropriate fair market rental fees to users of their properties? Does the third party use constitute an unrelated business prohibited by the ITA?

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M. REAL PROPERTY ISSUES

- Deeded land
 - Has an environmental assessment been conducted to determine the extent of liability exposure for existing property? Pending purchases?
 - If there are fuel oil tanks, is there compliance with mandatory provincial fuel oil tank regulations?
 - For charities - Do old title documents contain trust provisions that may impact real property held by the charity?
 - Are municipal zoning and legal non-conforming uses being complied with?
 - Does the municipal property tax assessment reflects the accurate classification and valuation? Any need for reconsideration or appeal?

- Leased land
 - Avoid personal guarantees on lease documents where possible
 - Avoid clauses requiring restoration of leased premises at the end of the lease
 - Ensure the right to sub-let and assign the lease, with a release
 - Address issues of environmental liability for both the landlord and the tenant
 - Monitor the date by which an option to renew the lease needs to be exercised
 - Does the lease need to be registered on title?
 - Obtain a right of first refusal to lease adjoining leased premises

N. INTELLECTUAL PROPERTY ISSUES

- Intellectual property is an essential asset of an organization and consists of both trade-marks and copyright
- Trade-marks need to be identified, licensed and enforced
- Trade-marks can be lost if they are not properly protected, including proper use and licensing
- Be pro-active in protecting its trade-marks or risk losing its trade-mark rights by default
- Registration of a corporate name or business name does not by itself give trade-mark protection
- Trade-mark rights exist at common law but those rights are limited and should be protected by trade-mark registration under the *Trade-marks Act*

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- It is essential that a trade-mark be properly marked with either a TM for an unregistered trade-mark or a ® for a registered trade-mark
- An infringement of a trade-mark by others, even if done unintentionally, must be immediately challenged
- Secure multiple domain names using its trade-mark as part of the domain name
- Has the designer of the organization's website assigned the copyright for the website design?
- Who owns the copyright for publications of the organization and is it properly identified with a notice of copyright protection, i.e. ©?
- Should the copyrighted material of the organization be registered, assigned or licensed?

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O. EMPLOYMENT AND VOLUNTEER ISSUES

- Does the organization utilize employment agreements?
- Has the organization developed appropriate policies and practices for hiring, disciplining and terminating employees and volunteers?
- Does the organization have appropriate policies, e.g. sexual harassment and workplace violence; bullying; volunteer recruitment; safety in the workplace; protocol for foreign volunteer projects, etc.
- Is the organization aware of and in compliance with applicable statutory requirements, such as pay equity, employment standards, human rights legislation, privacy legislation and occupational health and safety requirements?

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- Does the organization (with more than 5 employees) have a workplace violence and harassment policy in accordance with the recent Bill 168?
- Do employees and volunteers who deal with children need to be screened and supervised in accordance with an appropriate sexual abuse policy?
- Is the organization aware of and addressing ownership issues regarding intellectual property created by the employees and volunteers?
- For religious charities – Does the requirement to subscribe to a code of conduct comply with the Ontario *Human Rights Code*?

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P. FISCAL MANAGEMENT ISSUES

- Are all salaries and benefits being paid by the organization?
- Is the organization operating with a deficit and, if so, for how long?
- How is the deficit being funded?
- Has a sinking fund been established to retire the debt?
- Are investments being offered to the public without full disclosure to potential investors?
- Has the organization conducted an up to date inventory of its assets?


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CONCLUSION

- Develop a pro-active plan
- Implement comprehensive due diligence review process
- Establish risk management committee
- Regular review
- Seek professional advice

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