

LEGAL RISK MANAGEMENT CHECKLIST FOR ONTARIO-BASED CHARITIES

*By Terrance S. Carter and Jacqueline M. Demczur**

A. INTRODUCTION

The operations of charities are subject to an increasingly complex regulatory framework and the possibility of litigation against charities 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 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 is to provide a brief 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.¹ 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

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¹ 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>.

manage legal risks, and as a starting point for charities when consulting with their legal counsel. In particular, and in light of the COVID-19 pandemic, this checklist also includes a dedicated section outlining practical due diligence issues to be considered during public health emergencies.

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
 - Letters patent (articles of continuance) and supplementary letters patent (articles of amendment), 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', and debt registers
 - Copies of government filings
 - d) Identify other key legal documents
 - Leases/subleases, deeds, and mortgages

- Agency, partnership, association, and joint venture agreements
 - License agreements
 - Business name, 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
 - Program operational policy statements, *e.g.*, sexual abuse and volunteer policy statements
 - Insurance policies, including a historical record of insurance policies
 - Privacy policies under the Personal Information Protection and Electronic Documents Act ("PIPEDA")
 - 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 corporate objects or purposes?
 - What is the effect of a change of objects or purposes upon existing charitable property?

- 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 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
 - ◆ Mandatory reporting to the Office of the Public Guardian and Trustee
 - Federal Corporations:
 - ◆ Annual Return (Form 4022) – Canada
 - ◆ Extra-Provincial Initial Return/Notice of Change (Form 2) – Ontario
 - ◆ *Business Names Act* (Ontario) registrations
 - ◆ Mandatory reporting to the Office of the Public Guardian and Trustee

- ♦ Does the charity operate and/or fundraise in any other provinces? If so, there may need to be registration as an extra-provincial corporation and/or fundraiser in other provinces (such as Alberta), together with applicant business name registrations
 - 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 still to be proclaimed 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?
 - As of November 2020, the Ontario Government has taken steps to amend the ONCA in order to enable its proclamation. The deadline to proclaim the ONCA has been extended from December 31, 2020 to December 31, 2021. Once proclaimed, Ontario charitable corporations will have three years to amend their corporate documents to transition under the new legislation.
5. Has the charity developed and implemented operational and risk management policy statements, where applicable, on:
- a) Abuse prevention;
 - b) Accessibility;
 - c) Anti-harassment;
 - d) Anti-terrorism and money laundering;
 - e) Authorization procedures (*e.g.* due diligence as a requirement of obtaining authorization for a decision or action);
 - f) Board succession planning, recruitment, and orientation;
 - g) Brain and spinal injury prevention and management (when working with youth sports);
 - h) Bullying;
 - i) Child protection;
 - j) Code of conduct;
 - k) Collection of personal information (particularly with respect to children);
 - l) Confidential and proprietary information;
 - m) Conflicts of interest;
 - n) Crisis management plan;
 - o) Data breaches;
 - p) Disbursements;
 - q) Donor recognition;
 - r) Electronic record-keeping;
 - s) Fiscal management;
 - t) Fitness to work for staff and volunteers;

- u) Gift acceptance;
 - v) Human Resources;
 - w) Infectious diseases (*e.g.* COVID-19);
 - x) Investments;
 - y) Privacy (with respect to donors, employees and volunteers);
 - z) Privacy breach reporting obligations;
 - aa) Protocol for domestic and foreign volunteer projects;
 - bb) Provision of goods and services to people with disabilities;
 - cc) Public policy dialogue and development activities, including lobbying;
 - dd) Public relations;
 - ee) Safety in the workplace;
 - ff) Social media, computing, and acceptable use of technology equipment;
 - gg) Third party use of the charity's facilities;
 - hh) Volunteer conduct and volunteer recruitment (including application forms and agreements);
 - ii) Vulnerable persons;
 - jj) Whistleblowing and fraud prevention; and
 - kk) Workplace violence and harassment (including sexual harassment) prevention?
6. Is the content and effectiveness of policies evaluated and reviewed on an annual basis, or as appropriate?
 7. Is the charity aware of recent amendments to the *Income Tax Act* (Canada) on public policy dialogue and development activities and revised its applicable policies?
 8. Has the charity reviewed its lobbying policy and registered where required by the *Lobbying Act* (Canada) and/or *Lobbyists Registration Act* (Ontario)?
 9. Has the charity conducted an up-to-date inventory of its charitable assets, including intellectual property, *i.e.* trademarks and copyright?
 10. Are there any independent contractors or employees and, if so, are all provisions in their respective contracts in accordance with applicable legislation?

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 with 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 individuals” requirements under the *Income Tax Act* (Canada)?
 - b) Are there conflicting qualifications to be a director in the by-laws, articles, 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?
3. Are the lines of authority between the board and the executive staff clearly defined?
4. Does the board meet on a regular basis with all directors in regular attendance (and by electronic means, where permitted)?
5. Has an audit committee been established to review financial statements and the auditor’s report?
6. 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?
7. 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?
8. 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?
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 Office of the 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 board members 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 employee source deductions 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) are being remitted to avoid personal liability?
 17. 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?

18. Is there occurrence-based or claims-made insurance coverage for sexual abuse?
19. Has the charity provided full written disclosure each year of all risks to its insurer to avoid denial of coverage?
20. Does the charity request regular written reports from its insurance broker on existing coverage, exclusions from coverage and recommendations to enhance coverage?
21. 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?
22. Is there directors' and officers' liability coverage in place and is it reviewed on a regular basis to ensure its adequacy?
23. 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, non-owned vehicles, activities of volunteers and agents in foreign countries, and errors and omissions (*i.e.* professional services) including counselling?
24. 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?
25. 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?

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, non-owned vehicles, activities of volunteers and agents in foreign countries, 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?

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 facility use agreement with appropriate waiver releases and indemnification?
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 *Corporations Act* (Ontario) and, when it comes into force, 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 ISSUES

1. Do the board members 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 TM or an [®], 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/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?

J. EMPLOYMENT AND VOLUNTEER MATTERS

1. Are individuals being paid as employees or independent contractors, and if it is as independent contractors, is it in accordance with CRA's requirements?
2. Are there written employment contracts with all employees?
3. Is there a volunteer agreement and application form to be used with volunteers?
4. Has the charity developed and implemented appropriate hiring policies and practices for its 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?
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?
 - 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 volunteer members?
 - 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* 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 work place 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. Have the recent amendments to the *Employment Standards Act, 2000* (Ontario) been complied with, including Infectious Disease Emergency Leave (IDEL)?
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 wrongful dismissal or human rights claims of older employees?
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 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)?

K. 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 Office of the 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. Does the charity have a privacy policy in place in order to protect donors' rights?

7. Are sponsorship arrangements properly documented?
8. Has the charity developed and implemented a gift acceptance policy?
9. Do the charity's fundraising activities comply with the applicable corporate objects or purposes and powers of the charity?
10. 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?
11. Does the fundraising venue meet proper health and safety standards where applicable?
12. If the fundraising event involves catered food, has the caterer assumed the responsibility of safe food preparation?
13. 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?
14. If the fundraising event involves service of alcohol, is the duty of care to prevent intoxication and protect intoxicated individuals being met?
15. 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?
16. Has the charity developed a privacy policy in compliance with PIPEDA that protects the personal information of donors, employees, volunteers and clients, if applicable?
17. 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?
18. 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)?
19. Does the charity have a policy dealing with cause-related marketing arrangements in accordance with the requirements of CRA?
20. Does the charity accept donations in cryptocurrency? If so, have appropriate policies and procedures in accordance with CRA requirements for donations in-kind been adopted and implemented?

21. 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?
22. 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?

L. 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?
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?

M. 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
 - d) Proper management of endowed funds

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?

N. 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
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?

O. MAINTAINING CHARITABLE REGISTRATION

1. Does the charity know what charitable objects it has on file with CRA?
2. Has the charity ensured that its charitable activities are being undertaken in accordance with its charitable objects or 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 rollout of the new 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 supplementary letters patent or articles of incorporation/continuance and by-laws?
6. Does CRA have the current head office address of the charity?

7. Do all of its charitable receipts include the name and website address (canada.ca/charities-giving) of CRA?
8. Does the charity submit its annual information return (Form T3010 *Registered Charity Information Return*) within six months of the financial year end of a charity in order to avoid loss of charitable status?
9. Does the board of directors, the charity's accountant, 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?
10. Does the charity comply with split receipting and anti-tax shelter provisions of the *Income Tax Act* (Canada)?
11. Is the charity aware of the intermediate sanctions and penalties for infractions?
12. 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?
13. Is the charity aware of recent changes regarding the ability of charities to engage in public policy dialogue and development activities, and the new reporting requirements associated with them?
14. 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?
15. Is the charity aware of the applicable rules concerning the issuance of donation receipts?
16. Has the charity adopted a gift acceptance policy?
17. Are agency, joint venture relationships, or contractual transfer arrangements with non-qualified donees, both inside and outside of Canada, properly documented and implemented in accordance with the CRA's Guidance CG-002, *Canadian registered charities carrying on activities outside of Canada*?
18. Are the charity's books and records maintained in accordance with the requirements of the *Income Tax Act* (Canada)?
19. Does the charity maintain electronic records on a foreign database in contravention of CRA requirements?
20. Is the charity prepared for an audit by CRA?
21. 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)?

P. 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. Are relationships between national and international organizations adequately documented in order to effect an international operation?
3. Is the charity in compliance with the CRA's Guidance CG-002, Canadian registered charities carrying out activities outside Canada?
4. Is there a need for an international umbrella organization?
5. Has the ownership of trademarks and/or copyrights been determined and documented through license agreements?

Q. 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?
 - 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
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 aware that the “facilitation payment” exemption has been repealed?
- 6. Does the charity have any close associations with foreign or domestic politically-exposed persons?
- 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?

R. 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) Loss of crucial information
 - e) Intense media scrutiny
 - f) Irreparable damage to a charity’s reputation
 - g) Cyber security attack
- 4. Can some of the liability risk associated with a possible crisis be covered by specialized insurance?
- 5. Does the charity have a back-up plan in place for service options in the event of a cyber security attack?

S. PRACTICAL DUE DILIGENCE CONSIDERATIONS DURING PUBLIC HEALTH EMERGENCIES (e.g. COVID-19)

- 1. Have meetings of the board of directors been convened to discuss the emergency, and a committee established to oversee initiatives of the board? If necessary, have the bylaws or governing legislation of the charity been amended to allow board meetings to be held by telephone or electronic means?
- 2. Has the charity documented in writing all of the appropriate due diligence steps being taken in response to the emergency and the dates for undertaking those actions?

3. Does the charity have appropriate health and/or safety measures for staff, volunteers, clients and beneficiaries so any potential exposure to the emergency is either reasonably minimized or eliminated, particularly with respect to vulnerable beneficiaries that may be adversely impacted by the emergency, and evaluated and managed risks related to employee shortages, project cancellations, disruptions, and delays?
4. Has the charity reviewed any existing risk management, disaster recovery and remote access policies, and, if these are not in place, developed, adopted and implemented such policies?
5. Are there any federal, provincial or local public policies and public health-related orders, directives and restrictions which may impact the operations of the charity, both inside and outside Canada?
6. Do any government actions affect any programs of the charity in any jurisdiction in which they are carried out by the charity?
7. Has the charity developed and implemented an effective communications strategy, and is the charity maintaining open communication and transparency with staff, members, volunteers, clients, beneficiaries, suppliers, counterparties, and other third parties?
 - a) Is there one person in the charity in charge of maintaining consistency in content and methodology of communication, who reports back to the board?
 - b) Does the charity keep written or electronic records of what communication was sent, on what date, and to whom?
8. Has the charity reviewed insurance policies, including directors' and officers' insurance and business interruption insurance, if applicable, as well as any travel insurance policies covering staff or volunteers unable to return to Canada as a result of international travel restrictions?
9. Has the charity reviewed all contracts with regard to the effect of the emergency, as well as any government directive or public health recommendation as a result of the emergency, on planned events or conferences, real estate transactions or the delivery or receipt of goods and services generally?
10. Has the charity reviewed its financial health and how it may have been impacted, and continue to be impacted moving forward, by the emergency?
 - a) Review funding and other agreements with governments and agencies to determine the charity's obligations to deliver goods and services
 - b) Consider impact of the emergency upon all sources of income and how to offset the anticipated reduction in income
 - c) Ensure that employee salaries and statutory deductions and remittances continue to be paid on a timely basis to avoid exposing directors to personal liability for unpaid amounts
11. Has the charity sought legal advice from employment counsel on the extent of potential layoffs and/or elimination of staff?
12. Has the charity asked legal counsel to review bylaw provisions concerning members' meetings and determine if annual members' meetings may need to be postponed or whether alternative methods for holding member meetings may need to be considered, such as by telephonic or other

electronic means if permitted in the bylaws or governing statute for the charity, and if so, has the charity taken action to postpone or provide alternate means for holding annual members' meetings?

13. Have corporate filing dates for annual returns been monitored for any changes?
14. Has the charity taken appropriate steps to protect privacy and personal information, including obtaining appropriate consent, and are the charity's responses to the emergency in line with privacy legislation?
 - a) Educate and train staff to be extra-vigilant against phishing scams, and comply with privacy policies.
 - b) Setting up a virtual private network for accessing work data.
 - c) Restricting data access on a need-to-know basis.
 - d) Encrypting data on portable devices and removable media.
 - e) Having robust contracts with third-party service providers, and ensuring adequate and trustworthy IT support is available.
 - f) Regularly backing up data and updating software, and requiring the same from the employees.
 - g) 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.