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LEGAL RISK MANAGEMENT CHECKLIST FOR ONTARIO-BASED NOT-FOR-PROFITS

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1 INTRODUCTION

The operations of not-for-profits 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. For the purposes of this *Legal Risk Management Checklist*, the term “not-for-profits” means organizations that are exempt from tax under subsection 149(1) of the *Income Tax Act* (Canada), and are structured as either not-for-profit corporations or unincorporated associations (“not-for-profits”), but it does not include registered charities or other qualified donees under the *Income Tax Act* (Canada).

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The exposure of not-for-profits to liability goes further than the loss of assets and may possibly lead to the insolvency or winding up of a not-for-profit. Directors of not-for-profits may also face legal actions against themselves personally by members, third parties, and governmental authorities for breach of their duties as directors. Given these increased risks of potential liability to both not-for-profits and their directors, there is an increasing need to protect against lawsuits on a proactive basis. While these risks are, in some respects, not as extensive as those faced by charities (as outlined in a separate checklist),¹ not-for-profits still face many of the same risks as charities.

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

2 IDENTIFICATION AND MANAGEMENT OF LEGAL RISKS

2.01 General overview of organizational and legal documentation

- a) Identify the existence and location of key organizational documents
 - Develop an inventory of key documents
 - Maintain central location for key documents
 - Identify key staff person, as well as board officer (normally the secretary) who are to be responsible for maintaining legal documents
- b) Identify key organizational documents for an unincorporated not-for-profit
 - Constitution and amendments, if applicable
 - Policy statements and procedures, if applicable
 - Minutes of directors' and members' meetings
- c) Identify key organizational documents for an incorporated not-for-profit
 - Letters patent (articles of continuance) or articles of incorporation if incorporated more recently, supplementary letters patent (articles of amendment) and restated articles of incorporation, if applicable
 - Membership covenant, if applicable
 - All by-laws (general operating by-law and amending by-laws) and any special resolutions (to amend the by-laws)
 - Mission statement, if applicable
 - Minutes of board of directors, members and committee meetings,
 - Up to date and accurate list of members
 - Directors', members', officers', debt and land ownership registers, if applicable
 - Directors' consents

¹ For charities, a separate *Legal Risk Management Checklist for Ontario-Based Charities* is also available at <http://www.carters.ca/pub/checklist/Charity-Checklist.pdf>.

- Copies of government filings
- Governance policies, e.g. conflict of interest, confidentiality policies and board code of conduct
- d) Identify other key legal documents
 - Leases/subleases, real property transfers and mortgages
 - Agency, partnership, association, contracts for service and joint venture agreements
 - Intellectual property license agreements
 - Business names, trademarks, section 9 (*Trademarks Act*) and domain name registrations
 - Membership agreements in federated, national and international structures
 - Operational risk management policies, e.g., vulnerable persons and volunteer policies
 - Insurance policies, including a historical record of insurance policies
 - Privacy policies
 - Anti-spam policies
 - Investment policies
- 2.02 Review of key documents for an unincorporated not-for-profit
 - a) Are the purposes clearly stated in the constitution and are they not-for-profit?
 - b) Do constitutional documents correctly reflect how the not-for-profit is actually structured and operated?
- 2.03 Review of key documents for an incorporated not-for-profit
 - 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 not-for-profit, and is it consistent with the purposes?
 - Are its purposes appropriate for a not-for-profit, i.e. are they not charitable?
 - Has there been “mission drift” from the original purposes?
 - Are the activities carried out by the not-for-profit authorized by its purposes?
 - Is the dissolution clause complementary to the 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 purposes?
 - What is the effect of a change of purposes upon existing property?
 - c) Letters patent of amalgamation or articles of amalgamation
 - Are the purposes the same or similar?
 - What are the terms of the amalgamation agreement?

- d) Does the not-for-profit 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 between the general operating by-law and the letters patent or articles of incorporation (or articles of continuance or articles of amendment) or continuance concerning 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?
 - Are the by-law amendment procedures consistent with corporate legislation?
- g) Was the initial corporate organization of the not-for-profit properly done?
- h) Was there a documented transfer of assets from a previous unincorporated association? If not, need to consult with legal counsel for advice on what needs to be done.
- 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 Annual Return (Form 5284E)
 - ♦ *Business Names Act* (Ontario) registrations
 - Federal Corporations:
 - ♦ Annual Return (Form 4022) – Canada
 - ♦ Extra-Provincial Initial Return/Notice of Change (Form 5286E) – Ontario
 - ♦ *Business Names Act* (Ontario) registrations
 - Does the not-for-profit 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 not-for-profit fundraise in any other provinces or territories? Provinces such as like 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 not-for-profit aware of the importance of proper use of corporate name and operating names?

- p) Has the not-for-profit (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 all of its constating documents as part of its ONCA transition?
- On October 19, 2021, the ONCA came into force. Ontario not-for-profit corporations had three years from that date, i.e. until October 18, 2024, to amend their corporate documents to transition under the new legislation.
 - While Ontario charitable corporations which did not complete their ONCA transitions before October 18, 2024 will not be dissolved, corporate provisions that are inconsistent with the ONCA’s requirements (with a few exceptions) are now deemed to be amended to the extent necessary to comply with the ONCA.
 - Social clubs under the Ontario *Corporations Act* have until October 19, 2026 to continue out of the Ontario *Corporations Act* into the ONCA, the *Co-operative Corporations Act*, or the *Business Corporations Act*.
- 2.04 Has the not-for-profit developed, implemented and kept updated through regular review 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) Canada’s Anti-Spam Legislation (“CASL”) policies and compliance program;
 - k) Child protection;
 - l) Code of conduct;
 - m) Collection of personal information (particularly with respect to children);
 - n) Confidential and proprietary information;
 - o) Conflicts of interest;
 - p) Consent to collection, use, disclosure and processing of personal information;
 - q) Consent to treatment (where applicable)
 - r) An up to date and effective crisis management plan;
 - s) Data and privacy breaches;
 - t) Disbursements;
 - 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) Human resources and recruitment;
 - cc) Infectious diseases (e.g. COVID-19) and measures against infectious diseases (e.g. when masks must be worn, vaccination requirements, etc.);
 - dd) Intellectual Property
 - ee) Investments;
 - ff) Mandatory reporting for large organizations regarding avoiding the use of forced or child labour
 - gg) Protocol for domestic and foreign volunteer projects;
 - hh) Protocol for reporting, escalating, investigating, mitigating and resolving issues;
 - ii) Provision of goods and services to people with disabilities;
 - jj) Public policy dialogue and development activities, including lobbying;
 - kk) Public relations;
 - ll) Record retention and disposal;
 - mm) Research & ethics;
 - nn) Reserve fund;
 - oo) Sexual violence
 - pp) Social media;
 - qq) Third party use of the not-for-profit's facilities;
 - rr) Volunteer conduct and volunteer recruitment (including application forms and agreements);
 - ss) Vulnerable persons;
 - tt) Whistleblowing and fraud prevention;
 - uu) Workplace violence and harassment (including sexual harassment) prevention; and
 - vv) Use of generative artificial intelligence (AI) by the not-for-profit, its employees and/or volunteers.
- 2.05 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?)
- 2.06 Is the content and effectiveness of policies evaluated and reviewed on an annual basis, or as appropriate?
- 2.07 Has the not-for-profit reviewed its lobbying policy and registered where required by the *Lobbying Act* (Canada) and/or *Lobbyists Registration Act* (Ontario)?
- 2.08 Has the not-for-profit conducted an up-to-date inventory of its assets, including intellectual property, i.e., trademarks and copyright?
- 2.09 Are there any independent contractors or employees and, if so, are all provisions in their respective contracts in accordance with applicable legislation?
- 2.10 Are surplus cash flows invested and protected for undesignated use? How?
- 2.11 Does the not-for-profit utilize generative artificial intelligence (AI), and if so, does its use conform with the "*Principles for responsible, trustworthy and privacy-protective generative AI technologies*" established by Canada's federal, provincial, and territorial Privacy Commissioners?

3 UTILIZING MULTIPLE NOT-FOR-PROFIT CORPORATIONS

- 3.01 Should the not-for-profit consider utilizing multiple not-for-profit corporations for its high risk activities in order to better manage those risks?
- 3.02 Should a provincial or national not-for-profit that consists of member organizations be structured as an umbrella association of multiple not-for-profit corporations (federated model) or as a single corporation?
- 3.03 Should the not-for-profit consider establishing a separate foundation to fund exclusively charitable purposes that are complementary?
- 3.04 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?
- 3.05 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?

4 BOARD MANAGEMENT ISSUES

- 4.01 Who is a director?
 - a) What are the qualifications and procedures (*i.e.* election rules) to be elected as a director and have all of those qualifications and procedures been met by each director?
 - b) Have the applicable qualification requirements been confirmed in writing by each director?
 - c) Are there conflicting qualifications to be a director in the articles, by-laws, and board policies? If so, these conflicts must be reconciled
 - d) 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? (*i.e.* at a moment's notice, can the not-for-profit definitively determine who the directors are?)
- 4.02 Is the not-for-profit able to identify which group is in charge of the not-for-profit?
 - a) Where does the *de facto* control of the not-for-profit 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?
- 4.03 Are the lines of authority between the board and the executive staff clearly defined?
- 4.04 Is there a healthy constructive relationship of mutual respect and co-operation between senior management and the board?
- 4.05 Has senior management had to take on excessive authority and become unnecessarily exposed to liability akin to that of a board member?
- 4.06 Does the board meet on a regular basis as needed with all directors in regular attendance having been appropriately prepared (and by electronic means, where permitted)?

- 4.07 Has an audit committee been established to review financial statements and the auditor's report, including direct engagement with the auditor?
- 4.08 Are there overlapping board memberships with other organizations that require a more nuanced conflict of interest policy?
- 4.09 Is there adequate communication of board responsibilities to existing, new and future board members?
 - a) Has the not-for-profit created a board binder of all corporate documents, as well as an explanation of the general operations of the corporation as a not-for-profit and the board of directors' legal duties and liabilities?
 - b) Does the not-for-profit provide regular updates on changes in the law to board members?
- 4.10 Are the individuals who are authorized to enter into contracts as signing officers on behalf of the not-for-profit clearly identified in their official capacity instead of as individuals?
- 4.11 Are there policies in place to address board succession planning, recruitment, and orientation?

5 REDUCING THE BOARD'S EXPOSURE TO LIABILITY

- 5.01 Are the directors aware of their duties with respect to ensuring:
 - a) The purposes of the not-for-profit are properly carried out and the organization's activities comply with their purposes?
 - b) The organization'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?
- 5.02 Do any directors receive direct or indirect remuneration or other financial benefit from the not-for-profit in contravention of their fiduciary duties?
- 5.03 Has the not-for-profit given authority to indemnify its existing and former directors and officers in accordance with applicable corporate legislation and regulations?
- 5.04 Has the board authorized the not-for-profit to acquire directors' and officers' liability insurance?
- 5.05 Has the board delegated excessive responsibility to executive staff by restricting itself to establishing policy decisions only without ensuring careful and ongoing supervision?
- 5.06 Should the not-for-profit consider reducing the size of the board to limit the number of people who are exposed to liability as directors?
- 5.07 Is the not-for-profit effectively making use of committees as an alternative to a large board of directors?
- 5.08 Do the board members occasionally need to receive independent legal advice due to the possibility of liability exposure?
- 5.09 Should the not-for-profit consider implementing an advisory board to complement the board of directors without a corresponding exposure to liability?
- 5.10 Has the not-for-profit established a comprehensive due diligence review procedure by establishing and utilizing the appropriate legal risk management checklist?
- 5.11 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?

- 5.12 Are the directors and officers aware of their fiduciary responsibilities at law in operating the not-for-profit?
- 5.13 Are the directors and officers exercising due diligence in relation to the not-for-profit by remaining knowledgeable about its operations and ensuring its assets are properly protected?
- 5.14 Are new and existing directors and officers receiving proper orientation and training?
- 5.15 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 and GST/HST amounts pursuant to the *Income Tax Act* (Canada) and *Excise Tax Act* (Canada)?

6 INSURANCE CONSIDERATIONS / RISK TRANSFER

- 6.01 Has the not-for-profit maintained a historical record of its insurance coverage in the event of a future claim, together with copies of the original policies?
- 6.02 Is there occurrence-based or claims-made insurance coverage for sexual abuse?
- 6.03 Has the not-for-profit provided full written disclosure each year of all risks to its insurer to avoid denial of coverage?
- 6.04 Does the not-for-profit request regular written reports from its insurance broker on existing coverage, exclusions from coverage and recommendations to enhance coverage?
- 6.05 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?
- 6.06 Is there directors' and officers' liability coverage in place and is it reviewed on a regular basis to ensure its adequacy?
- 6.07 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, broadcasting, cyber attacks and data breaches; and errors and omissions (*i.e.* professional services) including counselling and now AI related legal claims?
- 6.08 Is there a vulnerable person policy and if so, has it been reviewed by the insurer, as well as legal counsel with regards to obtaining and maintaining abuse coverage?
- 6.09 Has the not-for-profit considered obtaining the services of an independent insurance consultant or specialist to conduct a risk management review of the not-for-profit's operations and policies from an insurance perspective to determine the adequacy of insurance coverage?
- 6.10 Has the not-for-profit developed and administered effective liability shields in the form of informed consents, disclaimers, releases, waivers and indemnities for program participants as necessary/appropriate as part of a volunteer agreement?
- 6.11 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?

7 THIRD PARTY USE OF NOT-FOR-PROFIT ORGANIZATION PROPERTY

- 7.01 Is the not-for-profit aware of the potential liability exposure in permitting third parties to use its property?

- 7.02 Has the not-for-profit developed and implemented a facility use policy and license agreement with appropriate releases of the not-for-profit and indemnification provisions?
- 7.03 Does the not-for-profit require evidence of liability insurance from third party users of its facilities?
- 7.04 Has the not-for-profit provided written notice to its insurer concerning the use of its property by third parties?
- 7.05 Does the not-for-profit charge appropriate fair market rental fees to any user of these properties that is not a not-for-profit organization?
- 7.06 Does the not-for-profit have the corporate authority to allow third party use of its property?
- 7.07 For not-for-profits with lifestyle requirements, has consideration been given to compliance with the *Human Rights Code* (Ontario), including the exception available to special interest organizations?

8 REAL PROPERTY ISSUES

8.01 Property Owned by the Not-for-Profit

- a) Has an environmental assessment been conducted to determine the extent of possible liability exposure for the not-for-profit in relation to future acquisitions as well as existing properties?
- b) Has the not-for-profit addressed and rectified encroachments with neighbouring lands?
- c) Are municipal zoning and legal non-conforming uses being complied with?
- d) Has the not-for-profit 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?
- e) Has the not-for-profit leased its lands and have the terms of the lease been reviewed for possible liability concerns?
- f) Does the not-for-profit 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?
- g) Does the not-for-profit own property with a cultural heritage value or interest that is therefore subject to the *Ontario Heritage Act*?
- h) If the not-for-profit 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)?
- i) 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?
- j) If the not-for-profit owns residential real estate, is it aware of possible filing requirements under the *Underused Housing Tax Act* which may apply even if the not-for-profit is exempt from paying the tax itself?

8.02 Property Leased From Third Parties by the Not-for-Profit

- 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?

9 INTELLECTUAL PROPERTY & ONLINE CONTENT ISSUES

- 9.01 Do the directors and executive staff of the not-for-profit recognize that trademarks, internet domain names and copyright are essential assets of the not-for-profit that need to be protected and managed?
- 9.02 Does the not-for-profit 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
- 9.03 Has the not-for-profit protected its trademarks by securing multiple corresponding domain names?
- 9.04 Has the not-for-profit removed all copyrighted material owned by any other organizations from its website?
- 9.05 Who owns the copyright for publications of the not-for-profit 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 not-for-profit's website assigned the copyright for the website design?
- 9.06 Does the not-for-profit 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 not-for-profit'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 not-for-profit should conduct themselves online and be held accountable by the not-for-profit? Do these rules outline what internet harassment is?
- 9.07 If the not-for-profit 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?
- 9.08 Is there "opt-in" consent regarding terms and conditions on the not-for-profit's website to protect the organization and its board of directors from liability?
- 9.09 Does the not-for-profit utilize AI "chatbots" on its website to assist users, and if so, if there a disclaimer stating that representations made by the chatbot are not warranted to be accurate and therefore are non-binding on the organisation?

10 PRIVACY CONSIDERATIONS

- 10.01 Has the not-for-profit's management or board of directors ever taken steps to assess or analyze any risks to personal information?
- 10.02 Do all employees receive training about the not-for-profit's privacy policy and their privacy obligations, including the handling, retention and destruction of data and personal information?
- 10.03 Has the not-for-profit named a privacy officer?
- 10.04 Does the not-for-profit 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?
- 10.05 Does the not-for-profit 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?
- 10.06 Does the not-for-profit store or process personal information outside of Canada (e.g. cloud computing)? If so, are clients advised of that when their personal information is collected?
- 10.07 Does the not-for-profit obtain client consent before any collection, use or disclosure of personal information?
- 10.08 Does the not-for-profit 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?
- 10.09 Does the not-for-profit have clear privacy breach and security incident response protocols in place?

- 10.10 Does the not-for-profit 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 not-for-profit or a third party working for the not-for-profit) creates a real risk of significant harm to an individual?
- 10.11 Is the not-for-profit aware of and complying with any federal privacy legislation (e.g. *PIPEDA*, etc.) that may apply to its circumstances and activities?
- 10.12 If the not-for-profit 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)*
- 10.13 Has the not-for-profit developed a privacy policy that protects the personal information and privacy rights of 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 not-for-profit will take to protect personal information from unauthorized uses and disclosures while information is in the hands of a third-party processor?
- 10.14 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 not-for-profit have adequate cyber insurance coverage to protect it against cyber-crime, fraud and privacy breaches?
- 10.15 Does the not-for-profit utilize an “opt-in” consent method regarding privacy on its website?

11 EMPLOYMENT AND VOLUNTEER MATTERS

- 11.01 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?
- 11.02 Are there written employment contracts with all employees and are these up to date?
- a) Does the employment contract have an enforceable termination clause?
- 11.03 Is there a volunteer agreement and application form to be used with all volunteers?
- 11.04 Has the not-for-profit 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 not-for-profit developed and implemented a policy in place 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 not-for-profits 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)?
- 11.05 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 not-for-profit developed and implemented a policy concerning sexual harassment?
- b) Has the not-for-profit developed and implemented a policy concerning workplace violence and harassment prevention?
- c) Has the not-for-profit developed and implemented a policy concerning social media, computing and the use of technology, including the electronic monitoring of employees?
- d) Has the not-for-profit 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 not-for-profit 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 not-for-profit 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?

- 11.06 Are the not-for-profit and its board of directors exposed to liability with regards to the actions of its employees or volunteers?
 - a) Have the not-for-profit and its representatives (*i.e.* directors, officers and all others who act on behalf of the not-for-profit) taken every reasonable precaution to ensure the safety of workers, volunteers and the public?
 - b) Have the not-for-profit and its representatives complied with federal and provincial occupational health and safety legislation?
 - c) Have the not-for-profit 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?
- 11.07 Are the not-for-profit and the board exposed to potential criminal liability under section 217.1 of the *Criminal Code* or taken reasonable steps to prevent bodily harm to any person arising from the work or tasks the board directs them to perform?
- 11.08 Has the not-for-profit undertaken an occupational health and safety audit conducted by an experienced work place safety consultant?
- 11.09 Has the not-for-profit 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 organization aware that punitive damages may be awarded in a case where the employer's conduct was harsh, vindictive, reprehensible and malicious?
 - b) Does the not-for-profit draft termination clauses in its employment contracts to limit its potential liability to the minimum allowable under employment standards legislation?
- 11.10 Has the *Employment Standards Act, 2000* (Ontario) been complied with?
- 11.11 For not-for-profits that have hired construction services, has the not-for-profit 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?
- 11.12 Has the not-for-profit implemented policies on effective confidentiality and conflict of interest?
- 11.13 Has the not-for-profit developed job descriptions for the different employment and volunteer positions?
- 11.14 Has the not-for-profit properly managed the performance and expectations of older employees to avoid potential wrongful dismissal or human rights claims by them?
- 11.15 Does the not-for-profit 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)?
- 11.16 Does the not-for-profit 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)?
- 11.17 Is the not-for-profit complying with CRA guidelines regarding determination of the province or territory of employment for remote staff?

- 11.18 Has the not-for-profit taken steps to ensure that the *Competition Act* (Canada) has been complied with regarding wage fixing and no-poaching agreements?
- 11.19 Has the not-for-profit secured or ensured that employees and/or volunteers have secured required legal documents for employees and/or volunteers working abroad (visas, permission from local authorities, etc.)?

12 FISCAL MANAGEMENT ISSUES

- 12.01 Does the not-for-profit continue to meet the test to be a non-profit organization under section 149(1)(l) of the *Income Tax Act* (Canada) in relation to both income and reserves?
- 12.02 Does the CRA have the current head office address of the not-for-profit?
- 12.03 Are all salaries, benefits and statutory deductions being paid by the not-for-profit on a timely basis with appropriate reports to the board of directors?
- 12.04 Is the not-for-profit required to register for GST/HST purposes?
- 12.05 Is the not-for-profit in compliance with its income tax obligations, including its compliance with requirements to file Ontario income tax returns, if applicable?
- 12.06 Is the not-for-profit operating with a deficit and, if so, for how long?
- 12.07 How is the deficit being funded?
- 12.08 Has a sinking fund been established to retire debt of the not-for-profit?
- 12.09 Are investments being offered to the public without appropriate exemptions for the distribution of securities?
- 12.10 Is there an audit committee in place?
- 12.11 Is the not-for-profit, if incorporated, ensuring compliance with audit requirements imposed under applicable corporate legislation, such as the CNCA, including record keeping requirements?
- 12.12 Are the not-for-profit funds being used to fund separate business operations of the not-for-profit? And if so, does it still comply with the requirements of a non-profit organization under section 149(1)(l) of the *Income Tax Act* (Canada).
- 12.13 Does the not-for-profit hold trust property as a trustee in any capacity? If so, has it consulted with its legal/tax advisors regarding potential annual T3 trust reporting requirements under the *Income Tax Act*?

13 NATIONAL AND/OR INTERNATIONAL RELATIONSHIPS

- 13.01 Are relationships with national organizations and/or subsidiary chapters adequately documented with specific reference to controlling trademarks in Canada?
- 13.02 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?
- 13.03 Are relationships between national and international organizations adequately documented in order to effect an international operation?
- 13.04 Is there a need for an international umbrella organization?
- 13.05 Has the ownership of trademarks and/or copyrights been determined and documented?

- 13.06 Have trademarks and copyrights been adequately protected and licensed in Canada or in other countries, as necessary?
- 13.07 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?
- 13.08 If operating in the United States, is the not-for-profit aware of requirements under the *Foreign Agents Registration Act* (United States)?
- 13.09 Is the not-for-profit compliant with privacy law in the local and international jurisdictions in which it operates?
 - a) Additionally, even if the not-for-profit is operating from within Canada but processes personal data of residents of the European Union (EU) to offer them goods or services (whether or not a fee is charged) or if it monitors behaviour of EU residents, is the not-for-profit aware of its duties and responsibilities under the EU's *General Data Protection Regulations* (GDPR)?
- 13.10 Is the not-for-profit compliant with AI law in the local and international jurisdictions in which it operates?
 - a) Additionally, even if the not-for-profit is operating from within Canada but uses AI components to provide services to EU consumers, is the not-for-profit aware of its duties and responsibilities under the EU's *Artificial Intelligence Act*?
- 13.11 Is the not-for-profit involved in any "arrangements" with "foreign principals" on behalf of foreign principals to carry out activities in relation to "a political or governmental process" as defined by the *Foreign Influence Transparency and Accountability Act*?
 - a) If yes, has the not-for-profit, within 14 days of entering into this arrangement, provided the details of this arrangement to the Foreign Influence Transparency Commissioner?

14 ANTI-TERRORISM / MONEY LAUNDERING LEGISLATION

- 14.01 Does the not-for-profit 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
- 14.02 Has the not-for-profit 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 programs for compliance
 - e) Requiring disclosure statements from affiliated not-for-profits, third party agents and/or partners and conducting appropriate inquiries
 - f) Conducting due diligence internet searches on directors, officers and agents
 - g) Does the not-for-profit operate in areas controlled by listed terrorist entities, as defined by Public Safety Canada?

- i) If yes, has it consulted with a legal professional regarding the potential availability of a humanitarian assistance exemption under the Criminal Code, allowing the not-for-profit to render lifesaving aid in those areas without being charged criminally with providing benefit to terrorist groups?
 - ii) If a humanitarian assistance exemption is not available, has the not-for-profit applied for authorization from the Minister of Public Safety to conduct its activities in areas controlled by terrorist groups without falling afoul of the *Criminal Code*?
- 14.03 Are directors aware of risks associated with failing to comply with anti-terrorism/money laundering legislation?
 - a) Personal liability in civil law
 - b) Possible criminal law sanctions
- 14.04 If the not-for-profit is working in the U.S. or in conjunction with U.S. organizations 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 not-for-profit investigate significant ownership interest in any organizations it works with domestically and abroad?
 - b) Does the not-for-profit conduct due diligence for any subcontractors it hires for work domestically and abroad?
- 14.05 Does the not-for-profit comply with anti-bribery prohibitions under the *Corruption of Foreign Public Officials Act, 1998* (Canada)?
 - a) Is the not-for-profit caught by the broader definition of “business” that does not require a “for profit” element?
 - b) Is the not-for-profit aware that the “facilitation payment” exemption has been repealed?
- 14.06 Does the not-for-profit have any close associations with foreign or domestic politically-exposed persons?
- 14.07 If the not-for-profit 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 not-for-profits with U.S. affiliations?
- 14.08 If the not-for-profit 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 Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) if it meets certain monetary thresholds?
- 14.09 Is the not-for-profit aware of and compliant with FINTRAC’s guidance for reporting suspicious transactions?

15 CRISIS MANAGEMENT ISSUES

- 15.01 Does the not-for-profit have an existing committee or working group that can develop a crisis management plan? If so, is the group diverse enough to consider the full range of crises that the not-for-profit might face?
- 15.02 Is the not-for-profit overly dependent on another organization? Could the relationship between the organizations be terminated with little or no warning?

15.03 Does the not-for-profit 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) Misappropriation of not-for-profit property by directors, employees and/or volunteers
- h) Intense media scrutiny
- i) Irreparable damage to a not-for-profit's reputation
- j) Unexpected financial shortfalls and/or fraud (especially cyber fraud)
- k) Novel or ongoing public health emergencies, such as the COVID-19 pandemic
- l) Harm to beneficiaries, staff, volunteers, e.g. those who work in dangerous situations such as conflict areas

15.04 Does the not-for-profit'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, as applicable?
- f) Develop a realistic reserve fund to offset cash flow issues during a crisis?
- g) Notify insurers and the police as necessary?
- h) Conduct an internal investigation or engage an external investigator?
- i) Seek recovery of misappropriated not-for-profit property and investigative costs through civil litigation?

15.05 Can some of the liability risk associated with a possible crisis be covered by specialized insurance?

15.06 Does the not-for-profit have a back-up plan in place for service options in the event of a cyber security attack?