

Tuesday, April 18, 2023

# Key compliance considerations for charities/not-for-profits in Canada and the US

Grow | Protect | Operate | Finance

## Moderator



**Blair L. Botsford**  
Partner, Toronto  
D +1 416 863 4459  
blair.botsford@dentons.com

## Presenters



**Christie B. Tillapaugh**  
Shareholder, Pittsburgh  
D +1 412 297 4603  
christie.tillapaugh@dentons.com



**Pamela Shin**  
Partner, Toronto  
D +1 416 367 6764  
pamela.shin@dentons.com



**Kelli A. Wikoff**  
Partner, Kansas City  
D +1 816 460 2480  
kelli.wikoff@dentons.com



**Tony Manconi**  
Consultant, Toronto  
D +1 416 361 2339  
tony.manconi@dentons.com

The background features a complex marbled paper pattern with swirling veins of teal, blue, and gold. A large, semi-transparent purple shape with a rounded corner on the right side is overlaid on the left and center of the image. The text "Compliance Excellence" is centered within this purple area in a white, bold, sans-serif font.

# Compliance Excellence

# What is compliance excellence?

- Mindset that prioritizes good governance and ethics
- “Tone from the top”
- Full visibility of compliance requirements across topics and geographies
- Accountability through intentional measurement of target outcomes (e.g. internal cultural indicators, enterprise risk management strengthening, external recognition, accreditation, etc.)
- Continuous improvement and learning

# Accountability for compliance of charities and non-profits

- 360 ownership mindset
- Fiduciary role of the Board
- Delegated responsibility of management and staff

# Unique compliance challenges that charities and non-profits face

- Limited time and resources
- Wide variety of non-profits
- Misperception of what is a non-profit
- Complex legislation
- Guidance tools and resources not always written in accessible manner
- Legislative changes lagging behind changing sector and need for modernization

# Managing costs associated with compliance of charities and non-profits

- Keep it simple and principles-based
- Proactively establish and maintain sound culture of compliance
- Leverage learnings and insights from peer organizations, only where applicable
- Establish solid relationships with expert advisors, especially when navigating: novel issues, complex matters, capacity needs, high risk, etc.
- Take informed risks while implementing appropriate mitigations
- Work collaboratively with regulators

The background of the slide features a traditional marbled paper pattern with swirling veins of blue, teal, and gold. A large, semi-transparent purple shape with a rounded corner is overlaid on the left and center of the image. The text "Good Governance" is printed in white, bold, sans-serif font within this purple area.

# Good Governance



# Key governance considerations for charity and non-profit boards to keep top of mind

- Importance of avoiding conflicts of interest, real or perceived
- Broader range of policies
- Regular training (e.g. refresher on role of board)
- Shared resources and documentation, books and records
- Mission-orientation and keeper of “purposes”
- Operating vs. governing board

# Governance trends in the charitable and non-profits sector

- Navigating conflicts of interest
- Transitions related to board and staff turnover
- Gift acceptance policies and practices
- Collaboration with ESG-focused organizations
- Inclusion, Diversity, Equity, Accessibility leadership
- Exploring innovative structures and partnerships
- Expanding operations and programs
- Sharing resources with other nonprofits or for-profit entities
- Exploring affiliations and mergers

# Challenges with board performance and getting back on track

- Revisit basics of good governance
- Identify root cause(s) of performance issues. Sub-committee or working group may be helpful in streamlining process
- Where appropriate, seek independent review / counsel to establish findings and recommendations to strengthen / create path forward
- Accountability through measurable outcomes toward stronger performance

The background features a traditional marbled paper pattern with swirling, organic shapes in shades of deep blue, teal, and gold. A large, semi-transparent purple shape with a rounded corner on the right side is overlaid on the left and center of the image. The text is centered within this purple area.

# Cross-Border Operations

# Charities and non-profits with operations outside home jurisdictions

Country	Options
Canada	Non-profits with charitable status: <ul style="list-style-type: none"><li>• “Own activities” (directly or through intermediaries)</li><li>• “Qualifying disbursements” (gifts to qualified donees or grants to non-qualified donees)</li></ul>
US	Grantmaking (in-bound, out-bound): <ul style="list-style-type: none"><li>• Private Foundations: Expenditure responsibility/equivalency determination/advance approval</li><li>• Public Charity: Apply private foundation rules as best practice, but balance with grant type/recipient</li></ul> Direct Activities (employees, independent contractors, affiliates, etc.)

# Key corporate law requirements when exploring establishment in a host country

- Purpose alignment
- Incorporating legislation compliance requirements
- Compliance with governing documents of home country
- Options to establish in host country (work with local counsel)
- Board authority / role in approving new entities or branches in host countries
- Delegating authority to management of new entity or branch

# Key tax law requirements when exploring establishment in a host country

- Variances in U.S. tax exemption requirements
- Employment tax triggers
- Inbound and outbound grants – tax treatment
- Review relevant tax treaties
- Books and records (maintenance, location, accessibility, etc.)
- Establish tax compliant relationships between home and host country entities
- Ensure tax-exempt status for host country entity
- Comply with other tax law requirements per local laws (e.g. payroll tax, VAT, withholdings tax, etc.)

The background features a traditional marbled paper pattern with swirling veins of blue, teal, and gold. A large, semi-transparent purple shape with a rounded corner on the right side is overlaid on the left and center of the image.

# **Broader Compliance Requirements**



# General regulatory compliance requirements applicable to charities and non-profits

- Beyond corporate and tax law baseline requirements:
  - In U.S., state attorney general
  - Fundraising legislation (in the US, state charitable solicitation laws)
  - Proactive privacy and data security program
  - Anti-misappropriation of funds
  - Safeguarding
  - Employer obligations and immigration law
  - Human rights legislation
  - Sector / industry specific regulation (e.g health sector privacy laws, child welfare sector protection laws, education sector accreditation standards, etc.)
  - Lobbying and political activity

# **Evolving requirements – Staying ahead of the curve**

- Continuous improvement and learning as a principle for keeping up with changing regulatory landscape
- Annual cadence of review for policies, procedures and protocols
- Functional ownership of organizational compliance program
- Proactively sharing organization's business plans with advisors – issue spotting

# Compliance resources for charities and non-profits

Country	Resources
Canada	<ul style="list-style-type: none"><li>• <a href="#">Canada Revenue Agency Charities and Giving webpage</a></li><li>• <a href="#">Contact the CRA Charities Directorate</a></li><li>• Umbrella organizations and leading publications (e.g. <a href="#">Imagine Canada</a>, <a href="#">Nonprofit Law Ontario</a>, <a href="#">The Philanthropist Journal</a>)</li><li>• Thought leadership from expert advisors and consultants</li></ul>
US	<ul style="list-style-type: none"><li>• <a href="#">IRS Charities Website</a></li><li>• <a href="#">IRS Exempt Organization Publications</a></li><li>• <a href="#">National Association of State Charity Officials</a></li><li>• Thought leadership from expert advisors and consultants</li><li>• Attorney General – Charities Bureau publications – e.g. <a href="#">California Attorney General publications</a></li><li>• Nonprofit compliance firm resources - e.g. <a href="#">Harbor Compliance</a></li><li>• <a href="#">Council on Foundations</a></li></ul>