



Board Governance in the Not-for-Profit Sector – Tips and Tools to Protect Your Board and to Help Your Board Govern Legally and Effectively

PAVRO CONFERENCE WORKSHOP

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Anna C. Naud

Mason Bennett Johncox Professional Corporation



AGENDA

- 1. What is a not-for-profit organization?**
 - 1. NFP vs. Registered Canadian Charity**
 - 2. Jurisdiction**
- 2. Governance**
 - 1. Rules binding the Corporation**
 - 2. Rules binding the Directors and Officers**
 - 3. Protection of Directors and Officers**
 - 4. Role of Governance Board**
 - 5. Tools to Help Management Help the Board**

This presentation is provided for informational purposes only and does not constitute legal advice. You should not act or rely on any information contained in this presentation without first seeking legal advice on your specific situation. This presentation focuses on general principles set out in the corporate not-for-profit legislation of Canada and Ontario.

LET'S PLAY: WHAT AM I?



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COMMON LAW DEFINITION OF “CHARITY”



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1. The 1601 *Preamble to the Statute of Elizabeth*
2. The test set out in the reasons of Lord Macnaghten in the 1891 House of Lords decision in *Commissioner for Special Purposes of the Income Tax v. Pemsel*

STATUTE OF ELIZABETH'S DEFINITION



... relief of aged, impotent and poor people ... the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities ... repair of bridges, ports, havens, causeways, churches, seabanks and highways ... education and preferment of orphans ... the relief, stock or maintenance for houses of correction ... marriages of poor maids ... supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed ... relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers and other taxes.

PEMSEL: THE FOUR HEADS OF CHARITY



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"Charity" in its legal sense comprises four principal divisions:

- trusts for the relief of poverty;
- trusts for the advancement of education;
- trusts for the advancement of religion; and
- trusts for other purposes beneficial to the community, not falling under any of the preceding heads.

INCOME TAX ACT (CANADA): WHAT IS A CHARITY?



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- Its purpose must fall under one of the Four Heads of Charity
- Must meet the public benefit test:
 - Its activities and purposes provide a tangible benefit to the public;
 - Those eligible for benefits are not a restricted group;
 - Its activities must be legal and not contrary to public policy.
- The organization has to be either incorporated or governed by a legal document called a trust or constitution. This document has to explain the organization's purpose and structure.
- Exempt from income under paragraph 149 (1) (f)



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EXAMPLES OF REGISTERED CHARITIES

- relief of poverty (food banks, soup kitchens, low-cost housing units)
- advancement of education (colleges, universities, research institutes)
- advancement of religion (places of worship, missionary organizations)
- purposes beneficial to the community (animal shelters, libraries, volunteer fire departments)

TYPES OF CHARITIES



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1. Charitable Organization
2. Public Foundation
3. Private Foundation

GOVERNING BODIES



- Canada Revenue Agency – federal
- Ontario Public Guardian and Trustee
- Don't forget – there are other applicable pieces of legislation. And the funders often impose conditions re. activities as well.



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What if you don't qualify to be a registered Canadian charity, but you still want to do good deeds (and be exempt from income tax)?

INCOME TAX ACT, PARAGRAPH 149(1)(I)



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The taxable income of an association is exempt from tax under Part I of the Act for a period throughout which the association complies with all of the following conditions:

- (a) it is not a charity;
- (b) it is organized exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit;
- (c) it is in fact operated exclusively for the same purpose for which it was organized or for any of the other purposes mentioned in (b); and
- (d) it does not distribute or otherwise make available for the personal benefit of a member any of its income unless the member is an association which has as its primary purpose and function the promotion of amateur athletics in Canada.

?????



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1. A NFP cannot operate exclusively for charitable purposes (aka the Four Heads).
2. Cannot be organized for *profit*.
3. Cannot be operated for *profit*.
4. Cannot confer a private benefit.



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WHAT IS A NOT-FOR-PROFIT?

- It does not distribute or otherwise make available, for the personal benefit of a member, any of its income unless the member is an association which has as its primary purpose and function the promotion of amateur athletics in Canada.
- An NPO is exempt from tax under Part I of the Act on all or part of its taxable income for a fiscal period if it meets all of the above requirements for that period.

An NPO cannot issue tax receipts for donations.

EXAMPLES OF NFPS



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- social, recreational or hobby groups (bridge clubs, curling clubs, golf clubs)
- certain amateur sports organizations (hockey associations, baseball leagues, soccer leagues)
- certain festival organizations (parades, seasonal celebrations)

NICKNAMES



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NFP

NPO

NGO

Not-for-Profit

Non-Profit

Non-share capital corporation

CANADA NOT-FOR-PROFIT CORPORATIONS ACT(CNCA)



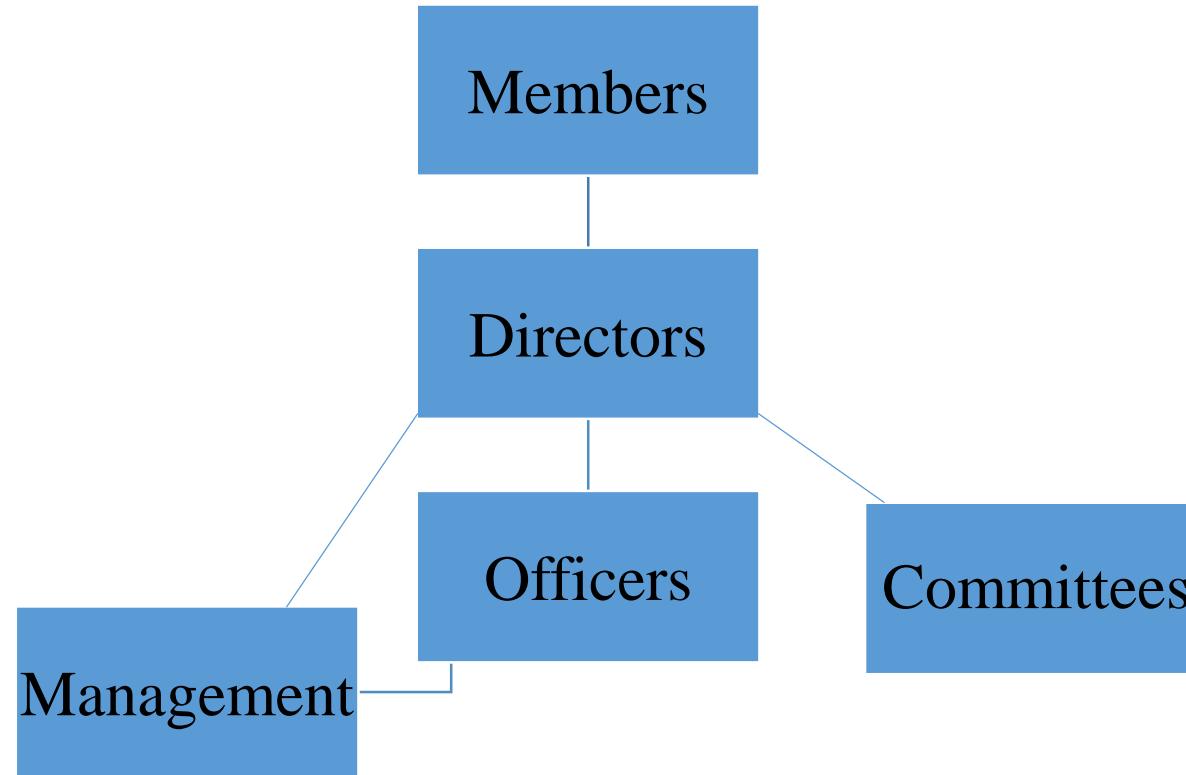
- Transition was required by October 17, 2014 for not-for-profits incorporated federally under the *Canada Corporations Act*
- Provides a new clear set of rules to govern the internal affairs of federal not-for-profit corporations
- Introduces concept of soliciting (>\$10,000 in public source income) vs non-soliciting
- NFPs incorporated under the *Corporations Act* (Ontario) can transition to the CNCA or wait until ONCA is proclaimed in force

ONTARIO CORPORATIONS ACT / ONTARIO NOT-FOR-PROFIT CORPORATIONS ACT, 2010 (ONCA)



- Ontario - ***Corporations Act (Ontario)***
 - 1907
 - Updated 1953 and 1998
- New Act: ***Not-for-profit Corporations Act, 2010 (Ontario)***
 - Passed on October 19, 2010 – Royal Assent October 25, 2010
 - Awaiting Regulations
 - Not yet in force: currently scheduled for early 2020
 - In 2014, the Ministry of Government and Consumer Services was mandated to bring forward legislation to implement the ONCA.
 - November 14, 2017 – *Bill 154, Cutting Unnecessary Red Tape Act, 2017*
 - Amends many statutes, including the Ontario *Corporations Act (the “New OCA”)*, the Ontario *Not-for-profit Corporations Act, 2010 (the “ONCA”)*, and the *Charities Accounting Ac*

THE BASIC GOVERNANCE STRUCTURE





THE HIERARCHY

- Members elect directors
- Directors oversee the activities of the corporation
- Directors accept members
 - In many organizations, Members = Directors
- Directors appoint officers
- Directors appoint committees and hire the ED/CEO
- Most responsibilities of the Board may be delegated to a committee
- Committees deal with specific topics and make recommendations to the Board
- ED/CEO, through management and staff, implements actions based on strategic plans set by the Board (in consultation with the ED/CEO)
- **Board sets the ends / ED implements the means**



THE MEMBERS

● Who Can be Members?

- Members are those who are interested in furthering the objects of the corporation.
- By-laws set out conditions for membership
- CNCA: Articles must create classes of members
- CNCA: Articles must state voting rights of each class; otherwise all classes vote equally
- Unpaid
- Not held liable for any act of the corporation
 - However...the English High Court of Justice recently held that a member of a charitable corporation is a fiduciary of the charity and must exercise his or her rights as a member in the best interest of the charity (*The Children's Investment Fund Foundation v. A.G. et al. [2017] EWHC 1379 (Ch)*).

● What Rights Do Members Have?

- To vote (in person or by proxy) on:
 - Election of directors
 - By-Laws
 - Appointment of the auditor
 - Receive the financial statements
- Requisition a members' meeting
- Access certain corporate documents

DISCIPLINE OR TERMINATION OF MEMBERS



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OCA: By-Laws set out how a membership terminates

CNCA/ONCA:

- Directors, members or committee of directors or members may be given the power to discipline or terminate a member
- Must be in articles or by-laws, including circumstances and manner of termination
- Good faith, fair and reasonable manner

ONCA: 15 days notice (with reasons) and right to be heard (at least 5 days before action takes effect)

MEMBERS MEETINGS – ELECTRONIC/TELEPHONIC PARTICIPATION



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- Permitted.

CNCA/ONCA:

- Participation in a members meeting by telephonic/electronic means permitted if corporation makes available – unless by-laws provide otherwise
- Members may request that a meeting called by the members be held entirely by telephonic or electronic means only if by-law so authorize

MEMBER MEETINGS – ABSENTEE VOTING



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OCA: Mandatory right to have a proxy. Does NOT have to be a member.

CNCA: Members have the right to vote by proxy. Does NOT have to be a member. By-Laws can also permit voting by mailed-in ballot, telephone, or electronically.

ONCA: By-laws may permit voting by mailed-in ballot or telephonically or electronically in addition to or instead of proxy (must be verifiable, but the technology must not allow the corporation to determine the identity of the voter). Does NOT have to be a member.

MEMBER MEETINGS – WHO CAN VOTE



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- CNCA: The right to vote is set out in the Articles
- OCA: Only voting members can vote.
- CNCA/ONCA: Even non-voting members may vote in certain circumstances
 - 👉 Heads Up! This right will come in no earlier than the 3rd anniversary of the date Section 4(1) of the ONCA comes into force.

MEMBER MEETINGS – PROPOSALS (CNCA/ONCA)



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- Any voting member may make a proposal

Includes:

- proposal to amend by-laws or articles
- any matter significantly related to activities or affairs of corporation
- proposals to nominate directors (requires support of at least 5% of voting members)

THE BOARD OF DIRECTORS



- Directors are in control of the business and affairs of the corporation.
- Set out policies, oversee governance, etc.
- Elected by the members (and sometimes by the Board – ONCA/CNCA)
- Ex-officio directors permitted under OCA and ONCA; not under CNCA
- Must consent to being a director
 - ↳ Heads Up! Under the ONCA, an individual's consent to act as a director must be in writing. Not required under the CNCA or the OCA. Practice Tip – Get a written consent that covers telephonic/electronic meetings, existing conflicts, and director qualifications.
- Usually unpaid.
- On record with the Ministry of Government Services / Industry Canada
- May be chosen based on:
 - Expertise
 - Location / Part of Certain Sector
 - Willingness

DIRECTORS' DECISION MAKING AUTHORITY



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- Directors have the general authority to manage or supervise the management of activities and affairs of corporation
- Can delegate powers to a committee of directors.
- CNCA/ONCA: Powers that must be exercised by full Board (cannot be delegated):
 - Submitting questions/matters for member approval
 - Filling board vacancies/auditor vacancies
 - Appointing additional directors
 - Issuing debt obligations (except as specifically authorized by directors)
 - Approving financial statements
 - Adopt, amend and repeal by-laws
 - Establishing members dues/contributions

BOARD SIZE & COMPOSITION



1. Under CNCA/ONCA: Minimum and maximum number of directors permitted (e.g.: 10-18) and members 'fix' size of board within range from time to time
2. Number or range of directors must be in Articles (CNCA)
3. Under OCA: Number must be set in Letters Patent. Can be increased or decreased by Special Resolution.
4. OCA – Directors no longer need to be members.

ONCA & CNCA: BOARD ELECTION & NOMINATION



1. Members have a right to nominate directors (5% of group or class entitled to vote)
2. Directors may appoint other directors to the Board (so long as appointments not exceeding 1/3 of the total number of directors elected by members at the last AGM). Appointed directors hold office until the next AGM
3. Maximum term is four years (no limit on re-elections) [currently 5 years under OCA and at least 3 must retire each year]
4. Directors may be removed by members by ordinary resolution (simple majority) [used to be 2/3rds under OCA]

BOARD MEETINGS



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- No minimum notice or specified form unless by-laws so provide
- Can participate electronically or telephonically if all directors consent
- No requirement to state purpose unless non-delegable business
- Quorum – majority of directors unless otherwise provided in articles/by-laws (no minimum quorum)
- Written resolutions (unanimous) permitted for Board meetings
- Director deemed to consent unless dissent submitted or recorded (even if director not at the meeting – have 7 days to have dissent placed in minutes once become aware of resolution or action)

DIRECTOR MEETINGS – AGENDAS, NOTICES



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- Agendas of Board Meetings
 - Responsibility of the Chair but usually prepared by the Secretary with input from the Chair and CEO
 - Practice Tip: Allot a time for each item to be used as a guide by the Chair.
 - Practice Tip: Add declaration of conflict of interest item, so no one forgets!
 - Practice Tip: Formally approve the agenda – gives chance to make changes.
 - Proxies are NOT allowed.
 - Notices of Board Meetings
 - Must be given in accordance with the by-laws
 - No formalities in the legislation with respect to form, content, or manner of delivery
- Practice Tip: Provide the agenda, together with reports and information, sufficiently in advance of the meeting to allow the directors to come to the meeting prepared for discussion.

OFFICERS



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- Appointed by the directors.
- OCA: Requires President and Secretary
- ONCA: Requires Chair
- CNCA: No requirements
- Usually are directors, but not all positions have to be.
- Have different roles to perform; set by the Board.
- Usually unpaid.
- On record with the Ministry of Government Services

OFFICER DEFINITIONS – BROADER THAN YOU THINK!



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- OCA: president, chair of the board of directors, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, manager, or any other person designated an officer by by-law of the corporation
- ONCA: an officer of the corporation appointed by the directors, including:
 - (a) the chair of the board of directors and a vice-chair of the board of directors;
 - (b) the president, vice-president, secretary, assistant secretary, treasurer, an assistant treasurer, and the general manager of the corporation; and
 - (c) any other individual who performs functions for the corporation similar to those normally performed by an individual listed in (a) or (b).
- CNCA: ``officer'' means an individual appointed as an officer under section 142, the chairperson of the board of directors, the president, a vice-president, the secretary, the treasurer, the comptroller, the general counsel, the general manager or a managing director of a corporation, or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any of those offices.

MANAGEMENT



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- ED/CEO hired by the Board.
- Employees hired by the ED/CEO.
- ED/CEO tasked with dealing with day-to-day issues and delegating appropriately.
- ED/CEO oversees volunteers and other employees.

RUNNING A NFP/CHARITY



Your organization must meet its legal obligations under:

1. Its Letters Patent/Articles (remember the objects)
2. By-Laws
3. Policies, Codes, etc.
4. Agreements with Funders, Donors, Partners, etc.
5. Applicable Legislation
6. Directives/Guidelines of Applicable Ministries, Canada Revenue Agency, Public Guardian and Trustee (Ontario)



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WHAT ARE BY-LAWS?

By-Laws usually, at a minimum, set out the following information:

1. Head Office Location
2. Fiscal Year End
3. Members
4. Directors
5. Officers
6. Meetings
7. Protection of Directors and Officers
8. Conflict of Interest

LEGISLATIVE REPORTING REQUIREMENTS

OCA

- File Corporations Annual Information Act Annual Return for Ontario Corporations (S546)
***Usually filed by accountant with annual tax return
- Provide updated Head Office and contact information including any changes to Officers and Directors (15 days)
- Register business names

CNCA

- File an Annual Return
- Provide updated Head Office and contact information including any changes to Officers and Directors (15 days)
- File By-Laws with Industry Canada
- File financial statements if a soliciting corporation
- Extra-provincially register in province where business is being conducted
- Register business names



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LEGISLATIVE RECORD-KEEPING REQUIREMENTS



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- Letters Patent, Articles of Incorporation, etc.
- By-Laws and Special Resolutions
- Minutes of Board, Members', and Executive Committee meetings
 - The Members do NOT have the right to access the Board and Exec. Committee minutes***
- Debt obligations register, if any
- Directors, Officers, and Members registers
 - A Member must formally make a request, and file of Affidavit, before receiving a list of Members.***
- Accounting records and tax returns
- OCA: Records of land ownership in Ontario (identify each property, show the date the corporation acquired/disposed of the property, keep copy of any deed/transfer documents) [effective date –December 10, 2018]

REGISTERS



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- Directors
 - Since incorporation
 - Names and addresses
 - Dates on which each became or ceased to be a director
 - Consents – ONCA (not the CNCA) requires consents to be kept
- Members
 - Last 10 years
 - Names alphabetically arranged
 - Address of every person
- Practice Tip: Keep a register of officers too – it'll be worthwhile, I promise!
(Will be required under the ONCA and the CNCA.)

BOOKS OF ACCOUNT



- A corporation shall keep proper books of account and accounting records, including records of:
 - All sums of money received and disbursed by the corporation and the matters with respect to which receipt and disbursement took place
 - All sales and purchases of the corporation
 - The assets and liabilities of the corporation
 - All transactions affecting the financial position of the corporation

MINUTE BOOK



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Where should the records be kept?

- At the head office of the corporation OR at another place (e.g. lawyer's office) if the records are available for inspection during regular office hours at the head office by means of a computer terminal or other electronic technology.

ACCESS TO RECORDS



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- Who can see the records?
 - A **director** can inspect any of the records and shall have access during normal business hours of the corporation
 - A **member** or a **creditor** (or his agent or legal representative) can inspect the minutes of any members' meeting, the constating documents, the registers of members and directors and shall have access during normal business hours of the corporation. They can make copies of any of these documents.

THE ROLE OF A DIRECTOR



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- Who is ultimately responsible for ensuring that all rules governing the organization are met?...

THE BOARD OF DIRECTORS

DIRECTORS = FIDUCIARIES



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What is a fiduciary?

- Legal term defined in statute and by common law
- Refers to a person who, because of the position he/she holds, has a responsibility to act primarily for another's benefit
- For directors, they are fiduciaries in relation to their corporation
- Two main fiduciary duties: Duty of Care and Duty of Loyalty

FIRST BRANCH OF FIDUCIARY DUTY: DUTY OF CARE



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- (1)The duty to act honestly
- (2)The duty to exercise power
- (3) The duty of obedience
- (4) The duty to act with a certain level of skill
- (5) The duty of diligence

DUTY TO BE HONEST / DUTY TO EXERCISE POWER



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- Act **Honestly** – With the corporation, the directors, the stakeholders, and yourself
- **Exercise Power** –
 - Abstentions are not permitted under the CNCA/ONCA.
 - Section 147(1) CNCA: A director who is present at a meeting of directors or of a committee of directors is deemed to have consented to any resolution passed or action taken at the meeting unless
 - (a) the director requests a dissent to be entered in the minutes of the meeting;
 - (b) the director sends a written dissent to the secretary of the meeting before the meeting is adjourned; or
 - (c) the director sends a dissent by registered mail or delivers it to the registered office of the corporation immediately after the meeting is adjourned.
 - (3) A director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented to the resolution or action unless, within the prescribed period after becoming aware of the resolution or action, the director
 - (a) causes a dissent to be placed with the minutes of the meeting; or
 - (b) sends a dissent by registered mail or delivers it to the registered office of the corporation.

DUTY OF OBEDIENCE / DUTY TO COMPLY



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- Directors and officers are required to comply themselves with the Act and its regulations, the Articles/Letters Patent, and the by-laws
- Directors are required to ensure that the corporation, its staff, and committees comply with the Act and its regulations, the Articles/Letters Patent, the by-laws, and any internal rules
- Directors ensure that governing documents remain current and accurate, and oversee the process used to amend and update governing documents
- Directors have a duty to obey external laws imposed on the corporation and to ensure that processes and procedures are in place to ensure that the corporation complies with these laws (e.g. employment legislation)

DUTY OF CARE: SKILL

HOW MUCH SKILL IS ENOUGH SKILL?



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- Be informed
 - Directors are required to remain informed about the corporation's activities and to ensure the lawfulness of the Articles/Letters Patent and the purpose/objects of the corporation
- Act with competence
 - Business Judgment Rule – decision must be reasonable, not perfect
- Obliged to foresee potential risks inherent in a situation and to take reasonable steps to manage those risks.
- Act in accordance with a particular standard of care:
Exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances. (CNCA/ONCA)

DUTY OF CARE: DILIGENCE

WHAT DOES IT MEAN TO BE DILIGENT?



- Hold meetings regularly
- Attend meetings regularly
- Carefully and regularly review all documents relating to the corporation's financial affairs
- Review and participate in formulating budgets and strategic plans
- Develop a sound knowledge of all aspects of the corporation
- Create procedures to mitigate risk (example: fraud)
- Enlist the advice of professionals when required
 - Can rely on financial statements prepared by accountant

DILIGENCE = DELEGATION



- Delegation is specifically permitted by statute:
 - “The directors shall manage or supervise the management of the activities and affairs of a corporation.”
- However...delegation:
 - May affect quality
 - Increases the risk of self-serving behaviour
 - Does NOT completely absolve the Board of responsibility
- Therefore, delegation must be handled appropriately by:
 - (i) clearly setting out, in writing, the **scope and expectations** of the delegation;
 - (ii) ensuring that management has established and maintains **systems** appropriate to achieve goals, meet industry standards, respond to risk management concerns, and achieve compliance;
 - (iii) receiving and reviewing regular and useful **reports**;
 - (iv) maintaining control over **all final decisions**, other than operational decisions; and
 - (v) taking **actions towards improvement** when necessary.

Fiduciary Duty: Second Branch - Duty of Loyalty

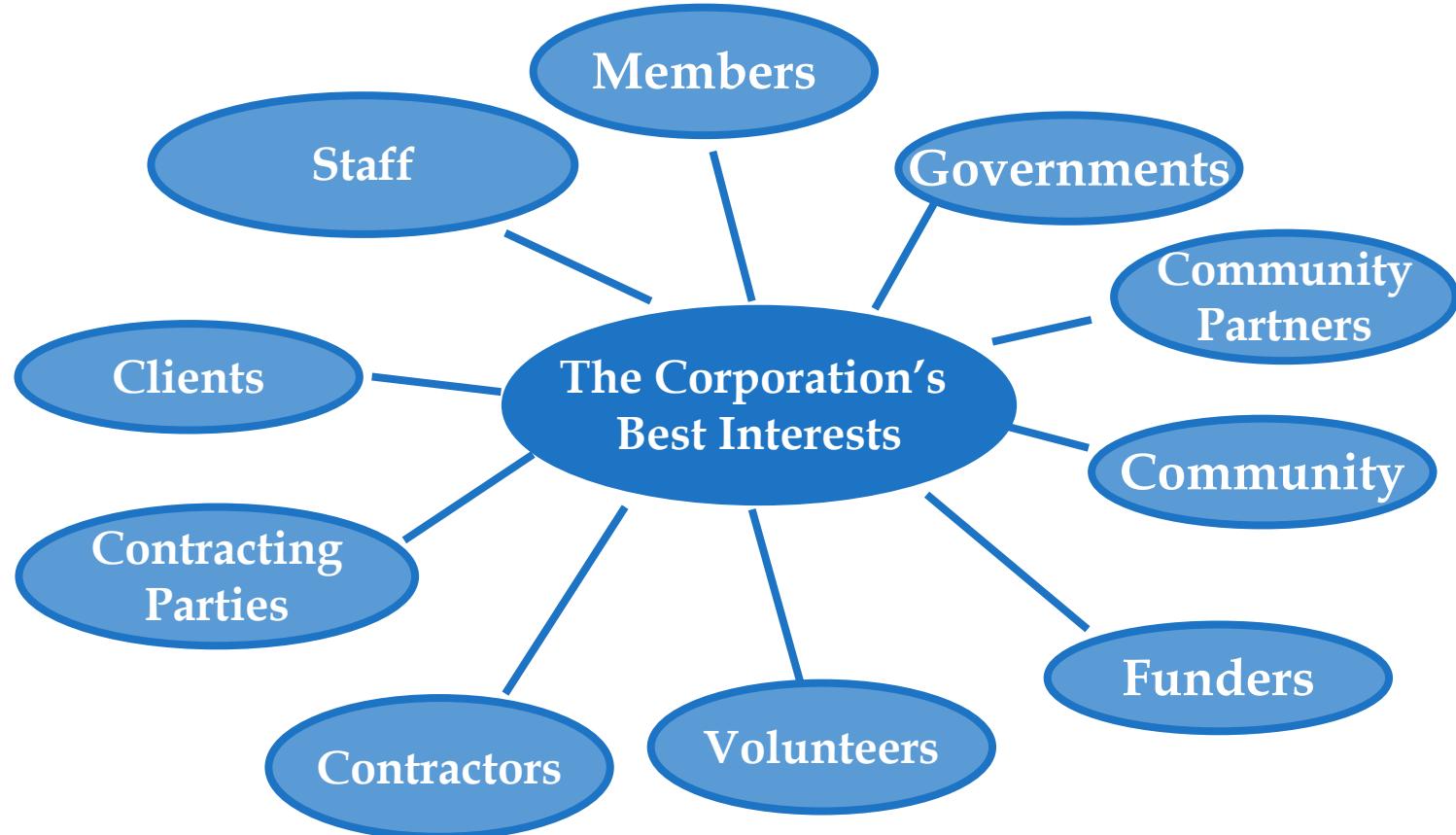


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1. Know the Order of Priority – The corporation comes first! A director must ALWAYS act in the best interests of the corporation.
2. Avoid conflicts of interest – real, potential, or perceived. Loyal directors will avoid putting themselves in situations of a conflict of interest.
3. Keep confidential matters private – this is an indefinite obligation.
4. Act as one entity. Loyal directors support the decisions of the Board, even if they might not personally agree with them and might not have voted to support the ultimate decision. The Board acts as a collective unit – it is not, to the outside world, a group of *individual voices*.



THE STAKEHOLDERS



LIABILITY



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Failure to fulfill fiduciary duties may result in liability for directors.

Liability arises in three general situations:

1. Statutory Breach
2. Contractual Breach
3. Tort – When an act, or failure to act, whether intentionally or unintentionally, causes injury or damage to another person.



STATUTORY BREACH

Three broad categories:

1. Unpaid wages (six (6) months) – liable when a director and for two years afterwards (s. 146)
2. Withhold, deduct, remit statutes – income tax, UI, CPP, etc. – For example, under the *Income Tax Act*, directors are jointly and severally liable to pay employee income tax deductions that the corporation fails to remit for two years following ceasing to be a director
3. Non-compliance with statutes – Environment Protection, Occupational Health and Safety, Employment Standards (etc.)



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CONTRACTUAL BREACH

- Directors are responsible for ensuring that the corporation's contractual obligations are fulfilled. This responsibility can be delegated to the ED/CEO – so long as there is a process in place to ensure that the obligations are fulfilled, and regular reporting is provided confirming that the process is being followed.



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TORT

- Directors are responsible for ensuring that they, as well as staff, do not behave negligently. Directors and staff are, at all times, expected to act in a reasonably diligent and safety-conscious manner so that others affected by such individuals' actions are not faced with an unreasonable risk of harm.

WHAT ACTIONS CAN BE TAKEN AGAINST A DIRECTOR?



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1. By Members

- Apply to the court for a compliance order to make officers and directors comply with the legislation and constating documents; apply for an investigation; apply for Court-order liquidation and dissolution

2. Crown

3. Competition Bureau

4. Canada Revenue Agency

5. Current or former staff

6. Third parties (e.g. funders, partners, vendors)

7. Fellow directors

8. General public

EXAMPLES OF MOST COMMON LAWSUITS



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- Corporation acting beyond scope of authority
- Director's breach of fiduciary duties
- Board authorized excessive spending
- Board failed to supervise employees or affairs properly

WHEN WILL A DIRECTOR BE FOUND PERSONALLY LIABLE?



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Answer: When a director breaches his/her fiduciary duty and the breach results in a loss that can be traced back to the individual director.

- Liability will depend on the particular facts and circumstances.
- Courts will ask questions such as:
 - Was the decision/action taken in the best interests of the corporation?
 - Did the director discharge his/her duties with skill and diligence?
 - Was the director loyal, honest, and acting in good faith?
 - Were responsibilities delegated properly?
 - Was there a conflict of interest?

WHAT PROTECTIONS ARE AVAILABLE TO DIRECTORS?



- Incorporation
- Indemnification (At the very least, put language in the by-laws! Consider an indemnity agreement.)
- Insurance
- Advances (A charitable corporation may not purchase insurance unless it obtains a court order or complies with the *Charities Accounting Act*.)

But, none of these shields matter unless each individual director ensures that he/she meets the relevant standard of care, exercises due diligence, and has the minutes of every meeting accurately reflect the votes and set out any objections.



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SO, NOW YOU KNOW WHAT AN INDIVIDUAL DIRECTOR IS SUPPOSED TO DO.

BUT WHAT IS THE BOARD SUPPOSED TO DO AS A COLLECTIVE UNIT?

BOARD'S ROLE CHANGES WITH AGE & STAGE



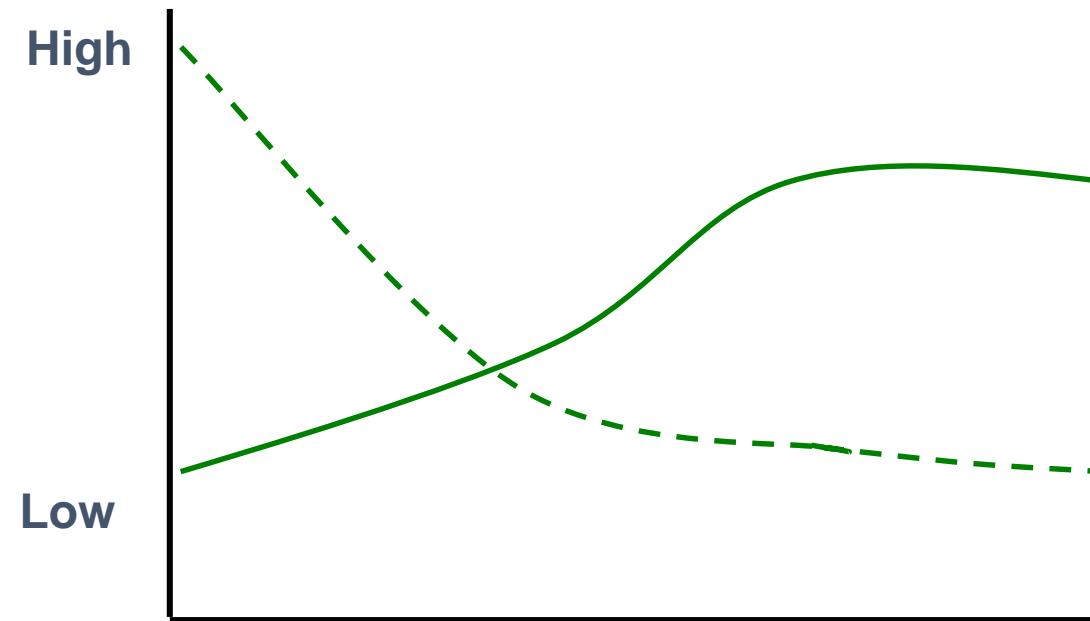
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Management Competence (—)

Operational/Working Board

Board Involvement (---)

Governance/Policy Board



DIFFERENT TYPES OF BOARDS



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1. Operational Board:
 - No staff support.
2. Collective Board :
 - Board and staff involved as 'single team' in decision-making about governance and the work of the organization.
3. Management Board:
 - Board manages operations but has a staff coordinator.
4. Traditional Board:
 - Board governs and oversees operations through committees but delegates management functions to the CEO. Committees, established along functional lines that parallel management functions (eg. finance, hr, programs) are used to process information for the Board. Often invites Board interference in management functions.
 - CEO has primary reporting relationship to Board through Chair.



TYPES OF BOARDS

5. Policy Governance Board (“Carver Model”):

- Board governs through policies that establish organizational aims (“ends”); governance approaches or processes; management limitations; and that define the Board/CEO relationship.
- CEO has broad freedom to determine the “means” that will be implemented to achieve organizational aims.
- CEO reports to the full Board.
- Board does not rely heavily on standing committees but may use task teams to assist it in specific aspects of its work.

6. Advisory Board:

- This Board is typically selected and dominated by the CEO.
- Governs only in a nominal sense. A rubber-stamp Board.

BEHAVIOURS OF AN EFFECTIVE BOARD



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1. Accountability Relationships – Know The Players
2. Know the Role of the Board
3. Set Targets
4. Identify the Risks
5. Delegate
6. Assess Performance
7. Practice Discipline
8. Report Back

QUESTIONS BOARDS SHOULD ASK



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In general, a board should always think in three types of modes: fiduciary, strategic, and generative

1. Fiduciary: THE ‘MUST DO’ MODE
 1. Stewardship of tangible assets
 2. Overseeing of operations
 3. Ensuring appropriate use of resources
 4. Legal compliance (Corporate, Tax, Contractual, Legislative)
 5. Fiscal accountability
2. Strategic: THE ‘SHOULD DO’ MODE
 1. Setting priorities
 2. Developing and improving various strategies
 3. Monitoring Performance
3. Generative: THE ‘REASON WHY BOARDS ARE IMPORTANT’ MODE
 1. Look at the big picture – how is the organization doing overall?
 2. Look at the corporation’s reason for being – are the objects being followed? The mission and vision?
 3. Each time, ask: Why are we doing this? What impact will it have on long-term goals, reputation, etc.? How does this action reflect on image and mandate?

EXAMPLES OF PRIORITIES OVERSEEN BY A BOARD



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1. Programs
2. Employees
3. Finances
4. Systems (crisis management, risk assessment, etc.)
5. Partnerships
6. Resources
7. Board Governance



BOARD OF DIRECTORS – RESPONSIBILITY CHART

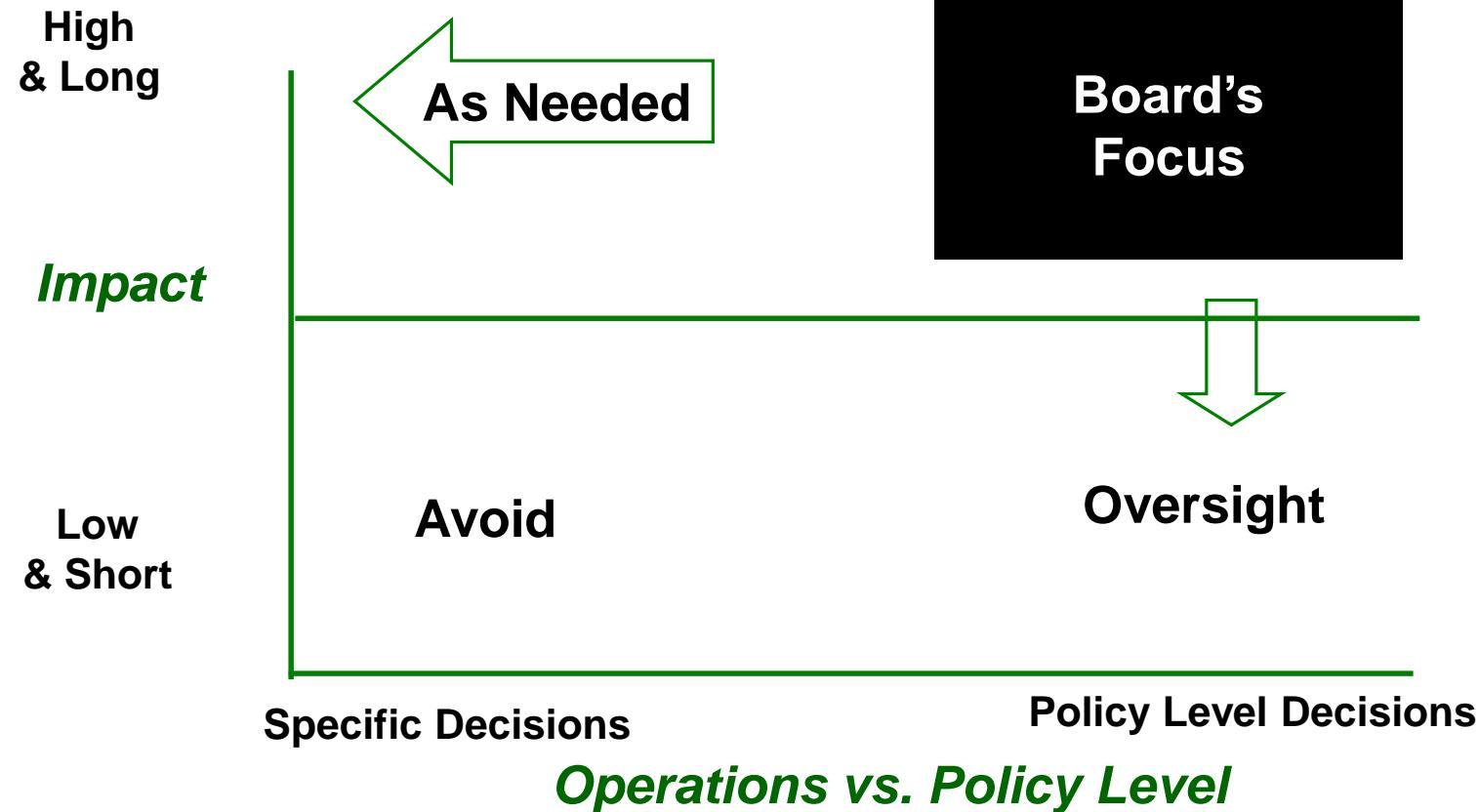
1. Ensure that the Board's Fiduciary obligations (7 areas) are always met.
2. Be involved in strategic planning (7 areas) on an "as-needed" basis.
3. Always ask 'why'.

POLICY GOVERNANCE MODEL TO FOCUS BOARD'S ROLE



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A governance board functions best when it focuses on higher level, future-oriented matters of strategy and policy and performs its oversight responsibilities in a rigorous but highly efficient manner.



THE BOARD-MANAGEMENT RELATIONSHIP



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Board's Role	Management's Role
Select, evaluate, and support the CEO.	<ul style="list-style-type: none">— Run the organization in line with Board direction.— Keep the Board educated and informed.— Seek the Board's counsel.
Approve high-level organizational goals and policies.	<ul style="list-style-type: none">— Recommend goals and policies, supported by background information.
Make major decisions.	<ul style="list-style-type: none">— Frame decisions in the context of the mission and strategic vision, and bring the Board well-documented recommendations.
Act as external advocates and diplomats in public policy, fundraising, and stakeholder/community relations.	Keep the Board informed, bring recommendations, and mobilize directors to leverage their external community relations to support the organization.

7 QUESTIONS TO HELP DETERMINE BOARD'S INVOLVEMENT



1. Is it big?

The bigger the impact of a decision, the more the Board ought to play a role in shaping and understanding the action and its possible consequences.

2. Is it about the future?

The Board's fingerprints should be on long-term vision and an integrated, three-to-five-year strategic and financial plan.

3. Is it core to the mission?

Management should bring the Board well-documented analyses and recommendations to help directors strike the right balance.

7 QUESTIONS TO HELP DETERMINE BOARD'S INVOLVEMENT



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4. Is a high-level policy-decision needed to resolve the situation?

Policies / decisions requiring Board approval should have a major impact on the corporation, require compliance with laws or regulations, or affect the responsibilities and conduct of the Board, management, and/or members.

5. Is a red flag flying?

Boards should routinely review dashboards and other performance reports, Directors should know the red flags that signal the need for closer inquiry. Boards should focus on trends. To avoid slipping from governance into management when reviewing performance problems, the board should focus on whether management recognizes the problem and has established the capability and plans needed to improve results. The Board should not micromanage possible solutions; it should hold management accountable for producing better results.

7 QUESTIONS TO HELP DETERMINE BOARD'S INVOLVEMENT



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6. Is a watchdog watching?

If the Canada Revenue Agency, Corporations Canada, the Competition Bureau, another governmental office, the Crown, or the news media cares, the Board should care.

7. Does the CEO want and need Board support?

If the CEO asks for Board advice or intervention, directors should respond.



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HOW CAN MANAGEMENT HELP?

The Board is tasked with many responsibilities, and as a result, reviews a lot of documentation prior to every meeting. It would be most helpful if the reports provided to the Board:

- Involve a summary
- Are succinct
- Involve only relevant information (i.e. information necessary to make a decision. While background information can be interesting, if it is not necessary, it will cloud the issue and take up unnecessary time.)

If you aren't clear about what your report should be on, **ask.**

If there are qualifications to your report (for example, not all of the relevant information was available), **explain them.**

If you think a different issue may be of more use to the Board, **speak up** (to your direct report).

THE DIRECTORS ARE RELYING ON YOU TO INFORM THEM ABOUT NEW AND IMPORTANT DEVELOPMENTS IN THE INDUSTRY. YOU ARE THE EXPERTS IN YOUR FIELDS.



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Any Questions?



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Thank you!

Anna C. Naud
Mason Bennett Johncox
Professional Corporation
905.620.4499 ext. 244
anaud@whitbylawyers.com



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