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## BOARD LEGAL RESPONSIBILITIES

It is recommended that Boards seek legal advice on an ongoing basis. The following provides a reference to some of the key concepts that govern a Board's legal responsibilities.

1. To always act in the best interest of the organization;
2. To ensure that its decisions are within the mandate set out in the constitution (Charter or *Lettres Patentes*) and the bylaws;
3. To act lawfully and with diligence, honesty and loyalty  
e.g.: attend meetings; react quickly to fraudulent acts; watch out for abuse of power;
4. To ensure there is no conflict of interests between that of the organization and the personal interests of Directors;
5. To have the necessary competence to execute one's mandate or ensure that one receives training to secure it or is able to access the required knowledge (e.g. seek legal counsel when a legal opinion is required).
6. To assume the responsibilities and the loyalty that was entrusted upon the Directors by the membership;
7. To be informed and act independently and personally in decision-making; to be open to different perspectives and not vote *en bloc*.
8. To safeguard corporate documents (articles of incorporation, bylaws, minutes, financial records, etc.);
9. Honouring contracts and payment of salaried employees and withholding tax and pension contributions at source;
10. To prepare an annual list of its members;
11. To hold an Annual General Meeting in order to report back to members;
12. Submit an annual declaration to the *Inspecteur général des institutions financières* (IGIF) stating any changes to the composition of the Board of Directors;
13. Hold a Special General Meeting in the event that changes are made to any element of the Charter of the organization (Lettres Patentes) and submit a "*déclaration modificative*" to the IGIF;
14. Request permission from the government if the organization is ceasing to exist or merge.

\* Article 844 of the *Code de procédure civile* permits all interested parties can petition to the Courts in the event that a board member or an entire board is not fulfilling her/his/its legal obligations.

Compiled by: Centre for Community Organizations

## THE BOARD'S RESPONSIBILITIES

(Adaptation of the Carver Governance Model)

### 1. Create and foster a vision

- the ultimate act of Board leadership
- maintain focus on "the Big Picture" - Where are we going?
- articulates the mission of the organization - What do we do, for whom and how do we do it?
- articulates the desired outcomes of the organization - What do we do for whom and at what cost?
- Ensures the future financial viability of the organization

### 2. Create policy

- value or perspective that underlies action
- serves as a guideline for carrying out action
- governs the course of action for an organization
- expresses the vision, mission values and the philosophy of organization

### 3. Monitor performance

- evaluate executive director
- monitor effectiveness of organization against previously set 'desired outcomes'

### 4. Board development

- explicitly deal with its own governance, job design, attendance, discipline, performance and accountability

## FOUR FUNCTIONS OF A BOARD OF DIRECTORS<sup>1</sup>

### 1. GOVERNORS

- ultimate decision-makers
- articulate the direction of the organization
- monitor the overall management of the organization

### 2. SPONSORS

- responsible for the continued funding and financial health of the organization

### 3. AMBASSADORS

- interpreting the mission of the organization to the external community
- defending the organization when it is under pressure
- representing the organization out in the community

### 4. CONSULTANTS

- contributing knowledge and skills in their particular area of expertise

## THE THREE "I" S OF EFFECTIVE BOARD MEMBERSHIP<sup>2</sup>

- \* **Information:** The key - without it, no responsible decision can be made.
- \* **Inquiry:** Board members must ensure that they have looked at the issues from all perspectives and that decisions are based on complete and accurate information
- \* **Involvement:** The information received is validated through active participation in the board member role.

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<sup>1</sup> Taken from an interview with David Hubbard found in *Managing the Non-profit Organization: Principles and Practices*. by Peter Drucker

<sup>2</sup> Adapted from : *The Liabilities of Directors and Officers: With Practical Solutions for Their Discharge* by Thomas F. Sheenan (Directors Press, Barlett, Illinois) as quoted in Conrad, 1986.

### **1. “Wearing one hat” only**

Although the board benefits from the expertise and perspectives that individuals holding various positions may have (e.g. executive director, staff ‘reps’, parent etc), it is important that all board members make decisions with the overall long-term health of the organization in mind and not only with their specific interest in mind.

### **2. Board decisions can only be made ‘around the table’**

Governance of the nonprofit corporation is a collective board responsibility. No individual trustee/board member, not even the president, can make decisions or act in the name of the organization unless having been authorized to do so by board resolution. Outside of board meetings, board members resume their role as members. A board member may also choose to carry out non-board volunteer tasks but does so under the authority of the executive director.

### **3. Honouring Decisions**

Board members must honour all decisions made collectively by the board or run the risk of being personally liable. Speaking against decisions made by board members needs to be dealt with immediately (and merits a board discussion and policy). Any board member who does not support a particular board decision or who feels that the decision made may be grounds for mismanagement or conflict of interest may ask to have their dissent recorded in the minutes. However, if after democratic debate a board member cannot support and honour the decision, s/he should resign.

### **4. Confidentiality**

In order to maintain a strong level of trust at all levels of the organization – board, director, staff and parents – it is essential that all particulars of a board meeting are not discussed with others outside the meetings. While the minutes of all board meetings need to be made available to members and board members need to be able to explain the reasoning behind the decisions, the specifics of the meeting should not be discussed. Neither in the minutes nor in outside discussions should “who said what to whom” be discussed. In the case of sensitive issues (e.g. human resources – hiring, firing, salaries and evaluation) it is extremely important that full confidentiality is kept. Maintaining trust at all levels of the organization is paramount.

## **BOARD STAFF RELATIONSHIP**

The board volunteer/staff relationship must be based on a clear recognition, understanding and acceptance of the distinctive board and staff roles.

The executive director and staff of a NFP are rarely voting board members. The executive director normally attends all board meetings. Staff have the right to provide input and even request an issue to be tabled.

The board needs to set policy regarding how staff issues will be handled by the board. Procedures for grievances with respect to personnel management need to be defined.

## **ROLE OF THE EXECUTIVE DIRECTOR**

The executive director has a central role in sensing the changing external environment and developing and implementing, through the board, strategic responses.

The executive director has a critical role in facilitating the flow of information throughout the organization.

The executive director's role is to carry out the policies of the board and to achieve the purposes of the organization within policies set forth by the board.

## POLICIES

Policies define the boundaries within which we conduct ourselves, manage programs and lead organizations toward a specific end.

Policies are developed to provide:

- guidelines for action to achieve the organization's mission;
- general directives to ensure consistent decision making;
- a point of reference for precedent-setting decisions.

In most cases, policies do not dictate action but present the reasoning that guides action. They promote the organization's values.

Determination and approval of policy is a board responsibility.

Boards are recommended to develop clear, precise policies in four areas:

- what we do, for whom and at what cost
- the board's functioning
- the board-staff relationship
- operations

### DEVELOPING POLICY

Effective policies are:

- ✓ based on facts, not opinion
- ✓ written in a simple style with clear intent
- ✓ presented in a format suitable for communication and distribution
- ✓ kept current and reviewed regularly
- ✓ consistent with mission and values of the organization
- ✓ consolidated into a policy manual

### Policy Formulation

- committees and/or staff may draft policies and make recommendations
- research and consultation with other organizations and experts is recommended

A common approach to policy formulation is:

1. identify the policy area
2. state the problem, issue, opportunity or need
3. explain why there is a need for such a policy
4. what should the policy do, i.e. define scope and outcomes

**Policy Determination** is the sole responsibility of the board

**Policy Implementation** is the responsibility of the board and/or staff. Essential that everyone is informed of policy development

**Policy Monitoring** is the responsibility of the board

## COMMITTEES

There is no right number of committees. Each organization must look at its own needs and create only the committees it needs. The mandates of standing committees need to be reviewed regularly.

**Effective committees** must have:

- ✓ a clear purpose
- ✓ members with specific skills relevant to the task
- ✓ an effective chairperson
- ✓ guidelines regarding expected outcomes, budget, timelines, access to information
- ✓ effective meetings

### Board Committees

- **Executive Committees**

Executive committees can be useful if their role is to organize the meeting and do some preliminary discussions on Board concerns. They can also become a detriment – as their influence increases, the influence of the board as a whole decreases. Executive committees have legal standing and can commit the entire board to a course of action. The entire board then becomes responsible for what the executive does.

- **Nominating Committees**

Exist to replenish the board, selecting nominees to govern. It needs to be a year round Board task. While a nominating committee can do the “leg work” of bringing in new members, all members of the Board need to participate in the process.

- **Fund Raising Committee**

Like the nominating committee, they may carry out more specific administrative and planning “leg-work” of fund-raising but the Board should keep ownership of the responsibility to raise funds.

- **Finance Committee**

The board’s financial responsibility should not be assigned to a smaller group. Each board member is fiscally responsible. The whole board needs to consider the issues.

- **Personnel Committee**

In an organization with an executive director, the reasons for having a standing personnel committee need to be questioned carefully.

- **Program Committee**

Program committees may be useful to provide advice on programming issues but must be careful not to do the work of the staff.

- **Ad hoc Committees** that advise the board on particular policy and outcomes can be useful.

### Staff Committees

The executive director may wish to create committees to deal with particular issues. Board members who sit on those committees should do so as volunteers of the organization, not as Board representatives.

### Recruiting Board Members

- Shared responsibility of whole board.
- The most important qualifications of prospective board members are enthusiasm, commitment and willingness to work
- Identify what are the needs of Board based on medium and short term planning goals.
- Use existing network to identify who are the people who have the skills, expertise and perspectives you need to move in desired direction.
- Ensure they have a clear understanding of the time and energy necessary for Board membership.

### Orienting Board Members

- Recognize that solid orientation takes significant time and energy
- Ensure that new board members have a clear understanding of what their Board roles and responsibilities are
- Build ownership of organization through an interactive discussion on organization's mission, history, program, staff, etc.
- Provide opportunities for new Board members to gain understanding of what the organization does, for whom and at what cost. i.e. observe/participate in day-to-day operation of organization, talk to listen to the stories of people who have been served by organization
- Identify what the strengths the new Board member believes they have to contribute to organization and discuss specific ways those strengths can be used
- Identify skills, expertise the new Board member would like to develop during their term and how they might be developed.

### Sustaining and Developing Board Involvement

- Have effective meetings where members are focused and input is respectfully heard and appreciated
- Motivate by being ever mindful of the mission/values of the organization and articulating how ongoing Board work allows the mission to become reality
- Provide opportunities for social interaction and offer refreshments during meeting

## A PROFILE OF BOARD MEMBER REQUIREMENTS - A SAMPLE

1. Strong belief and enthusiasm for the organization's mission and goals.
2. Availability for monthly meetings (2-3 hours) and subcommittees or officer work (two hours per month) - total of four hours per month.
3. Availability for annual day long Board planning/evaluation day
4. Willingness to participate in fundraising and contribute financially
5. Willingness to make a two year commitment
6. Experience in one or more of the following areas:
  - fund-raising
  - promotion
  - financial management
7. Connected to the community and/or with potential organization partners
8. Team player
9. Problem-solver
10. Good communicator

### FUNCTION OF OFFICERS - A SAMPLE

#### CHAIR - One year Term

- To call monthly board meetings
- to ensure quorum for monthly meetings
- to prepare agenda for monthly Board meetings in conjunction with director
- to chair or arrange for chair of monthly Board meetings
- to oversee and coordinate board functions and operations
- to be responsible for liaison with sponsoring organizations and with general public
- to ensure follow-up work generated from monthly meetings is done, in collaboration with director

#### SECRETARY - ONE YEAR TERM

- to be responsible for ensuring that the minutes of monthly board meetings are taken and word-processed
- to ensure that minutes and support documents are distributed in co-ordination with staff
- to be responsible for the minute book

#### TREASURER - ONE YEAR TERM

- to ensure that Board receives relevant and regular financial statements
- to ensure that an annual financial budget is done
- to ensure that accurate financial records are kept

<b>FUNCTIONING OF THE BOARD - a self-evaluation</b>
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	This is very well done	This is satisfactory	This needs attention
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Our Board Meetings

- |  |       |       |       |
|--|-------|-------|-------|
| • happen often enough for smooth, effective work | _____ | _____ | _____ |
| • happen with sufficient notice                  | _____ | _____ | _____ |
| • have clear, appropriate agendas                | _____ | _____ | _____ |
| • have agendas of appropriate length             | _____ | _____ | _____ |
| • last an appropriate length of time             | _____ | _____ | _____ |

Decision-making at Board

- |   |       |       |       |
|---|-------|-------|-------|
| • keeps in mind that primary function is to ensure the long-term health of the organization | _____ | _____ | _____ |
| • happens after informed complete discussion  | _____ | _____ | _____ |
| • is based on complete information  | _____ | _____ | _____ |
| • is possible because information is provided beforehand                                    | _____ | _____ | _____ |
| • is properly recorded in minutes   | _____ | _____ | _____ |
| • gets proper follow-up attention   | _____ | _____ | _____ |

Delegation of Work

- |   |       |       |       |
|---|-------|-------|-------|
| • uses the expertise of members appropriately | _____ | _____ | _____ |
| • is fairly apportioned amongst members       | _____ | _____ | _____ |
| • avoids duplication of work                  | _____ | _____ | _____ |
| • is clear to all                             | _____ | _____ | _____ |

Tone or 'Climate' of Board

- |  |       |       |       |
|--|-------|-------|-------|
| • respects opinions/contributions of all                 | _____ | _____ | _____ |
| • respects confidentiality                               | _____ | _____ | _____ |
| • respects the time of members                           | _____ | _____ | _____ |
| • allows for appreciation of work done to be voiced      | _____ | _____ | _____ |
| • allows for some laughter and lightness                 | _____ | _____ | _____ |
| • builds in some social aspect (before or after, snacks) | _____ | _____ | _____ |

## BOARD MEETING AGENDA CHECKLIST

### OVERALL

- ✓ Is the agenda short and visually attractive?
- ✓ Are the name, date, place and time clearly identified?
- ✓ Is the person responsible for each item clearly identified?
- ✓ Are items numbered for easy referral?
- ✓ Are resource papers and supporting documents referenced?
- ✓ Is it sent out before the meeting?

### PURPOSE AND OUTCOMES

- ✓ Does it identify desired outcomes of item? (i.e. information, discussion, decision)
- ✓ Does it identify the decision-making method?

### SEQUENCING

- ✓ Has the sequencing been paid attention to? (i.e.: energy flow and “culture” of the organization?)
- ✓ Is there a time allocated for each item?
- ✓ Is there time allocated for the agenda to confirm necessary follow-up before the next meeting? (i.e. who needs to do what by when )

**What kind of information does the Board need to make informed decisions as well as effectively monitor the organization?<sup>3</sup>**

**MONITORING INFORMATION** - Is ‘present’ and ‘past’ oriented

How is the organization performing in relation to previous set criteria or planning goals? Possible areas to assess - finance, programs, relationship with organizational partners

**DECISION-MAKING INFORMATION** - Is ‘future’ oriented

What are the implications of information? Are there trends in providing service that need to be addressed? Are there trends in the community that need to be addressed?

**INCIDENTAL INFORMATION**

Can be useful information if it enriches Board perspective but can be unnecessary. Unless the information is specifically to help monitor the organization against previous set criteria or is critical for Board to make informed, thoughtful decisions for the future, the information may not be useful or time effective for the Board.

### WHERE CAN THE BOARD GAIN THEIR INFORMATION?

- Director
- Community partners
- Other community boards
- Own experience as volunteer
- Funders

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<sup>3</sup> adapted from *Boards that Make a Difference* by John Carver pp 118-119

<b>BOARD MEETING AGENDA FORMAT - A SAMPLE</b>
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Date:  
 Time:  
 Place:  
 Chair:  
 Secretary:  
 Timekeeper:

<b>Subject</b>	<b>Presented by:</b>	<b>Time allotted</b>	<b>Desired outcome: information discussion decision decision</b>
1. Approval of agenda and minutes	chair	7:00 - 10 minutes	decision
2. Directors report	Erica	7:10 - 10 minutes	information
3. Budget review	Mohammad	7:20 - 10 minutes	information/discussion
4. Developing fund-raising strategy	Olivia	7:30 - 60 minutes	discussion/decision
5.			
6.			
7. Review of necessary follow-up before next meeting	chair	8:30 - 10 minutes	discussion
Evaluation of mtg - Changes/Keepers for next time?		8:40 - 10 min.	discussion

### MINUTES

#### GENERAL INFORMATION

- who was present
- date
- place
- time

#### CONTENT - What do we need to keep in the collective memory to ensure informed decisions and monitor organization in future?

- Information
- Discussion (summary, no quotes, no names)
- Decision (highlighted)

#### ACTION

- Summary sheet

ACTION	Who	What	When
_____			