

DIRECTOR LIABILITY and the Role of Directors in a Non-Profit Organization

The basic responsibility of directors is to represent the interest of the organization, their members and their constituencies in directing the affairs of the organization, and to do so within the law. The word **fiduciary** means credible and trustworthy, which means the Board must act with integrity, honesty, and in the best interest of the whole organization.

In their role as “trustees” directors have three basic duties:

Care/Diligence: to act reasonably, prudently, in good faith and with a view to the best interests of the organization and its members;

Loyalty: to place the interest of the organization first, and to not use one’s position as a director to further private interests;

Obedience: to act within the scope of the governing policies of the organization and within the scope of other laws, rules and regulations that apply to the organization.

A volunteer director who fails to fulfill his or her duties may be liable.

The Bylaws of the Association are the governing papers and are therefore binding on the Membership, and therefore the Board of Directors. Members of the Association have limited exposure to liability unless the Member becomes involved in making decisions on behalf of the organization in which case the increased authority is accompanied by an increased potential liability.

All non profit Boards must uphold a public trust. This requires that the Board:

- Use, maintain, protect, preserve and increase the financial resources of the organization.
- Ensure continuation of programs and services of the organization for the long term.
- Provide governance and ensure proper management of the organization.

Once a Member has been elected as a Director, he or she may incur personal liability where his conduct falls short of the prescribed “standard of care.” If you are to act in a responsible manner as a Director of an incorporated non-profit organization and to avoid personal liability, follow this summary of steps:

1. Attend all Board meetings;
2. Ensure that you receive and read, prior to meetings, all documents and reports on which voting will be anticipated;
3. Review with care all minutes of the meeting;
4. Keep notes of your impressions of the meetings;
5. Keep a notebook of all minutes and other important documents
6. Insist on written legal opinions for any important step to be taken;
7. Insist on written professional opinion from specialists on whose advice the Board is expected to act.

Minutes are extremely important as it is the official record. Accurately recorded minutes and financial records are vital for your annual audit of records. The minutes are the record of resolutions and directions, and protect the Officers and Board of Directors in the actions that are taken. The key to good minutes is “the ability to accurately capsule conversation or discussion” so that clear and accurate minutes will be apparent the first time you find it necessary to go back 6-8 months to review a decision. Minutes do not have to include all the discussion but should include enough detail so that an individual can understand the context of a resolution, action or direction.

Meeting minutes and financial records are the protection of the individuals on the Board of Directors because

they show the Managerial Duty, Fiduciary Duty, Duty of Care, Duty of Diligence, Duty of Skill, and Duty of Prudence.

Retention of these records is a frequently asked question. All financial records including Alberta Gaming are to be retained for a minimum of seven years. Incorporation documents, bylaws/objects and amendments, annual audited financial statements, meeting minutes of the membership and Board of Directors should be archived and kept indefinitely.

In addition to the areas already discussed, the Board will likely be liable for:

- Unpaid wages, benefits, and source deductions for employees.
- Inadequate screening of employees or volunteers
- Failure to remit withholdings made for employees and or GST to Revenue Canada
- Incorrect receipting or inaccurate reporting of charitable donations to Canada Revenue Agency.

Particularly sensitive areas of liability for the Board or Executive Director are:

- Employee dismissal for/with just cause
- Injures to clients/service users, public or employees while on organizational property or using organizations facilities or equipment.
- Allegations of human rights violations
- Allegations of abuse or misconduct by employees or volunteers.

It is impossible to totally eliminate the Board's risk or exposure to liability, the goal is to limit the liability and reduce the risk. **The bylaws of the organization must include indemnification for the Board.** General liability insurance is purchased by the organization, on behalf of the Board, employees, and volunteers, and covers most or all of the organizations facilities and operations. Directors and Officers liability insurance is purchased separately, and must insure all directors and officers, past, present and future. If the organizations Board of Directors and employees are aware and act in the best interest of the organization within the limits of legislation, the governing documents, policies and procedure, the organization will be in good position should difficulties arise.

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