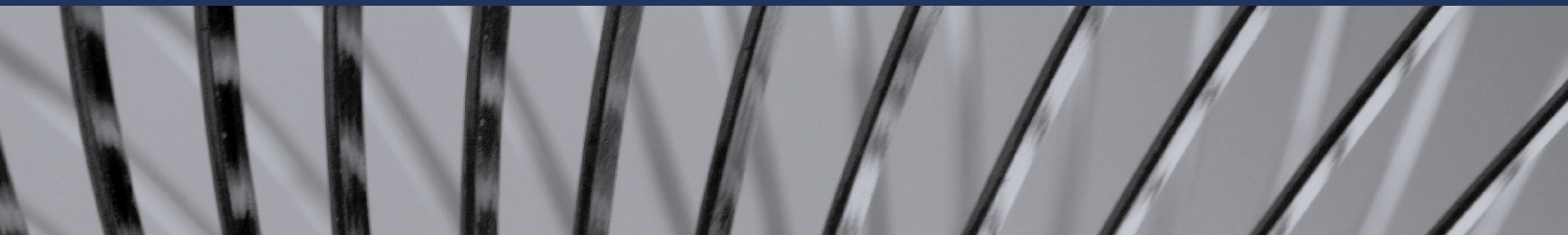


Guide to Good Governance: Not-for-Profit and Charitable Organizations

SECOND EDITION (SEPTEMBER 2013)



Introduction to the Guide

The Governance Centre of Excellence (GCE), an initiative of the Ontario Hospital Association (OHA), is committed to leading excellence in health care governance. Established in 2004, the GCE provides a broad range of relevant services, educational programs, and resources including the *Guide to Good Governance: Not-for-Profit and Charitable Organizations* (2009). Like the first edition, the second edition of the *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, provides a comprehensive overview of the key components of good governance practices, as well as templates and tools to implement and support these practices.

The Government of Ontario's *Not-for-Profit Corporations Act* is scheduled to come into effect no earlier than six months after Bill 85 (*Companies Statute Law Amendment Act, 2013*) is passed. Bill 85 would make a number of amendments to the new Act and is expected to be debated and passed in the fall of 2013. The *Not-for-Profit Corporations Act* (Ontario) will replace the *Corporations Act* as the governing statute for non-share capital corporations in Ontario. To the best extent possible under the circumstances, this second edition of the Guide clarifies how the *Not-for-Profit Corporations Act* (Ontario) will affect governance and how to navigate these changes. This Guide has also been updated to reflect emerging trends and best practices in board roles. The GCE will be completing any necessary updates to this Guide once the *Not-for-Profit Corporations Act* (Ontario) is in force.

The resource materials found in the Guide are intended for use by all not-for-profit and charitable organizations. However, they may need to be adapted to meet the needs of specific institutions and, as such, organizations are encouraged to customize the tools and templates to meet their unique circumstances. We also anticipate that organizations may wish to consult the Guide for different purposes. For example, new board members may utilize the Guide to familiarize themselves with governance practices and processes, while more experienced board chairs and secretaries may look to the Guide to supplement their practices in a particular area. It is not expected that organizations will adopt the Guide in its entirety.

The Guide is not intended, nor should it be construed, as legal advice. Those concerned about the applicability of specific governance practices to their organization are advised to seek legal or professional advice based on their particular circumstances. Although the Guide contains a list of resources and references, it does not provide a synthesis of the literature with respect to governance. For those interested in a review of the literature, we would recommend consulting the list of references provided in [Appendix II](#).

As the not-for-profit and charitable sector continues to improve its governance processes and practices, additional resources will be needed. The OHA and GCE look forward to developing additional tools and resources that will supplement the contents of the Guide, and to offer educational programming based on the best practices outlined in the Guide.

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Chapter 1

Framework for Good Governance

OBJECTIVE: GOOD GOVERNANCE OF NOT-FOR-PROFIT CORPORATIONS

The objective of this publication is to help boards of not-for-profit corporations govern effectively.

A board is created as a consequence of a corporation being formed. Boards of directors or trustees (both terms are often used interchangeably) exist to “govern” corporations. Most not-for-profit corporations are non-share corporations. They may be created under federal or provincial legislation or special purpose legislation.

[Chapter 2](#) describes the legal context of the not-for-profit corporation, how corporations are created and the governance implications. The implications of charitable status are described in [Chapter 3](#).

While the specific legislation applicable to a sector may create differences in governance requirements, for the most part, governance in the different non-profit sectors follows the same principles. Terminology may vary, but essentially, the titles are equivalent and we use them interchangeably (e.g., some organizations use chief executive officer as the title for their top staff person and others use executive director). Boards of larger organizations will tend to follow more structured and formal governance processes than smaller community boards. While the manner in which governance practices are implemented may vary, the fundamentals of governance are equally applicable to all not-for-profit boards.

THE AUDIENCE: A BROAD SPECTRUM OF NOT-FOR-PROFIT BOARDS

This Guide’s audience includes a broad spectrum of not-for-profit corporations with special emphasis on those in the health and related sectors.

Not-for-profit corporations touch on a wide range of sectors such as social services, religion, community housing, education, health and wellness.

The corporations operating within each sector may differ based on a number of factors including the mission or purposes of the corporation. For example, within a sector, there may be corporations that:

- Deliver or provide services;
- Focus on fundraising or advocacy;
- Exist solely to provide services to other not-for-profit entities in the same sector, such as a supply chain management corporation; or
- Operate as trade associations to provide services to a defined and narrow group of members.

Looking just at the health sector, examples of not-for-profit corporations may include:

- Health providers such as public hospitals, long-term care homes, community mental health centres, public health agencies and community health centres;
- Self-regulatory organizations, such as the regulated health professions colleges;
- Sector associations;

- Health networks;
- Shared services corporations;
- Fundraising – foundations;
- Volunteer service corporations or auxiliaries;
- Research institutions; and
- Standard-setting organizations.

A FRAMEWORK FOR GOOD GOVERNANCE

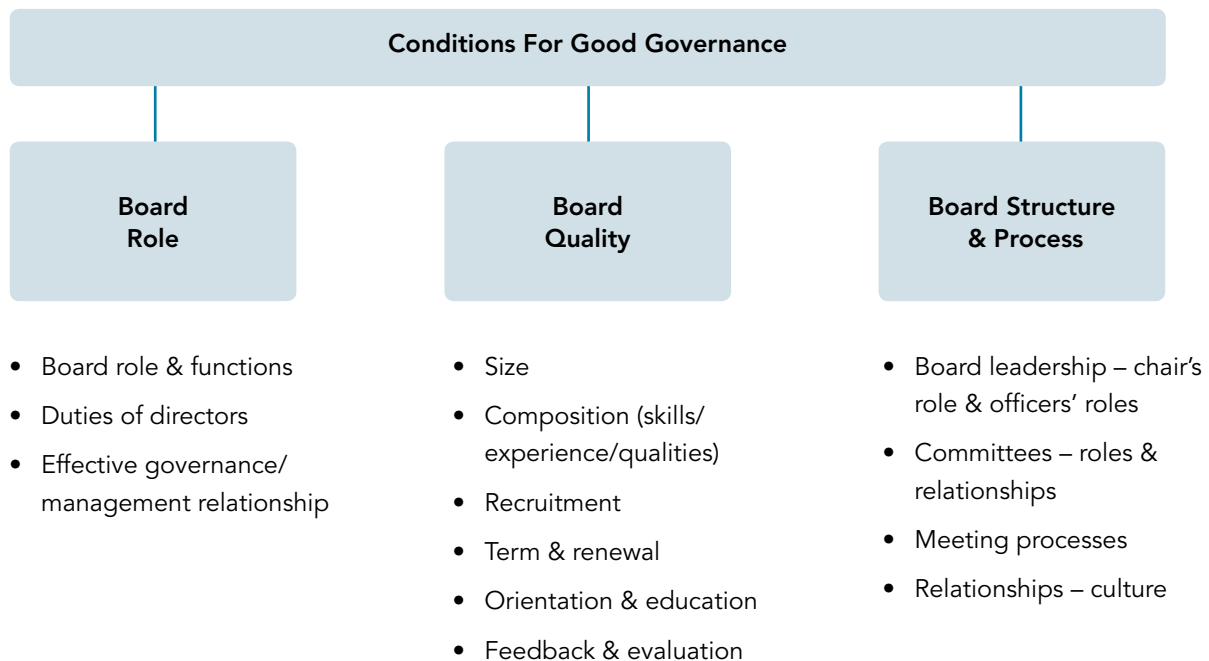
Good governance fundamentally means that boards carry out their fiduciary responsibilities.

The fiduciary role requires that the board act to ensure the corporation it governs succeeds in serving its objects or purposes (i.e., fulfilling its mission), and sustains itself in order to continue serving those objects by maintaining its tangible and intangible assets and financial viability. In doing so, the corporation adheres to its core values and discharges its accountability responsibilities.

The quality of governance is a direct result of the quality of the board’s behaviour. Effective board behaviour is crucial for good governance. There are three broad conditions that are conducive to, and supportive of, effective board behaviour: these are the **Conditions for Good Governance**.

- 1. Board’s Role** – The areas in which the board exercises a governance role and the approach the board takes to exercise its role (i.e., what a board does).
- 2. Board Quality** – The quality of the people at the table and the impact of their collective skills on good governance.
- 3. Board Structure and Processes** – The structures and processes used by the board to perform its governance role (i.e., how the board does its work).

Figure 1.1: The Good Governance Framework



Condition #1 – The Board’s Role

All boards have fundamentally the same role, although they may exercise it somewhat differently. Effective performance of the board’s role involves the following:

- **Board role and functions** – Being explicit about the board’s role as the governing body.
- **Directors’ duties** – Ensuring individual board members know the board’s role, and know and discharge each of their own duties as directors.
- **Effective governance/management relationship** – Differentiating the board’s role from the role of the chief executive officer and management as clearly as possible.

These subjects are discussed in [Chapter 4](#), [Chapter 5](#) and [Chapter 6](#).

Condition #2 – Board Quality

Both the board role and the effectiveness of the board’s processes and structures are impacted by the quality of the board. Board quality is comprised of a number of elements, including the following:

- Board size;
- Board composition including the skills, experience, qualities and diversity of the board;
- Recruitment, including the processes that the board uses to recruit and train its directors;
- Term and renewal of directors;
- Orientation and education; and
- Feedback and evaluation of governance.

These elements of board quality are more fully discussed in [Chapter 7](#).

Condition #3 – Board Structure and Processes

Governance includes the processes and structures that are used by a board to perform its governance role. Governance processes comprise a number of elements, including:

- **Leadership** – The board chair and other officers are the directors who take on board leadership roles. The board governance processes with respect to its officers include defining the role and qualification of officers, setting the term, and establishing the process for selecting officers.
- **Committees** – Board committees can assist the board in performing the work that the board might not otherwise have the time to do. Governance processes with respect to committees include distinguishing between standing and ad hoc committees; ensuring committees are not doing management work;

As part of governance development, boards need to actively seek to achieve a culture of good governance where the conditions for good governance are in place, best practices are followed, and the board “lives and breathes” good governance as a matter of course.

determining and reviewing the terms of reference for committees; committee composition and selection processes for committee members and committee chairs; and ensuring good practices for board reporting and oversight.

- **Meeting processes** – This includes how agendas are set; how directors have input into agenda setting; open board meetings and *in camera* meetings; approval of minutes; and distinguishing between matters requiring decision and matters for information.
- **Relationships** – Relationships among board members and with management, while less tangible, is an important element in creating effective governance.

Matters of board structure and processes are discussed in [Chapter 8](#).

Boards Responsible for their Own Governance

Boards are responsible for their own good governance. Therefore, boards need to assess the quality of their governance and determine how to develop or improve it.

As part of governance development, boards need to actively seek to achieve a culture of good governance where the conditions for good governance are in place, best practices are followed, and the board “lives and breathes” good governance as a matter of course.

In [Chapter 9](#), the focus turns to how boards routinely work to develop good governance, and how boards in trouble identify and act to improve their governance.

It is important for boards to take their responsibility for the quality of governance seriously, and to review their own performance regularly. There are many ways to do this depending on the size and resources of the board. [Chapter 9](#) also provides some ideas about conducting governance reviews and summarizing best practices for governance.

Chapter 2

The Not-For-Profit Corporation

WHAT IS A CORPORATION?

A corporation is a legal entity that is separate and distinct from its directors and members or shareholders. As a separate legal entity, it can sue or be sued in its own name. It may also hold property in its own name. It has perpetual existence, which means that it continues to exist until it is dissolved.

THE NOT-FOR-PROFIT CORPORATION

Not-for-profit corporations are distinguished from business corporations by the purposes for which they each exist. Business corporations exist for profit. Not-for-profit corporations exist for the purpose of carrying on a specific activity usually of a philanthropic, charitable, religious, educational, scientific, artistic, cultural, social, professional or sporting nature. Accordingly, the range of not-for-profit corporations includes schools, colleges and universities, religious and faith-based organizations, health care provider organizations, research institutes, theatres, museums and art galleries, organizations that oversee public works, sports and recreation clubs and fundraising foundations, as well as volunteer organizations and community service organizations.

Distinct from a business or share capital company where shareholders are entitled to share in the profits of the company by receiving dividends, a non-share capital corporation has members who are prohibited by legislation from receiving any financial gain.

Creating a Not-For-Profit Corporation

Corporations are creatures of statute and are created:

- By a special Act of the legislature;
- Pursuant to specific governing legislation which creates a number of similar organizations (e.g., local health integration networks, and community care access centres and community colleges); or
- Pursuant to constating documents issued by the government in response to an application for corporate status (letters patent or articles of incorporation) under general corporate legislation (e.g., *Corporations Act* (Ontario) or the *Canada Not-for-Profit Corporations Act*).

Letters patent are the constating documents issued pursuant to an application for corporate status for not-for-profit corporations under either the *Canada Corporations Act* or the *Corporations Act* (Ontario).

Some corporations incorporated pursuant to a specific governing statute may not, by the terms of statute, be subject in whole or in part to the general corporate statute that otherwise applies to the not-for-profit corporations incorporated in the same jurisdiction.

To determine which general corporate statute law is applicable, a corporation should determine its jurisdiction of incorporation, the manner in which it was incorporated, and whether it is subject to any specific legislation that may exclude some or all of the provisions of the general corporate statute. Legal advice

should be obtained in any case of doubt. In addition, if the corporation is subject to specific legislation, that legislation may contain unique governance requirements that must be complied with.

Both the Ontario government and the government of Canada are moving to modernize and update the corporate law that applies to not-for-profit corporations. The *Canada Corporations Act* is being replaced by the *Canada Not-for-Profit Corporations Act* and the *Corporations Act (Ontario)* will be replaced by the *Not-for-Profit Corporations Act (Ontario)* when that Act is proclaimed in force. Under each of these Acts, letters patent will be replaced by articles of incorporation as the method by which a corporation obtains corporate existence. One difference between a letters patent regime and one where a corporation is incorporated by articles is that articles are issued “as of right” and thus the time for processing articles of incorporation or articles of amendment will be reduced. The method for incorporating a not-for-profit corporation will be substantially similar to that which applies to a business corporation.

For groups of individuals who wish to obtain corporate status, a decision must be made as to whether to apply under federal law or provincial law. Generally speaking, corporations that are subject to federal jurisdiction or that will operate in more than one province will consider incorporation under federal law.

For existing corporations, consideration will need to be given to the process for transitioning the corporation so that it will come under the jurisdiction of the new legislation that will apply to not-for-profit corporations. The process will be different for federally incorporated corporations and those subject to Ontario law.

Transitioning to the new *Canada Not-for-Profit Corporations Act* and *Not-for-Profit Corporations Act (Ontario)*

Existing non-share capital corporations that were incorporated under the *Canada Corporations Act* are being given a period of three years from October 17, 2011, the date the *Canada Not-for-Profit Corporations Act* was proclaimed in force, to file articles of continuance to bring the corporation under the jurisdiction of the new Act. This means that a corporation that was incorporated under the *Canada Corporations Act* must file articles of continuance under the *Canada Not-for-Profit Corporations Act* by October 17, 2014 to bring the corporation under the jurisdiction of the new Act.

As of the publication of this Guide, the Government of Ontario’s *Not-for-Profit Corporations Act* is scheduled to come into effect no earlier than six months after Bill 85 (*Companies Statute Law Amendment Act, 2013*) is passed. Bill 85 would make a number of amendments to the new act and is expected to be debated and passed in the fall of 2013. Once proclaimed, the new *Not-for-Profit Corporations Act (Ontario)* will immediately apply to non-share capital corporations that were previously subject to the *Corporations Act (Ontario)*. Unlike the *Canada Not-for-Profit Corporations Act*, Ontario corporations do not need to take steps, such as obtaining articles of continuance, to be subject to the new *Not-for-Profit Corporations Act (Ontario)*; however, a three-year period of “transition” is planned before the by-laws or letters patent of an Ontario corporation will be “deemed” to be in compliance with the new Act. Despite the three year transition period, the Act will be immediately applicable once it is proclaimed in force, and accordingly, Ontario corporations are encouraged to consider the implications of operating under the new *Not-for-Profit Corporations Act (Ontario)* before the Act is proclaimed.

The Range of Not-for-Profit Entities

Not-for-profit corporations touch on a wide range of sectors such as social services, religion, community housing, education, health and wellness. Within each sector there may be operating corporations that deliver or provide services to the community at large. Some of these operating entities may be very large organizations that are significant employers and that have complex legal and regulatory compliance obligations and sophisticated management. Other corporations may focus on fundraising or advocacy. Some corporations may exist solely to provide services to other not-for-profit entities in the same sector such as a supply chain management corporation. There are also trade associations that exist for the purpose of providing services to members who may be a limited group.

Looking just at the health sector, examples of not-for-profit corporations may include:

- Health providers such as public hospitals, long-term care homes, community mental health centres, public health agencies and community health centres;
- Self-regulatory organizations;
- Sector associations;
- Health networks;
- Shared services corporations;
- Fundraising – foundations;
- Volunteer service or auxiliaries;
- Research organizations; and
- Standard-setting organizations.

Soliciting Corporations and Public Benefit Corporations

The *Canada Not-for-Profit Corporations Act* provides for two types of corporations: soliciting corporations and non-soliciting corporations. While much of the *Canada*

Not-for-Profit Corporations Act will apply equally to both soliciting and non-soliciting corporations, there are a few areas where a soliciting corporation is treated differently. A soliciting corporation is defined as one that receives a prescribed amount from third parties or government. In particular, a soliciting corporation is one that receives income in excess of \$10,000 in the form of:

- Donations or gifts from a person who is not:
 - A member, director, officer or employee at the time of the request for donation or gifts; or
 - A spouse or common law spouse of a member, director, officer or employee; or
 - A child, parent, brother, sister, grandparent, uncle, aunt, nephew or niece of a member, director, officer or employee or of a spouse or common law spouse of a member, director, officer or employee.
- Grants or similar financial assistance received from government (federal, provincial or municipal) or agencies of government.
- Donations or gifts from a corporation that meet a definition of a soliciting corporation.

Being a soliciting corporation has several implications; however, for the purposes of corporate governance and this Guide, the most significant impact is on board composition. The board of a soliciting corporation must have at least three directors, two of whom are not officers or employees of the corporation.

Under the *Not-for-Profit Corporations Act* (Ontario), public benefit corporations are treated differently than corporations that do not meet the test of being a public benefit corporation. A public benefit corporation is one which meets the following definition:

- A charitable corporation (a corporation incorporated for the relief of poverty, advancement of education, the advancement of religion or other charitable purpose); or

- A non-charitable corporation that receives more than \$10,000 in a year:
 - In the form of donations or gifts from persons who are not members, directors, officers or employees of the corporation; or
 - In the form of grants or similar financial assistance from government.

The definitions of a public benefit corporation and a soliciting corporation have similarities. However, a soliciting corporation treats gifts from family members of employees, directors, officers or members as exempt from the \$10,000 threshold, while a public benefit corporation in Ontario would need to consider such amounts towards the \$10,000 threshold applicable under that Act.

The corporate governance implications of being a public benefit corporation under the *Not-for-Profit Corporations Act* (Ontario) include, among various differences in the application of that Act, different requirements with respect to board composition. No more than one-third of the board of a public benefit corporation may be employees of the corporation or any of its affiliates.

Focus of the Guide

This Guide focuses on the legal requirements from a governance perspective of non-share capital corporations subject to the *Canada Not-for-Profit Corporations Act* or the *Corporations Act* (Ontario). To assist Ontario not-for-profit corporations that will eventually be subject to the *Not-for-Profit Corporations Act* (Ontario) comments are also included with respect to new requirements under the *Not-for-Profit Corporations Act* (Ontario), however, it should be noted that the new Ontario Act is not yet proclaimed and it could be amended before it is proclaimed.

Not-For-Profit Corporations and the Income Tax Act (Canada)

Not-for-profit corporations are usually categorized as “non-profit” organizations or registered charities for tax purposes. Entities that meet the definition of a non-profit organization under subsection 149 (1) of the *Income Tax Act* (Canada) do not pay tax under Part I of the *Income Tax Act* (Canada) on their taxable income. However, they are not charities, and therefore, are not able to give donors charitable tax receipts.

A non-profit organization for the purposes of subsection 149 (1) of the *Income Tax Act* (Canada), is described as follows:

A club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(l) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada.

Registered charities are also exempt from income tax, but are subject to special rules for tax purposes. Charities are discussed in [Chapter 3](#).

Corporate Governance Structure

Corporations and their Directors

The affairs of the corporation are governed by its board of directors. Directors stand in a fiduciary relationship with the corporation. The fiduciary duties that are owed by a director to the corporation are among the highest standard of conduct that the law imposes. Unless the governing legislation has set out a standard of care,

directors are required to act honestly, in good faith and in the best interests of the corporation, and to apply the level of skill and judgment that is reasonably expected of a person with their knowledge and experience.

This is the standard that currently applies to Ontario corporations that are subject to the *Corporations Act* (Ontario). It is a subjective standard of care: it depends on the personal knowledge and experience of each director.

Both the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario) have set out a statutory standard of care which, in the case of the Ontario Act, is as follows:

- Every director and officer in exercising his or her powers and discharging his or her duties to the corporation shall,
 - Act honestly and in good faith with a view to the best interests of the corporation; and
 - Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- Every director and officer shall comply with,
 - The *Not-for-Profit Corporations Act* (Ontario) and its regulations; and
 - The corporation’s articles and by-laws.

The fiduciary duties owed by directors to the corporation also include the duties of loyalty, maintaining confidentiality, avoiding conflicts of interest and the duty of corporate obedience.

Corporations and their Members

Not-for-profit corporations usually have members, although it is possible to qualify as a non-profit corporation for tax purposes and still have shareholders.

Directors stand in a fiduciary relationship with the corporation. The fiduciary duties that are owed by a director to the corporation are among the highest standard of conduct that the law imposes.

Corporations incorporated under Part III of the *Corporations Act* (Ontario) or Part II of the *Canada Corporations Act*, or incorporated or continued under the *Canada Not-for-Profit Corporations Act* or subject to the *Not-for-Profit Corporations Act* (Ontario) (when that Act is proclaimed) will have members.

Corporations created by special legislation may or may not have members.

Members are not “owners” in the same sense that shareholders have an equity ownership interest in a for-profit corporation. Members have the right to vote and to receive financial statements, but are not entitled to any distribution of the surplus revenues of the corporation (“dividends” in a for-profit context).

Distinct from a business or share capital company where shareholders are entitled to share in the profits of the company by receiving dividends, a non-share corporation incorporated under Part III of the *Corporations Act* (Ontario) is to be carried on without the purpose of gain for its members. A similar provision is included in the new *Not-for-Profit Corporations Act* (Ontario) and the *Canada Not-for-Profit Corporations Act*.

The role of members is limited, but it is a meaningful and potentially powerful role. Directors (other than *ex officio* directors) are elected by the members and may be removed by the members. Members approve fundamental changes, such as amalgamations. They are entitled to notice of, and to attend, the annual meeting. Under the new *Canada Not-for-Profit Corporations Act* and the new *Not-for-Profit Corporations Act (Ontario)*, members are given expanded rights.

See [Form 2.1: Members' Legal Requirements and Governance Principles](#)

Best Interests of the Corporation

Despite the fact that the directors are elected by the members, the duty of the directors is to act in the best interests of the corporation as a whole. Because a not-for-profit corporation exists for a purpose, the best interests of the corporation will not always be consistent with the best interests of the members. Unlike for-profit corporations where best interests of the corporation are closely linked to the financial interests of the shareholders, best interests in a not-for-profit corporation are linked to the mission, vision, values and accountabilities of the corporation. Therefore, acting in the best interests of a mission-based, not-for-profit corporation, means fulfilling the mission, moving towards the vision, adhering to core values, and discharging accountabilities.

Understanding Corporate Accountability

While it is clear that the board of a corporation is accountable solely to the corporation, understanding to whom the corporation is accountable and for what, is more challenging.

In Building on Strength: Improving Accountability in Canada's Voluntary Sector (Final Report 1999, page 11) (the "*Broadbent Report*") accountability is described as follows:

- *Accountability is the requirement to explain and accept responsibility for carrying out an assigned mandate in light of agreed upon expectations. It is particularly important in situations that involve public trust. However, a commitment to accountability should be thought of not only as answering to external audiences, but also as a constructive tool for organizational development, enhancing management practices, self evaluation and strategic planning.*
- *The application of accountability involves three elements:*
 - *Taking into consideration the public trust in the exercise of responsibilities;*
 - *Providing detailed information showing how responsibilities have been carried out and what outcomes have been achieved; and*
 - *Accepting the responsibility for outcomes, including problems created or not corrected by an organization or its officials and staff.*
- *Accountability in the voluntary sector is multi-layered. It means accountability to different audiences, for a variety of activities and outcomes, through many different means. This multidimensional nature is the principal complexity of accountability in the voluntary sector.*

Corporations may be accountable to a number of stakeholders depending on the purposes or objects of the corporation. Each stakeholder relationship has the potential to give rise to some measure of accountability on behalf of the corporation.

One of the challenging tasks for the board of a not-for-profit corporation is to ensure that in any decision coming before the board, the corporation will properly discharge its accountability to its stakeholders.

In some cases, there may be primary and secondary accountability, and in other cases the accountabilities may be in conflict. The *Broadbent Report* also described accountability as “downward, outward and upward”.

In most cases, stakeholders will be identified with reference to three factors:

- The organization’s mission or purposes;
- Its sources of funding and resources;
- Whether there is a regulatory authority with an oversight responsibility.

In order to effectively and appropriately make decisions in the best interests of the corporation, a board needs to understand the nature of its relationship with, and obligations to, its stakeholders.

Depending on the purposes of the corporation, a board may have a narrow or a broad range of interests, stakeholders and accountabilities to consider in determining the best interests of the corporation. For example, corporations that are trade associations may have a primary, and perhaps even a sole, accountability to its members.

The stakeholders and accountability relationships will be unique to each corporation and may include:

- Those served by the corporation who may be clients, customers, residents, patients or students;
- Broader community served;
- Government and regulatory authorities;
- Funding agencies;
- Staff;
- Volunteers who may provide financial support and unpaid hours that contribute to the fulfillment of the organization;
- Donors and financial supporters; and
- Other providers of similar services.

Acting in the best interests of the corporation in a not-for-profit context, means acting to further its mission, and moving towards its vision in a manner consistent with the organization’s values and accountabilities.

To fully understand corporate accountability, a board must first be knowledgeable of the various relationships between the corporation and its stakeholders. A board will benefit from clearly defining its mission and vision, stating its values and describing its stakeholder relationships and how they are taken into account when decisions are made.

It may also be helpful for the board to develop a statement or guideline with respect to the corporation’s accountability.

See [Form 2.2: Sample Accountability Statement](#)

To fully understand corporate accountability, a board must first be knowledgeable of the various relationships between the corporation and its stakeholders. A board will benefit from clearly defining its mission and vision, stating its values and describing its stakeholder relationships and how they are taken into account when decisions are made.

Factors that Impact Governance

A corporation's governance structure is impacted by a number of factors, including:

- **Legislative requirements** – Is the corporation subject only to general corporate legislation or is it subject to its own governing legislation? If a corporation is subject to either its own Act of incorporation (“special Act corporations”) or a specific piece of governing legislation, it may be subject to unique requirements with respect to such governance matters as board size, board composition, appointment of directors, required committees, board meetings open to the public and whether or not the corporation has members.
- **Mission** – The corporation's mission will also impact its governance structures. In particular, the mission may impact the degree to which the board is an independent skills-based board or representative of stakeholders. Corporations whose mission or purpose is confined to serving the interests of a limited group of persons may have a board composed entirely, or partially, of representatives of those it serves. Similarly, organizations that provide a service to the community or act in the public interest will be more likely to have independent, skills-based boards.

The mission may also impact the board's structures, such as its committee structure. For example, corporations whose purposes are limited to fundraising may not have the same number or types of committees as an operating organization that provides services (education, health care or social services).

- **Resources** – Corporations with smaller budgets may have a limited organizational structure at the staff level and rely on volunteers for the fulfillment of roles that in another organization might be performed by paid staff members. Where the board takes on roles that might be performed by staff of a corporation with a greater organizational capacity, the board will be referred to as a “working board”. As organizational capacity increases, the board will transition from a working board to a governing board.

Summary

Those responsible for corporate governance should understand the nature of the corporation's origin, the applicable governing legislation and the factors that will influence governance including, mission, accountabilities and resources.

Form 2.1

Members' Legal Requirements and Governance Principles

Generally speaking, not-for-profit corporations have members unless the corporation was established by specific legislation or as a special Act corporation and its governing legislation specifies the corporation has no members. There are some not-for-profit corporations that have shareholders. This is sometimes the case in sporting clubs, such as golf courses.

While there are similarities between the role of the members of a not-for-profit corporation and the role of shareholders of a for-profit corporation, there are also some significant differences. Importantly, for most not-for-profit corporations and for all corporations with a charitable purpose, members are not "owners" in the sense that shareholders have an equity interest in a for-profit corporation. Members are not, as such, liable for the liabilities of the corporation. Members do, however, elect directors, receive financial statements and approve fundamental changes. Accordingly, the members play an important role with respect to board governance.

Legal Requirements

Rights of Members Under the Corporations Act (Ontario)

Under the *Corporations Act* (Ontario), members of a non-share capital corporation have the following rights:

- Elect directors (other than *ex officio* directors);
- Attend member meetings (annual meetings and any special meetings);
- Receive financial statements;
- Appoint and remove auditors; and
- Approve fundamental corporate changes (such as amendments to by-laws or letters patent, amalgamations or transfers of all or substantially all of the assets of the corporation).

Members also have additional rights as follows:

Removal of Directors – Members also have the right to remove directors by special resolution (two-thirds vote), but only if such a provision is set out in the by-laws.

Requisition of Members Meeting – Members may requisition a special members' meeting to initiate any action that is within the authority of members. A members' meeting may be requisitioned by 10% of the members entitled to vote.

Circulate Information – Five percent of the members entitled to vote may request the directors to circulate notice of and information about a resolution that may properly be moved and voted on at the next meeting of members. The matter must be one within the scope of members' authority (as set out above).

Rights of Members Under the Not-for-Profit Corporations Act (Ontario)

Under the *Not-for-Profit Corporations Act* (Ontario), members of a non-share capital corporation will also have the rights, as set out above, to:

- Elect directors (other than *ex officio* directors);
- Attend member meetings (annual and special);
- Receive financial statements;
- Appoint and remove auditors or persons appointed to conduct a review engagement; and
- Approve fundamental corporate changes.

The new Act provides additional rights to members as follows:

Nomination of Directors – Five percent, or such lower percentage as may be permitted by the by-laws, of a class or group of members entitled to vote may make a proposal to nominate one or more individuals for election as directors. Such a nominee must be placed before the annual meeting for consideration by the members even if the by-laws provide that only board or nominating committee approved nominees are eligible for election.

Member Proposals – Any one voting member may make a proposal to:

- Make, amend or repeal by-laws;
- Add a matter to the agenda for a members' meeting; or
- Initiate a fundamental corporate change.

There are some limits on what may be the subject of a proposal and there are certain procedural requirements that must be followed, for instance:

- The proposal must be submitted at least 60 days prior to the meeting;
- It must be significantly related to the activities and affairs of the corporation; and
- The proposal shall not be to enforce a personal claim or redress a personal grievance, secure publicity or deal with the same subject matter of a proposal submitted to a members' meeting in the prior two years which was either not presented by the member or which was defeated.

Directors are responsible under *the Not-for-Profit Corporations Act* (Ontario) to manage or supervise the management of the activities and affairs of the corporation. Accordingly, while proposals may include matters significantly related to the activities and affairs of the corporation, proposals are not binding on the corporation unless the proposal is related to an action that is within the purview of members, such as a by-law amendment.

Removal of Directors – A simple majority of members may remove an incumbent director from office at any time, whether or not the by-laws contain any such provision. This is a reduction of the existing threshold which is not less than two-thirds to remove an incumbent director and which only applies if authorized by the by-laws.

Requisition of Members Meeting – 10% (or such lower percentage as is set out in the by-laws) of the members entitled to vote at a members meeting may requisition a meeting of members.

Class Voting – If a corporation has more than one class or group of members, the *Not-for-Profit Corporations Act* (Ontario) provides for voting by class in certain circumstances where a fundamental change is proposed (e.g., where a proposed amalgamation, sale of all or substantially all of the assets, or special resolution to amend the articles would affect the class or group in a manner differently from another class or group). There are also provisions that may permit class voting even by non-voting members in some circumstances, although these provisions may not be proclaimed in force when the Act is proclaimed.

Rights of Members Under the Canada Not-for-Profit Corporations Act

Under the *Canada Not-for-Profit Corporations Act*, members will have rights that are substantially similar to those of members under the new *Not-for-Profit Corporations Act* (Ontario), namely:

- Elect directors (*ex officio* directors are not permitted);
- Attend annual and special members meetings;
- Receive financial statements;
- Appoint and remove public accountants; and
- Approve fundamental changes.

Nomination of Directors – Five percent or such lesser percent as is permitted by the by-laws, of the members of a class or group entitled to vote may nominate one or more individuals for election as directors.

Member Proposals – Any one voting member may make a proposal to:

- Make, amend or repeal a by-law;
- Add a matter to an agenda for a members' meeting;
- Initiate a fundamental corporate change.

As in the case of the new *Not-for-Profit Corporations Act* (Ontario), there are certain procedural requirements that must be followed including with respect to prior notice of the proposal and limits on how often the proposal may be brought.

Removal of Directors – Directors may be removed from office by ordinary resolution of the members.

Requisition of Members Meeting – Five percent or such lesser percent as is set out in the by-laws, of the members entitled to vote may requisition a meeting of members.

Discipline or Termination of Membership

Both the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario) contain provisions that enable the termination or discipline of a member.

For example, the *Not-for-Profit Corporations Act* (Ontario) permits the articles or by-laws to provide that the directors, members, or a committee of directors or members be given the power to discipline a member or to terminate membership. If the articles or by-laws provide for such a power, the circumstances and the manner of the exercise of the power must be set out. Any discipline or termination must be done in good faith in a fair and reasonable manner.

The Act further provides that it is fair and reasonable if at least 15 days notice is given and the member is given an opportunity to be heard orally, in writing or in another format permitted by the corporation's articles or by-laws not less than five days before the disciplinary action or termination becomes effective.

Governance Considerations

Membership categories, eligibility, and criteria for voting should be carefully considered with reference to a number of factors including the corporation's mission and accountabilities, the different role for directors and members, and the importance of board quality and managing board succession.

Mission and Accountability of the Not-for-Profit Corporation

- Given the wide range of not-for-profit corporations, there is a range of practices with respect to composition of membership. Some organizations may have different classes of members, including life members. Others will have limited the number of members, and in some cases only the directors are the members.
- In a corporation whose purpose is to serve its members, such as a trade organization or industry or professional association, the membership will typically only consist of those individuals or entities whose interests are the mission of the organization.
- A community services organization may decide that opening membership to the community on a voting or non-voting basis provides some measure of accountability, however, it is unlikely that accountability and transparency can be fully met solely through reporting to members.

Duties of Directors and Members

- Directors are fiduciaries accountable to the corporation they serve.
- Directors are required to make decisions honestly and in good faith and in the best interests of the corporation. Directors are not elected to represent the interests of members. This is in contrast to the duties of directors of business corporations (for-profit corporations) who represent the interests of shareholders. While in a business or for-profit context best interests of the corporation may equate with maximizing shareholders' financial interests, best interests in a not-for-profit corporation do not necessarily equate with members' interests.
- In contrast to the duties of directors, corporate members owe no fiduciary duties and may act in self-interest. Accordingly, in exercising any of the decisions that fall within the scope of members' authority (including by-law amendments, election of directors, removal of directors and "proposals"), members may act for a narrow self-interest without any regard to the mission of the organization or the interest of others to whom the organization is accountable. Consequently, member decisions may be in conflict with the best interests of the corporation.

Board Quality and Board Succession

- A representative board may be appropriate in the context of some organizations (such as an organization that exists solely to serve the interest of its members).
- For other corporations, current best practice in corporate governance recognizes the importance of skills-based boards that act independently of management and individual constituency or stakeholders groups.

- The new rights that entitle five percent of the members of a group or class entitled to vote to nominate a candidate for election to the board may be disruptive to the board succession planning and to ensuring that the board has the necessary competencies and independence to carry out its duties.

Transparency and Engagement

- Corporations that receive public funds or philanthropic dollars strive to adhere to principles of transparency and accountability. Where the corporation has a limited membership model (e.g., where only the directors are members), a concern may be a risk of a lack of transparency and accountability.
- Generally speaking, membership provides a very limited opportunity for engagement with stakeholders. In many membership models, there is no assurance that the members will be representative of all stakeholder groups or interests.
- For those corporations where stakeholder engagement and demonstrating accountability is important, consideration should be given to determining effective means for appropriate stakeholder engagement and demonstrating accountability. The board must actively consider ways in which to engage its stakeholders and demonstrate accountability and closely monitor management's execution of stakeholder engagement activities.

Letters Patent, Articles and By-laws

- Under the *Corporations Act* (Ontario), the classes of groups of members, membership conditions and voting rights are typically set out only in the by-laws.
- Under the *Not-for-Profit Corporations Act* (Ontario) classes or groups of members and the different voting rights attached to such classes or groups must be set out in the articles. All conditions of membership are to be set out in the by-laws. In particular, if a corporation wishes to have a class of non-voting members that must be specified in the letters patent/articles as the Act provides that unless the articles provide otherwise, all members have one vote. Provisions of the Act with respect to voting and non-voting membership rights should be carefully reviewed in anticipation of the Act coming into force.
- Under the *Canada Not-for-Profit Corporations Act*, similar provisions apply. The articles must set out the classes or groups of members and by-laws must set out the conditions for membership of any particular class described in the articles. Where there is more than one class, the articles must set out the voting rights attached to each class or all members will have the right to vote.

Summary

- Membership categories, eligibility, and criteria for voting should be carefully considered and appropriate for the corporation's mission and accountabilities.
- A corporation should periodically re-evaluate its membership structure by asking the following questions:
 - Is there a defined and limited constituency to whom we are accountable?
 - Do we have appropriate mechanisms for demonstrating accountability and engaging with stakeholders?
 - Considering the members' role in corporate governance, who, in the context of our mission and accountabilities, is best suited to perform that role?
 - Are there categories of persons that should not be eligible to be voting members (e.g., employees)?

Form 2.2

Sample Accountability Statement

The duty of the board is to make decisions that are in the best interest of the corporation.

Decisions that are in the best interests of the corporation will be decisions that further the corporation's mission, move it towards its vision, are consistent with its values, but also discharge its accountabilities. The corporation has adopted a mission, vision and values statement.

To guide the board in making decisions in the best interests of the corporation, the board has confirmed the following accountabilities of the corporation:

Accountable To	Accountable For
Our Clients	Quality services and best practices.
The Community We Serve	Efficient utilization of resources, clear communication, transparent processes, advocacy, and expectation of management.
Government	Compliance with policies and regulations.
Donors	Financial stewardship.
Staff and Volunteers	Establishing and communicating expectations and providing a safe work environment.
Members of the Corporation	Complying with the by-laws and applicable legislation as they govern the corporation and for the achievement of its mission and vision in a manner consistent with its values and accountabilities.

Chapter 3

Legislation Governing Charities

WHAT DIRECTORS NEED TO KNOW

Registered charities are granted special tax treatment in Canada. For example, they are exempt from income tax and, unlike other non-profit entities, they are able to issue tax receipts allowing donors to benefit from income tax credits or deductions. However, in part because of these advantages, charities are subject to statutory restrictions and obligations that do not apply to other organizations.

What is a Charity?

To be considered a charity, an organization must be established and operated for accepted charitable purposes. These accepted purposes are:¹

- The relief of poverty;
- The advancement of education;
- The advancement of religion; and
- Other purposes beneficial to the community.

Generally speaking, the purposes of a charity, which are set out in the charity's constating documents, must be of a public character and must be sufficiently specific to enable a court to categorize the entity under one of the four heads of charity listed above.

¹ See the *Charities Accounting Act*, s. 7.

Becoming a Registered Charity

In order to access the tax benefits available to charities and their donors, charities must be registered under the *Income Tax Act* (Canada).

The Canada Revenue Agency (CRA) will review an organization's application (Form T2050) and supporting documentation (such as a charter, letters patent, articles of incorporation or other constating documents, financial information and statement of activities or proposed activities) and determine if the organization qualifies as a charity. Once qualified, a charity will be given a registration number, and information about the charity, its financial information and its directors or trustees is made available to the public on the CRA's website.

In order to access the tax benefits available to charities and their donors, charities must be registered under the *Income Tax Act* (Canada).

When registering a charity, the CRA will designate it as a charitable organization, a public foundation or a private foundation, depending upon its structure, its source of funding, and the way it operates. The designation is relevant in applying various restrictions within the *Income Tax Act* (Canada) such as carrying on a related business, the non-qualified investment rules and the disbursement quotas.

A registered charity will be designated as a *charitable organization* if it meets the following criteria:

- It devotes all its resources to charitable activities carried on by the charity;
- No personal benefit can accrue to its members, shareholders, trustees or settlors;
- More than 50% of its directors/trustees deal at arm's length² with each other and with contributors of more than 50% of the capital of the charity; and³
- It is not controlled by contributors of more than 50% of the capital of the charity.⁴

A registered charity will be a *public foundation* if it meets the following criteria:

- It is constituted and operated exclusively for charitable purposes;
- No personal benefit can accrue to its members, shareholders, trustees or settlors;
- It is not a charitable organization;

² For the purposes of the *Income Tax Act*, persons related by blood, marriage or common law partnership or adoption are not considered to be at arm's length. Further, corporations controlled by the same persons or group of related persons are also not at arm's length. Finally, in other circumstances, it is a question of fact as to whether persons not related to each other deal at arm's length.

³ Note: this proposed amendment to the *Income Tax Act* received Royal Assent on June 26, 2013 and is applied retroactively as of January 1, 2000.

⁴ Note: this proposed amendment to the *Income Tax Act* received Royal Assent on June 26, 2013 and is applied retroactively as of January 1, 2000.

- More than 50% of its directors/trustees deal at arm's length with each other and with contributors of more than 50% of the capital of the charity; and⁵
- It is not controlled by contributors of more than 50% of the capital of the charity.⁶

In all other cases, a registered charity will be a *private foundation*. Generally, an entity will be a private foundation because of the extent to which those who fund it or control it are not operating at arm's length.

Charitable organizations generally carry on charitable activities directly ("doers"), whereas charitable foundations (public or private) generally provide funding for charitable organizations.

All registered charities must file with the CRA an annual Registered Charity Information Return (Form T3010). Each charity's board of directors should be aware of the extensive information from the filing that is publicly available on the CRA's website.

Instructions for Issuing a Charitable Tax Receipt

Tax receipts issued to donors must comply with the following requirements:

- The tax receipt must include the following information:
 - Name, address and registration number of the charity;
 - Receipt for income tax purposes;

⁵ Note: this proposed amendment to the *Income Tax Act* received Royal Assent on June 26, 2013 and is applied retroactively as of January 1, 2000.

⁶ Note: this proposed amendment to the *Income Tax Act* received Royal Assent on June 26, 2013 and is applied retroactively as of January 1, 2000.

- The place or locality where the receipt was issued;
 - The date the donation was received;
 - The date on which the receipt was issued, if different from the date of donation;
 - Amount of the gift (including the *eligible amount* of the gift, and a description of any *advantage* received by the donor, discussed in more detail below);
 - The name and address of the donor;
 - The signature of an authorized person; and
 - Where the donation is a gift of property other than cash, additional information is required including:
 - a) the fair market value of the property at the time the gift was made;
 - b) a description of the property; and,
 - c) the name and address of the appraiser of the property (if any).
- B. Receipts must always be completed in duplicate. The registered charity must keep one copy and give the other to the donor. The copy of the receipt must be made available at the official address of the registered charity.
- C. Only one copy of a receipt can be issued. If a donor loses the receipt and requests another, a charity may issue a replacement. However, it must contain the notation that, “this cancels and replaces receipt # (insert serial number of the lost receipt)”. The charity’s copy of the lost receipt must be retained and marked cancelled.
- D. Special instructions regarding particular information fields:
- Every receipt must have an original serial number. Please note that the duplicate copy of the receipt kept by the registered charity must, by nature of it being a duplicate, have the same serial number

as that given to the donor. A replacement receipt must show the serial number of the receipt originally issued in addition to its own serial number.

- The date of issue need only be filled out if it is different from the date of the donation.
- The date of issue is the date on which the receipt was prepared – receipts do not have to be issued in the same year as the gift.
- The name, address and registration number of the registered charity on the receipt must be the same as that recorded with CRA Charities Directorate.
- The signature must be of a responsible individual who has been authorized by the organization to acknowledge donations.
- The CRA’s name and website must be included on the receipt.

The “eligible amount” of a gift is the only amount for which a registered charity can issue a tax receipt. The eligible amount of a gift is the amount by which the fair market value of the gifted property exceeds the amount of an “advantage”, if any, received or receivable as a result of the gift. An advantage is generally the total value of any property, service, compensation, use or any other benefit that the donor is entitled to as partial consideration for, or in gratitude for, the gift (e.g., a meal, tickets to a show). The advantage must not exceed 80% of the fair market value of the gifted property.⁷

For example, a donation of \$1,000 is made to the Anytown Ballet Company, which is a registered charity. In gratitude, the charity gives the donor three tickets to a show that are valued at a total of \$150. The donor is considered to have received an advantage of \$150. Therefore, the eligible amount of the gift is \$850 (\$1,000 - \$150).

⁷ Note: these proposed amendments to the *Income Tax Act* received Royal Assent on June 26, 2013 and are applied retroactively as of December 20, 2002.

Losing Charitable Status

The *Income Tax Act* contains a number of restrictions on the activities of registered charities. The following factors may disqualify an organization from registration or cause its charitable status to be revoked.

Failing to meet its disbursement quota requirements

– All charities must spend a certain amount (the “disbursement quota”) each year, either in respect of the performance of its charitable activities or as contributions to other qualified donees. A “qualified donee” includes Canadian registered charities, quasi-charities, such as registered Canadian amateur athletic associations, low-cost housing corporations for the aged, or registered national arts service organizations, federal, provincial or municipal governments, certain prescribed universities outside Canada, the United Nations and its agencies, and those foreign charities the federal government has contributed to in the last 24 months. A failure to meet disbursement quota requirements is a ground for revocation.

Existence of a private benefit – No part of a charity’s income can be payable or otherwise available to personally benefit any member of the organization. Fair market payments for services rendered or normal operating costs are excepted.

Charities must take care in accepting donations that provide an advantage to the donor. Donation receipts must not include the value of any advantage or benefit received by the donor (whether from the charity or other person) in connection with the donation.

Political purposes or activities – Political purposes are not charitable. However, the *Income Tax Act* recognizes that a registered charity established exclusively for charitable purposes can engage to a limited extent (not more than 10% of its resources) in what the CRA describes as *non-partisan* political activity in furtherance of the charity’s purposes (the activity must be ancillary and incidental to the organization’s charitable purposes or activities).

The boundary between some charitable activities and political activities may be grey. Charities engaged in the advancement of education must ensure that the educational activities are structured, factually based, objective and well-reasoned. If materials are biased in favour of one view or position, the charity may cross the line into disseminating propaganda, which is a political activity.

Once the charity engages in political activities, the distinction between what are acceptable and not acceptable political activities becomes unclear. For example, if a political party or candidate for public office supports a policy that is also supported by a charity, the charity is not prevented from promoting this policy. However, a charity in this situation must not directly or indirectly support the political party or candidate for public office. This means that a charity may make the public aware of its position on an issue provided:

- It does not explicitly connect its views to any political party or candidate for public office;
- The issue is connected to its purposes;
- Its views are based on a well-reasoned position; and
- Public awareness campaigns do not become the charity’s primary activity.

Partisan political activity, such as supporting or opposing, directly or indirectly (monetarily or otherwise), a political party or candidate for public office, is strictly prohibited.

Activities not fully charitable – Many organizations devote their resources to a mix of charitable and non-charitable activities – e.g., services to needy members of the community and social activities for its members. Mixed together, these activities will disqualify an organization from registration because charities must be operated exclusively for charitable purposes. Organizations wishing to become registered charities must segregate their charitable activities in one organization. Some ancillary activities (such as social

events that constitute fundraising), may be permitted provided they do not constitute a primary activity of the charity and do not consume charitable resources so as to make it difficult for the charity to meet its disbursement quota.

Inappropriate use of charitable assets – The *Income Tax Act* requires registered charities to use their resources either directly on their own charitable activities, whether this occurs inside or outside of Canada, or by funding other qualified donees. A charity must exercise control over its assets, property and resources. The charity is ultimately responsible to ensure that its resources are used in the furtherance of its objects. In effect, a charity is not permitted to delegate control over its assets to others, although it can retain agents (acting always under the control of the charity) to act on its behalf.

Therefore, where a charity wishes to enter into a joint venture or similar arrangement with one or more organizations that are not qualified donees (such as for-profit and not-for-profit organizations or foreign agencies), the charity is responsible for ensuring that it maintains adequate control over its resources and property. A charity can contract with another non-charitable organization to have that organization perform services on the charity's behalf; however, a written agreement demonstrating the charity's control and accountability for the use of the funds is essential.

Business activities – The *Income Tax Act* significantly restricts the ability of charities to carry on profit-making activities. The CRA considers a business to be any commercial activity undertaken with the intention to earn profit. When such activities are pursued on a regular and continuous basis, the organization will be considered to be "carrying on" the business. Fees are charged in the context of many charitable programs. The presence of fees does not necessarily mean the charity is engaged in a business activity, provided the program is operated altruistically and for the public good. Private foundations are not permitted to carry on any business.

Charities designated as charitable organizations or public foundations are permitted to carry on businesses that are "related" businesses. A related business is:

- Any business unrelated to the objects of the organization staffed all or substantially all (more than 90%) by volunteers; or
- A business that is *linked* to a charity's purpose and subordinate to that purpose.

Examples of related business activities that are linked include: (a) the use of "excess capacity", such as the rental of idle equipment/space (the church parking lot or university student residences), (b) the sale of by-products or charitable activities (the church choir's CD or symphony's recordings), and (c) ancillary services related to a charitable program such as the church bookstore, the museum gift shop, or the hospital cafeteria. However, care must be taken that the business activity not become so significant as to lose its *subordinate* status. In this regard, the CRA will (a) review the resources devoted to the activity (human and financial), (b) consider whether the activity is integrated into the charity's other activities or is a self-contained enterprise, (c) review whether charitable goals (rather than for-profit motives) dominate decision-making, and (d) consider whether there is any element of private benefit connected with the business activity.

Charities wishing to carry on or invest in businesses must be well-informed of these rules.

Incurring unacceptable debt, acquiring control over corporations, and excess private holdings – Foundations (public or private) are precluded from incurring debts, other than debts for current operating expenses incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities. Foundations are also not able to acquire control (alone or together with persons not at arm's length with the foundation) over any corporation. The Excess Business Holdings rules

prevent private foundations from holding even moderate holdings in public or private businesses. Depending upon the amount of its interest in a particular class of shares of a company, a private foundation will be subject to varying requirements (reporting or divestment requirements). These rules do not apply to public foundations or charitable organizations.

Anti-avoidance rules and ineligible individuals –

The CRA has the authority to revoke the registration of any charity:

- Which has made a gift to another registered charity in circumstances where it can reasonably be considered that one of the main purposes in making the gift was to avoid or unduly delay the expenditure of amounts on charitable activities;
 - Which has accepted a gift from another registered charity in circumstances where it can reasonably be considered that one of the main purposes in accepting the gift was to assist the other registered charity to avoid or unduly delay the expenditure of amounts on charitable activities;
 - Which has made a false statement in circumstances amounting to culpable conduct in the furnishing of information for the purpose of obtaining registration as a charity;
 - Which has received a gift of property from a non-arm's length registered charity in a taxation year, and has spent, before the end of the next taxation year, in addition to its disbursement quota for each of those years, an amount less than the fair market value of the property on charitable activities carried on by it or by way of gifts to arm's length qualified donees;⁸ or
- If an "ineligible individual" is a director, trustee, officer or "like official" of the registered charity, or controls or manages the charity, directly or indirectly, in any manner whatever. Ineligible individuals include persons who:
 - Have been found guilty of a "relevant criminal offence" for which a pardon has not been granted – such offences include both offences under Canadian criminal law and similar offences outside Canada relating to financial dishonesty, including tax evasion, theft, fraud or any other criminal offence that is relevant to the operation of the charity;
 - Have been found guilty of a non-criminal "relevant offence" in Canada or outside Canada within the past five years – such offences relate to financial dishonesty, such as offences under fundraising legislation, consumer protection legislation or securities legislation, as well as any other offence that is relevant to the operation of the charity;
 - Have been a member of the board of directors, a trustee, officer, or an individual who otherwise controlled or managed the operation of a charity during a period in which the organization engaged in conduct that constituted a serious breach of the requirements for registration for which the charity had its registration revoked within the past five years – such conduct includes improper receipting arrangements, abusive tax shelters, or providing undue private benefit to directors; or
 - Have been at any time a promoter of a gifting arrangement or other tax shelter in which a charity participated and the registration of the charity has been revoked within the past five years for reasons that were related to participation in the tax shelter.

⁸ A registered charity that receives a gift from another registered charity that is not at arm's length must spend 100% of the fair market value of the gift. However, if the donor charity chooses to designate the gift as a "designated gift", the recipient charity will not be subject to this additional spending requirement. A gift becomes a designated gift if the donor charity identifies it as a designated gift in its information return for the year the gift is made. As a consequence, the donor charity cannot use the designated gift to satisfy its disbursement quota.

Intermediate Penalties

Revocation of charitable status is a severe penalty. To address minor or moderate infractions, the *Income Tax Act* contains a number of intermediate penalties that can be assessed against charities, in lieu of revocation.

See *Figure 3.1: Penalties* [at the end of this chapter.]

Improper Gifting Arrangements

As noted above, receipted charitable donations provide tax benefits (in the way of tax credits or deductions) for donors. Over the past few years, a number of inappropriate donations schemes have been identified and managed by the CRA. These arrangements attempt to significantly increase the tax receipt available to a donor (sometimes in an amount well in excess of the out-of-pocket cost of the donation). The CRA has identified three broad categories of such improper arrangements which charities should take care to avoid:

- Gifting trust arrangements, where the donor becomes a beneficiary of a trust and receives property as a distribution from the trust. The donor then donates the property to the charity for the purported fair market value of the property. The CRA will reduce the amount of the donation by the amount of any advantage received by the donor. The CRA's position is that the receipt of the property from the trust is deemed to be such an advantage;
- Leveraged cash donations, where a donor will, in a prearranged arrangement, borrow on a limited recourse basis to make a cash donation. The donor will acquire a corresponding investment from the promoter to be used as security to pay off the loan;
- Buy low, donate high arrangements, where non-cash property (such as art or wine) is acquired by a donor at a low price and then donated to a charity at a higher price, supported by a valuation provided by the promoter.

These gifting arrangements are aggressively promoted. Many constitute tax shelters that require registration with the CRA (registration is for identification purposes only – it does not mean the CRA has sanctioned the arrangement). The out-of-pocket (cash) cost to a donor to participate in these schemes is often only 30% (or less) of the amount of the charitable receipt. As a result, the tax benefit exceeds the cash outlay to the participant. The CRA is aggressively pursuing these arrangements and tough new anti-avoidance provisions have recently been introduced.⁹

Charities participating in these arrangements must be wary, as significant intermediate penalties could be imposed. Of particular concern to charities is the amount to be recorded on the receipt when non-cash donations are made. It is the charity's responsibility to ensure that any gifts accepted by the charity of property "in kind" (and any receipts issued therefore) are supported by an independent professional valuation. This can increase the costs of accepting the donation to the charity. Further, the charity must consider the implications of accepting donations of property "in kind" on its ability to meet its disbursement quota – often, "in kind" property may be difficult to liquidate.

Provincial Law – Ontario

Most provinces do not have specific legislation that applies differently to charities. However, in Ontario, several statutes apply to charities operating in the province. The Ontario Public Guardian and Trustee has jurisdiction over enforcing these provincial rules.¹⁰

⁹ Note: these provisions received Royal Assent on June 26, 2013 and are to be effective retroactively.

¹⁰ If a registered charity is governed by another comprehensive provincial statute, it may be exempted from certain provisions in statutes applicable only to charities. In *Re Centenary Hospital Association and Public Trustee*, it was determined that the Ministry of Health and Long Term Care had exclusive jurisdiction over the operation of business activities on land owned by Hospital and that the restrictive provisions in the *Charities Accounting Act* and the *Charitable Gifts Act* (now repealed) did not apply.

Ontario courts have held that directors of charities have a higher standard of care than other organizations – this standard of care is imposed through a combination of the *Charities Accounting Act* and duties arising under trust law. Although not free from doubt, case law in Ontario suggests that directors are trustees of the charitable property of the *charitable corporation* (this view is reinforced by section 2 of the *Charities Accounting Act* which deems charitable corporations to be trustees of their property).

Dealing with charitable property – A director has a positive obligation to ensure that the donation is used (i) in furtherance of the charity’s objectives; and (ii) in accordance with any restrictions imposed by the donor. Where a charity has received a donation subject to a restriction, the directors are considered trustees of that restricted property and must ensure that the donated funds are applied in accordance with the donor’s restrictions. Directors could be held responsible for any mismanagement or loss arising from any actions (or failure to act) that constitutes a breach of trust. The *Charities Accounting Act* requires that the charity

notify the Public Guardian and Trustee of all charitable donations and provide regular reports dealing with the administration of the charity and its property.

Charities are not permitted to hold land for investment or other purposes – they must use or occupy the land for the charitable purpose for which they are established (*Charities Accounting Act*, section 8).

Investment of charitable funds – The *Trustee Act* (Ontario) imposes a prudent investment standard on trustees (including mandatory investment criteria). Further, directors must be wary of sub-delegating their decisions, including investment decisions. Charities operating in Ontario can co-mingle restricted funds with general funds, provided they comply with the requirements of the regulations under the *Charities Accounting Act*.

Section 6 of the *Charities Accounting Act* allows any person to complain about the fundraising practices of, or the management of charitable property by, a charitable organization. This, in turn, may trigger an investigation by the Public Guardian and Trustee. If necessary, the Public Guardian and Trustee can apply to court to prevent directors from using the assets of the charity improperly. Stiff penalties can be imposed against the charity and the directors of the charity.

Remuneration of directors – A basic tenet of trust law is that trustees are not entitled to make a profit from the office of trustee, or be placed in a position of conflict of interest. Because Ontario courts have held that directors are trustees, a director of a charity operating in Ontario cannot receive any compensation, directly or indirectly, for acting as director without court approval under section 13 of the *Charities Accounting Act*. A charity can reimburse a director or trustee for reasonable expenses. Difficulties can arise when a paid employee of, or service provider to, the charity is also a member of the board of directors. The question is whether or not there is a conflict of interest when the person receives remuneration in some other capacity.

Most provinces do not have specific legislation that applies differently to charities. However, in Ontario, several statutes apply to charities operating in the province.

Provincial Law – Other Jurisdictions

Other Canadian provinces have legislation that deals primarily with charitable fundraising. British Columbia enacted the *Charitable Purposes Preservation Act*, which is aimed at protecting restricted purpose donations from the claims of general creditors of a charity.¹¹ The statute protects restricted funds from creditor claims where certain requirements are met. It may apply to charities operating in other jurisdictions that fundraise in the province.

Other provincial statutes relating to charities include:

- Prince Edward Island *Charities Act*;
- Ontario *Religious Organizations Lands Act*;
- Manitoba *Charities Endorsement Act*;
- Saskatchewan *Charitable Fundraising Businesses Act*;
- and
- Alberta *Charitable Fundraising Act*.

Personal Liability of Directors of Charitable Corporations

In addition to personal liabilities arising under common law and the *Charities Accounting Act*, many provincial and federal statutes impose personal liability on directors of corporations. These personal liabilities generally arise in relation to matters of employment (such as employee wages, source deduction remittances), taxation (penalties for failing to comply with tax requirements, failing to remit GST/HST), reporting requirements, fundraising, and environmental concerns. Canada's anti-terrorism laws also extend to charities.

¹¹ In Ontario, the Court of Appeal has held that all assets of the charity, whether restricted or not, are available to satisfy the claims of creditors (Re: *Christian Brothers of Ireland in Canada* (2000), 47 OR (3d) 674).

Figure 3.1: Penalties

Infraction	First Infraction	Repeat Infraction (Repeated infractions will increase the probability of revocation)
Not filing an annual information return (Form T3010) on time	\$500 penalty (assessed when an application for re-registration is made)	\$500 penalty (assessed when an application for re-registration is made)
Providing incomplete or inaccurate information on the annual information return (Form T3010)	Suspension of tax-receipting privileges until the required information is provided to the CRA on Form T3010	Suspension of tax-receipting privileges until the required information is provided to the CRA on Form T3010
Not keeping proper books and records or providing them to authorized CRA officials when requested	One-year suspension of tax-receipting privileges	One-year suspension of tax-receipting privileges
Charitable organization or public foundation carrying on an unrelated business	Five percent penalty on gross unrelated business revenue earned in a taxation year	100% penalty on gross unrelated business revenue earned in a taxation year and one-year suspension of tax-receipting privileges*
Private foundation carrying on a business	Five percent penalty on gross business revenue earned in a taxation year	100% penalty on gross business revenue earned in a taxation year and one-year suspension of tax-receipting privileges*
Foundation acquiring control of a corporation	Five percent penalty on dividends paid to the charity by the corporation	100% penalty on dividends paid to the charity by the corporation*
Undue benefit provided by a charity to any person (e.g., a charity makes a cash gift to the director's son or a charity provides an interest free loan to a director or non-qualified donee)	105% penalty on the amount of undue benefit	110% penalty on the amount of undue benefit. If the undue benefit is not conferred from a gift, one-year suspension of tax-receipting privileges is also applicable*
Issuing receipts with incomplete information	Five percent penalty on the eligible amount stated on the receipt	10% penalty on the eligible amount stated on the receipt*
Issuing receipts if there is no gift or if the receipt contains false information (where the total penalties do not exceed \$25,000)	125% penalty on the eligible amount stated on the receipt	125% penalty on the eligible amount stated on the receipt

* Repeat infractions within 5 years

Infraction	First Infraction	Repeat Infraction (Repeated infractions will increase the probability of revocation)
Issuing receipts if there is no gift or if the receipt contains false information (where the total penalties exceed \$25,000)	125% penalty on the eligible amount stated on the receipt and one-year suspension of tax-receipting privileges	125% penalty on the eligible amount stated on the receipt and one-year suspension of tax-receipting privileges
Entering into a transaction, including gifting property to another registered charity, so as to delay expenditures on charitable activities	The charities involved are liable to a 110% penalty on the amount of the expenditure avoided or delayed	The charities involved are liable to a 110% penalty on the amount of the expenditure avoided or delayed
Accepting gifts or transfers of property on behalf of a suspended qualified donee	One-year suspension of tax-receipting privileges	One-year suspension of tax-receipting privileges
Private foundation not divesting itself of a percentage of its shares at the end of its fiscal period, in respect of a class of shares (Excess Business Holdings rules)	Five percent of the result of multiplying the divestment obligation percentage (DOP) of the private foundation for the fiscal period by the fair market value (FMV) of all issued and outstanding shares in that class, except when there is a repeat infraction or another penalty for not disclosing, as indicated below, that applies for the fiscal period	10% of the result of multiplying the DOP of the private foundation for the fiscal period by the FMV of all issued and outstanding shares in that class at the end of the fiscal period*
Private foundation not disclosing a material transaction in a class of shares at the end of its fiscal period when disclosure is required (Excess Business Holdings rules)	10% of the result of multiplying the DOP of the private foundation in that class of shares by the FMV of all issued and outstanding shares in that class for the fiscal period	10% of the result of multiplying the DOP of the private foundation in that class of shares by the FMV of all issued and outstanding shares in that class for the fiscal period
Private foundation not disclosing a material interest held at the end of its fiscal period, by a relevant person, in a class of shares when disclosure is required (Excess Business Holdings rules)	10% of the result of multiplying the DOP of the private foundation in that class of shares by the FMV of all issued and outstanding shares in that class for the fiscal period	10% of the result of multiplying the DOP of the private foundation in that class of shares by the FMV of all issued and outstanding shares in that class for the fiscal period
Private foundation not disclosing its total corporate holdings percentage at the end of its fiscal period in a class of shares when disclosure is required (Excess Business Holdings rules)	10% of the result of multiplying the DOP of the private foundation in that class of shares by the FMV of all issued and outstanding shares in that class for the fiscal period	10% of the result of multiplying the DOP of the private foundation in that class of shares by the FMV of all issued and outstanding shares in that class for the fiscal period

* Repeat infractions within 5 years

Infraction	First Infraction	Repeat Infraction (Repeated infractions will increase the probability of revocation)
Gifts other than designated gifts received from a non-arm's length charity that are not spent by the recipient charity on its own charitable activities or transferred to an arm's length qualified donee in the current or following tax year – this amount is in addition to a charity's disbursement quota	For the recipient charity, a penalty of 110% of the amount not expended or gifted	For the recipient charity, a penalty of 110% of the amount not expended or gifted
Carrying out partisan political activities, or political activities that are not connected and subordinate to the charity's charitable purposes or carrying on political activities when the charity is not devoting substantially all its resources to charitable activities and purposes	One-year suspension of tax-receipting privileges	One-year suspension of tax-receipting privileges
If an ineligible individual is a director, trustee, officer or like official of the charity or controls or manages the charity, directly or indirectly, in any manner whatever	One-year suspension of tax-receipting privileges	One-year suspension of tax-receipting privileges

* Repeat infractions within 5 years

Chapter 4

Governance Models

In [Chapter 2](#), the nature of a not-for-profit corporation was described noting that the affairs of these corporations are governed by its board of directors. Boards can use a number of governance models to guide how they govern their corporation. This chapter addresses how boards determine which model to use to discharge their governance accountability.

BOARD ACCOUNTABILITY AND AUTHORITY IS BROAD

The board is often described as the directing “mind and will” of a corporation. The board has the ultimate oversight and decision-making role, subject to a few restrictions cited below. There are only a few specific legal roles, including:

The board is often described as the directing “mind and will” of a corporation.

- Electing or appointing its officers;
- Approving the financial statements of the corporation;
- Reporting to members by calling and holding the annual meeting; and
- Passing by-laws subject to approval by the members.

As stated in [Chapter 2](#), the board of a mission-based, not-for-profit corporation must act in the corporation’s best interests. This means fulfilling the mission, moving towards the vision, adhering to core values, and discharging accountabilities.

Each board is ultimately accountable for the success and sustainability of the corporation it governs. Success concerns the degree to which the entity is serving its purpose and effectively meeting its objects. These objects are set out in its letters patent or enabling legislation and interpreted from time to time, usually in strategic plans and statements of mission, vision and values.

Sustainability concerns maintaining the capacity, credibility and viability of the organization so that the corporation can continue to serve its objects over time.

The board’s prime responsibility is to ensure that the corporation’s objects are well served. That is why some boards may decide to end the life of the corporation and amalgamate it with another corporation if that holds the prospect of better serving the objects of the original corporation.

Constraints to the Board's Authority

No corporation, and therefore no board, lives in a vacuum. In addition to the laws of the land, the authority of the board is constrained or directed by a number of possible sources:

- **Letters patent and by-laws** – Most corporations are established with letters patent defining their set up and objects. The by-laws further define the governance process and structure. Any change in either document requires approval, usually by the corporation's members.
- **Enabling legislation and special legislation/regulations** – Corporations must comply with the legislation to which they are subject, including legislation governing charities as described in [Chapter 3](#).
- **Special members/owner declarations or agreements** – By-laws or related agreements may provide special rights to certain sponsors/members. Prime examples are a denominational hospital or a provincial unit of a national association which needs to follow national standards.
- **Affiliation or association agreements** – Many not-for-profit corporations are members of a broader federation or association. As such, these corporations need to meet certain requirements and rules to maintain membership status in good standing. Others may have alliances to share resources which are subject to legal partnership or shareholder agreements.
- **Funding and related service agreements** – This refers to any agreements between the agency and a funder which may restrict the powers of the board or direct the board.

BOARD CHOOSES ITS GOVERNANCE MODEL

While boards have ultimate authority over the corporation within the above constraints, each board can choose how to exert that responsibility. Many refer to this as choosing a governance model for the board. Indeed, a primary function of a board is to decide how it will govern.

As a general principle, the board governs and management manages. Most governance models are based on the premise that the board's role is to approve overall direction, interpreting the objects, and to see that the organization is well-managed by monitoring performance and compliance to plans and policies. A key element of any governance model involves defining the line between the board and management (particularly the chief executive officer).

There is no one best governance model for every not-for-profit corporation.

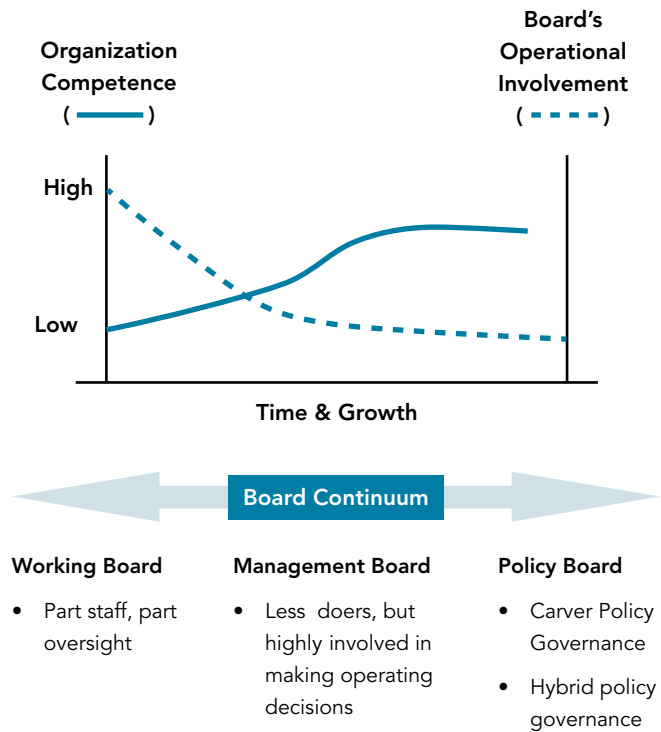
Governance Model Changes to Fit Organization

There is no one best governance model for every not-for-profit corporation. Typically, a board chooses its governance model to reflect the needs of the corporation it governs. “Age and stage” of the corporation affects this choice significantly. Age and stage refers to the length of time the corporation has existed, the growth of the organization relative to its potential, and the maturity of its administrative/operating policies and processes.

- At the start-up stage, boards often pitch in and work. The distinction between staff and board may be blurred. At this stage, the board is often referred to as a “working board”.
- As an organization shifts from the start-up stage, to becoming more developed, the board turns to overseeing the operations. However, the management is often missing some key skills such as accounting/finance, marketing, or law; as such, the board remains involved in many operating decisions. Typically, these boards are referred to as “management boards” since they assist the executive director with running the agency.
- As the entity matures, management skill gaps are filled and operational policies and processes become highly developed. The executive director/chief executive officer manages the operations, and the board turns its attention to broader issues that affect the organization’s future success and sustainability. This is when a board begins to assume a “policy governance” role.

Figure 4.1 graphically traces this evolution. Events (such as a change in chief executive officer leadership), or a crisis challenging a corporation’s viability (such as losing a major funder), can sometimes cause boards to shift back from a policy governance role to a hands-on management board model. However, generally, boards will follow this evolutionary path.

Figure 4.1: Evolution of a Board’s Role



TREND TOWARD A FORM OF POLICY GOVERNANCE

This policy governance approach was first articulated by John Carver and is sometimes called the 'Carver Model'. This model proposes that the board determine the 'ends' or goals of the organization (vision, mission and values), set broad policy directions and strategic plans, establish measures for monitoring performance, and monitor performance. Beyond that, the board delegates to the chief executive officer to accomplish key ends, following the policies and observing any executive limitations established by the board. The board is then responsible for ensuring that the chief executive officer fulfills his or her objectives and follows the limitations.

While there is no one best governance model, typically, larger not-for-profit organizations follow a form of 'the policy governance' model. This fits such organizations since they have reached a relatively mature and stable state, whereby the organization has highly developed policies and operating performance reporting with specialized and professional staff in most functions. The boards of these organizations do not need to be much involved in operations or give operational advice to management. These boards focus on policy direction and oversight of performance, plans and policy.

While there has been a trend among not-for-profit corporations of various sizes to accept the notion of the policy governance model, many boards have adapted it to suit their needs. Consequently, there are many permutations of the policy governance model, typically referred to as hybrid policy governance. However, all follow the same principles:

- The board should focus its attention on issues that have a high impact on the objects, ends or mission of the agency.
- Consistent with the above, the board should provide higher level strategic direction and policies that are guides for delegated decision-making (to be carried out by senior management).
- The board should deal with important issues in a way that least intrudes on the chief executive officer's role of managing the operations. It should prescribe only what it needs to and leave leeway for management to act.

The Line Between Board and Management

In defining its governance model, the board will define what it will do and what it will delegate to management. Typically, boards delegate day-to-day supervision of the affairs of the organization to a position (the chief executive officer or executive director) which is designated by the board as the administrative head of the organization. The board must then ensure that delegated acts are properly fulfilled.

In articulating its specific governance model, each board needs to draw the line between the board's role and management's role. Typically, the board should develop a statement of the board's role and functions that clarifies the governance model.

See Chapter 5, *Form 5.1: Sample Statement of the Roles and Responsibilities of the Board*

Delegation Challenges

In most governance models, the board delegates implementation to the chief executive officer and oversees implementation and performance. This is consistent with the reality that directors, being volunteers, have limited time and knowledge to deal with the specifics of the organization's operations.

Nonetheless, the board needs to oversee performance. It is in the oversight role that the board/management line tends to get blurred. There are a number of factors that challenge managing the line between board and management, or governance and operations. These factors can cause directors to question operational matters and begin to cross the line into giving operational advice to the chief executive officer and management.

- Especially in smaller localities, board members are known in their communities. Local consumers and donors may raise issues about agency operations to individual directors, expecting responses. Directors may agree to investigate these matters on behalf of the person, creating some confusion in roles.
- Since boards need to understand the operations of the agency to make policy and priority decisions, staff will provide education sessions and presentations to help the board. As part of this process, directors may begin to ask operational-level questions, which may lead unwittingly to operational suggestions and potentially inappropriate discussions.

The board needs to oversee performance. It is in the oversight role that the board/management line tends to get blurred.

- One of the emerging challenges comes from government funders. Concerned with the need for greater performance control of service quality and occurrences of poor management oversight, some government funders are requiring greater operational control by boards. For example, government is imposing procurement policies on arms-length not-for-profits. In the health care sector, consistent with the passage of the *Excellent Care for All Act*, there is a growing expectation that boards will closely monitor patient safety and quality care (e.g., quality improvement plans, procurement processes, and critical incidents reporting), areas typically within the domain of operations. As a result, the line between governance and managing operations is blurring. Directors do need to question and probe operational matters to some degree. However, they need to be diligent to avoid giving operational advice in areas where they have no expertise.

Simply having role statements to define the line between boards and management is proving to be inadequate. There needs to be flexibility and judgment. The board, in conjunction with the chief executive officer and senior staff, needs to manage that line actively so the board focuses on its high-impact roles and does not adopt a micro-managing pattern of behaviour.

Certain activities may help keep the board at a governance level in its oversight role:

- Management needs to develop and propose policy directions, goals and plans as a basis for stimulating the right discussion at the board level. Staff can also create education sessions and briefing papers that ask the right questions to guide the discussion effectively and appropriately.

- The board should keep to the principle that the board oversees performance best where there is an established policy, plan, target or budget in place already approved by the board. The issue then is compliance to that policy or plan. Questioning anecdotal operational issues may not be appropriate governance behaviour by the board.
- At meetings, board leaders and individual directors can ask themselves some key questions when deciding whether certain matters warrant inclusion in the board agenda, such as: Is the matter critical to the success and sustainability of the corporation? Is it something that the board can affect, based on the skills and capabilities of the board?
- When an operational-level discussion does emerge, the chair or another board member can inquire whether the issue requires board approval and warrants discussion.

Clearly, the chair and chief executive officer need to work closely to maintain an effective differentiation between the roles of the management and the board.

GENERATIVE GOVERNANCE MODE

About a decade ago, R. Chait and others in *Governance as Leadership, Reframing the Works of Non-Profit Boards* introduced a new governance model referred to as ‘generative governance’. Generative governance is not an alternative to the policy governance model, but can be thought of as an extension of it – taking the board beyond policy direction and performance oversight.

The basic approach proposes that boards can function in three modes: fiduciary, strategic and generative. Each has a different focus in terms of content and line of questioning. Interestingly, each also requires a different relationship between the board and management. The three modes are described [Figure 4.2](#) below.

The traditional two modes, fiduciary and strategic, are essential foundations. Under this concept, boards need to ensure that the first mode is performed well before advancing to the second, and so forth. Furthermore, the directors need to know which mode they should be using for each agenda item. Boards should knowingly (not haphazardly) be in the fiduciary mode, if appropriate. It is not productive for some directors to be in generative mode, and others to be in fiduciary mode.

Figure 4.2: Modes of Governance

	Mode 1: Fiduciary	Mode 2: Strategic	Mode 3: Generative
Focus	<ul style="list-style-type: none"> • Stewardship, risk and compliance to policy and plan • Budgets, audits, policies 	<ul style="list-style-type: none"> • Strategic directions and future plans • Creating and communicating sound, clear plans across stakeholders 	<ul style="list-style-type: none"> • What if questions and scenarios • Ideas and big questions about responding to change, but not firm plans for action
Management Relationship	<ul style="list-style-type: none"> • Board independence overseeing management 	<ul style="list-style-type: none"> • Partners with management, recognizing management’s lead role in understanding the business 	<ul style="list-style-type: none"> • Board as a resource and co-creator with management • Dialogue with management, not usurping management’s planning initiative

The underlying point to the generative governance mode is that boards should use their full talent to help management and their organizations succeed. Restricting board discussions to oversight and strategic directions does not use the full potential of the board and its members' breadth of experience.

Approaches to Implement Generative Governance

- **Board retreats** – One- or two-day annual board retreats have been around for some time and create more flexibility in terms of time and atmosphere for encouraging generative ideas. Now these retreats are being better organized to purposefully deal with generative subjects.
- **Education sessions** – As pre-meeting agenda items, staff will often provide an educational presentation on a new trend, a program or emerging practices for the board's information. This frequently generates questions and ideas from board members in a non-decision-making or generative context.
- **Identify agenda items for future generative dialogues** – An item may emerge in a regular meeting discussion that the chair puts aside as not relevant or urgent for the board meeting. This prevents the agenda from getting side tracked. To avoid losing the point of the discussion, the board holds a meeting review at the end of the business meeting, at which time directors may identify topics for a future discussion as generative agenda items.
- **Deep dives** – Boards can set a "chunk" of time (maybe an hour or more) to discuss one topic at greater depth. In these sessions, the purpose is to develop and discuss ideas, not to make policy or action decisions. As part of the session, management may provide background information and a presentation to support the board's consideration. The conversation can be far-ranging without restrictions. At the end of the session, the board does not direct management, but asks management to consider the discussion and report back, when and if appropriate, with their proposals for approval.

The generative model is relatively new for many boards, and ideas on implementing it are still evolving.

Chapter 5

Role and Functions of a Board

Boards need to decide on their role and develop a statement of their role and responsibilities as discussed in [Chapter 4](#). The statement should include the primary functions which not-for-profit boards should perform:

1. Approve strategic goals and direction;
2. Establish a framework for performance oversight;
3. Oversee program effectiveness and quality;
4. Oversee financial condition and resources;
5. Oversee enterprise risk management;
6. Supervise leadership;
7. Oversee stakeholder relationships; and
8. Manage the board's own governance.

This chapter describes these eight functions, defines how each one can be implemented and how the board should organize to perform them. The terms "corporation", "organization" and "agency" are used interchangeably to mean the total entity governed by a board.

See [Form 5.1: Sample Statement of the Roles and Responsibilities of the Board](#)

FUNCTION 1: APPROVING GOALS AND STRATEGIC DIRECTION

Understanding this Function

Like most organizations, not-for-profit agencies and the people who work there need a clear sense of the organization's purpose, what it wants to become, and how it intends to get there. In contemporary management, this strategic or policy direction-setting is referred to as strategic management.

Most not-for-profit organizations perform this function by developing and updating a strategic plan. The strategic plan is the foundation document that provides direction to the organization. It typically contains:

- A summary of a strategic scan, and an analysis of what is happening internally and externally;
- The broad, longer-term fundamentals of mission, vision and values; and
- Strategic directions and/or priorities for the next few years.

Mission, Vision and Values

The first part of a strategic plan provides a strategic long-term framework for the organization. Typically, the main elements of this are the mission, vision and values. These statements are intended to stay in place for a considerable period of time and are changed infrequently except for some minor "wordsmithing".

- **Mission** – A mission is a statement of the corporation's role and why it exists. As such, it is often called a statement of the agency's business – what we do, for whom, and why.
- **Vision** – While the terms "mission" and "vision" are often interchanged, there is a clear distinction between the two. A mission states the enduring role and purpose of the organization, while the vision is a description of what it plans to accomplish or become over a period of time. The longer-term vision statements tend to be short and inspiring, but do not describe what the organization will look like.
- **Values** – The values statement includes values, norms, principles and commitments that the organization intends to follow in performing the mission.

Strategic Directions and Priorities

Each strategic plan defines what the organization wants to accomplish during the time period of the plan. The time period is typically three to five years. This part of the plan may include:

- A medium-term goal or vision – This is a concrete description of the organization and the local community/service system or population served for the time horizon of the plan (e.g., five years from now). It should be tangible and measurable to the extent possible. For an example of what this might look like, see [Figure 5.1: Making Vision Concrete](#).
- Strategic directions (objectives, themes) that build toward the restated vision – these would include the strategic role and positioning of the organization (who is served and what programs/services will be emphasized or offered), and initiatives to improve effectiveness, quality and financial performance.

- A definition of organizational capacity and enhancements needed to succeed.
- An implementation plan that would include milestones and measures for monitoring progress.

Different terms (objectives, strategies, themes, and initiatives) are used to describe these directions, but the key is that they contribute to achieving the vision, mission and goals. The directions usually can be measured. The preference is to establish targets and indicators so that the board can evaluate whether the directions are successfully implemented and whether they achieve the results intended.

Figure 5.1: Making Vision Concrete

Current	Plus 5 Years
<ul style="list-style-type: none"> • Client satisfaction below average • Two of six programs meeting client result targets • Staff satisfaction below average • Clients wait for service 60 days over target • Two of three locations are old or poorly designed • Non-government revenues eight percent of total • 50 service staff in six core programs 	<ul style="list-style-type: none"> • Client satisfaction above average of peer agencies • All six programs are meeting client result targets • Staff satisfaction above average • Clients wait for service within 10 days of target • All buildings are replaced or renovated • Non-government revenues 15% of total • 80 service staff in eight core programs

Implementing this Function

Strategic Planning

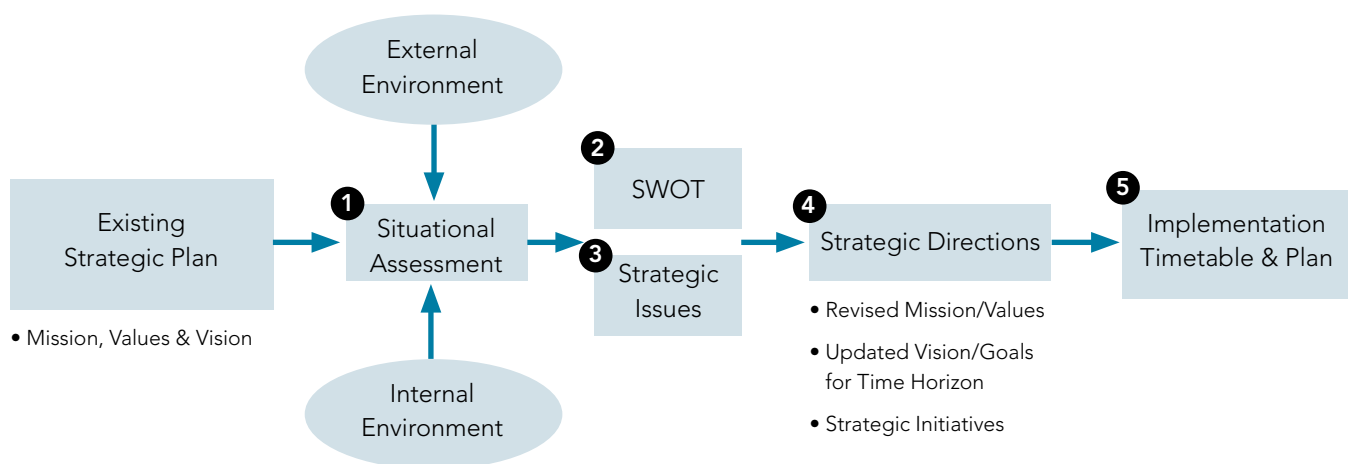
Strategic planning is a disciplined process with the goal of defining the purpose and direction of an organization, recognizing the current and future state of the external and internal environment within which the organization operates.

When an organization undertakes a major strategic planning process, typically the process steps are as follows (see [Figure 5.2: The Strategic Planning Process](#)):

1. Situational assessment or environmental scan;
2. Strengths, weaknesses, opportunities and threats (SWOT);
3. Strategic issues identification;
4. Strategic directions; and
5. Implementation timetable and plan.

Strategic planning is a disciplined process with the goal of defining the purpose and direction of an organization, recognizing the current and future state of the external and internal environment within which the organization operates.

Figure 5.2: The Strategic Planning Process



1. Situational Assessment or Environmental Scan

The starting point for a strategic review is the existing strategic plan, if relevant, and the existing mission, vision and values statements or goals, along with other relevant strategic directions or mandates. Government directions and existing funding agreements are also relevant.

A situational assessment sets out the context for the agency from both an internal and external perspective. It should include a review of the current situation, trends, and forecasts of emerging trends.

An internal environmental assessment or scan includes:

- Recent performance on clients served, outcomes and effectiveness, safety and quality of services;
- Financial condition and performance;
- Asset and infrastructure condition;
- Information technology capability;
- People strengths and capacity;
- Innovation and new programs;
- Education and research, as appropriate; and
- Community and stakeholder relationships.

external assessment or scan includes:

- Relevant sector trends – health, social, employment, education, housing, etc.;
- Funding trends;
- Legislative changes and possibilities;
- Population well-being or health indicators;
- Client usage of alternative and related providers;
- Technology trends; and
- New service entrants and networks.

2. Strengths, Weaknesses, Opportunities and Threats (SWOT)

A situational assessment is often summarized in the form of a SWOT analysis. This sets out the highlights from the assessment in a simple, four-box format. The strengths and weaknesses tend to come from the assessment of the internal environment, and the opportunities and threats from the external context.

3. Strategic Issues Identification

The core of a strategic plan is the identification of strategic issues that need to be addressed. Strategic issues may include the following:

- **Common themes from the environmental scans** – The situation assessment, and especially the SWOT summary, helps to identify these issues, but there is more art than science in deciding on which to select and focus.
- **Gaps in performance or benchmarks** – Using relevant outcome/results measurements for the sector (balanced scorecard for some, key performance indicators for others), the assessment can include a review of recent performance and a projection of future performance using these measures. Likewise, gaps in performance with benchmarks from peer organizations may be considered.
- **Key success factors for advancing toward the identified vision** – Given a relatively clear description of the future vision, there are typically accepted factors that contribute to the achievement of goals or a vision. For example, having consistent service providers lead to higher client satisfaction, and higher volumes of similar services provide for lower unit costs. One can then assess and identify which key factors need attention.

4. Strategic Directions

This component may be organized in various ways, depending on how the issues are set out. Every agency will need to find the format that suits its mission, role, programs and issues. However, the resulting list of strategic directions, objectives or initiatives should reflect the following features:

- A revised vision or goal that describes the agency (or the client group or relevant service system) at the end of the planning period. This should be concrete and measurable wherever possible. An example of what this concrete vision looks like is displayed in [Figure 5.1: Making Vision Concrete](#);
- Directions that set out areas of action and required investment in time, energy, and dollars;
- A list of action areas or initiatives spawned by each strategic direction, which will likely require an extensive period of time to complete – one to three years, or more;
- A clear indication that the action needs to start in the next year and continue thereafter, although the downstream impacts may accrue in the medium- or long-term; and
- Wherever possible concrete, specific targets should be set as a basis for measuring or gauging whether the objectives are accomplished.

5. Implementation Timetable and Plan

Many strategic planning processes stop here. However, the strategic plan needs to be linked to the implementation process. The following steps are one approach to managing this next step:

- Establish a timetable for implementation;
- Define targets or milestones in terms of accomplishments, measurements, or descriptions of success for year one, two and three;

- Assign accountability for implementation; and
- Define risks in the plan, and emphasize the need for reporting to, and monitoring by, the board.

Guidelines for Process

Each organization will decide what type of process best suits its challenges, resources and context (age and stage). However, there are some general guidelines to consider:

- **Choose an appropriate time horizon for your strategic plan** – Strategic plans can be prepared to cover any time horizon.
 - Environmental uncertainty and the quickening rate of change appear to be continually shortening time horizons for strategic plans. While the norm is three to five years, there is a trend to the former.
 - There is a contrary view emerging that real strategy for major organizations should be planned over a longer period, even 10 to 20 years. This is based on a view that major shifts in strategy require five or more years to implement. Hence, shorter three year horizons produce multi-year operational plans based on the same fundamental strategic positioning of the organization.
 - Consider looking further into the future in conducting an environmental scan (i.e., look out 10 years as a basis for thinking about what to do in the next three years).
 - Naturally, costs need to be considered when choosing the frequency with which the agency develops a plan.
- **Consult broadly as a means of community engagement** – Strategic planning is a major opportunity to engage with, and build support among stakeholders and the community. Broad consultation improves the diversity of thinking and ideas, and enhances the quality of the assessment process. As many channels of participation as possible should

be used to increase awareness, understanding and buy-in to the process and its results. For example, one may use surveys (such as web or paper), social media outreach (such as Facebook, Twitter), focus groups, community consultations, email updates, newsletters, and presentations to get input in and information out.

- **Communicate the strategic plan and its progress during implementation** – The board needs to communicate the strategic plan to many audiences, including members of the community, clients, staff, and other stakeholders. It also needs to report on progress periodically during its execution. In fact, strategic planning supports the board's ability to perform its stakeholder relations function.

Emphasis on Big Picture and Systems Thinking

Strategic planning processes generate a lot of information, input and analysis. Boards need to focus on what the key findings and themes mean to the “strategic” big picture or the fundamental questions of mission, vision, values. For example, what does this trend mean about our basic purpose? Does this help us define what success is and how to measure it? How well are we doing, and how well will we do in the future? Should we change our broad goals and directions?

Government ministries or agencies provide overall strategic directions for various service systems (e.g., the Ministry of Children and Youth Services for child protection agencies or Local Health Integration Networks (LHINs) in the case of health services). These government oversight organizations may appear to be a holding company or franchisor, directing and controlling regional/local service provider corporations. They define, through legislation and regulations, standards and requirements for service providers, and determine broad funding levels and priorities to guide resource allocation. While it may seem that only a few strategic levers are available to the board, each service provider in the local system still needs to chart its own course within those realities while recognizing its place within the larger sector.

Taking a systems viewpoint means an organization needs to think more strategically about its role and positioning relative to other organizations in the same service system. This leads to a number of possibilities and questions, such as the following:

- Is our portfolio of programs/services positioned effectively and competitively? Are we the best organization to deliver these services in terms of comparable cost/quality? Can we deliver these sustainably?
- Are there partnership opportunities which would provide benefits to the system? Are there collaborative efforts underway to consider these opportunities?
- How comparable and consistent is our agency's performance with sister agencies in other regions?
- Are we aligned with the plans of the larger system? Are we influencing higher level system plans to reflect our experience and perspective?

Taking a systems viewpoint means an organization needs to think more strategically about its role and positioning relative to other organizations in the same service system.

Whether the organization is a community care access centre looking at its alignment with the LHIN Integrated Health Services Plan, or a college considering its programs compared to policy trends from the ministry, or a local independent branch of a provincial or Canada-wide association, one can take a systems perspective to strategic direction setting.

A systems perspective by individual organizations should lead to better overall system results in terms of client outcomes and cost effectiveness. This is because organizations will concentrate on their strengths and avoid duplication and unnecessary competition with other agencies in the future. This will also create better coordination with related service organizations, improving client access and outcomes.

Organizing the Board to Perform this Function

The board is not responsible for conducting strategic planning. Instead, it ensures that strategic planning is done, and that the resultant goals and directions provide a reasonable plan for the corporation and in its best interests.

Planning is largely a management role to perform, and the board's role is to shape and oversee the process. Therefore, the chief executive officer and senior staff will typically manage the overall process, and ensure that adequate staff support is provided.

Board Participation in the Strategic Planning Process

While the chief executive officer may lead the work, the board as a whole should participate during the following key points in the strategic planning process:

- The board approves the strategic planning process, including the establishment of a steering committee (if so desired) and any preliminary areas of focus;

- The board participates in a workshop-style dialogue (e.g., retreats) at key points in the process, at least in the formation of strategic directions;
- The board receives highlights of findings on the process and updates at regular board meetings; and
- The board receives the final draft plan in advance, has opportunities to question its contents and suggest modifications, approves the final strategic plan, and directs the chief executive officer on implementing the plan.

Opportunities for learning about the relevant external environment, government policy and funding developments, and trends in client groups, programs and technology should be organized and built into the strategic planning process. This may happen as a part of regular board meetings or by holding retreats with the board and senior management.

Strategic Planning Steering Committee

A Strategic Planning Steering Committee is preferred as a means to manage the strategic planning process effectively. This is especially so if the plan is developed every three to five years as a major project. The Steering Committee can perform a number of roles, including:

- Organizing the strategic planning process and major events, such as retreats;
- Assigning groups to undertake consultations and analysis;
- Preparing or approving summaries of the scans, workshops and retreats;
- Preparing or proposing optional directions and/or changes to mission, values and vision, based on board input; and
- Overseeing sub-committees that are conducting parts of the strategic assessment work.

The Strategic Planning Steering Committee could be composed of a few board members, the chief executive officer and selected senior staff. Sometimes, external community leaders or past board members are included in the committee. In terms of leadership of the Steering Committee, co-chairing by a board member, possibly a candidate for future chair, and the chief executive officer is good practice.

Some larger organizations have established an ongoing Strategic Planning Committee, since the task of monitoring the plan's achievement of its milestones and of updating the plan annually requires ongoing work. In this case, the committee would be composed of board members and the chief executive officer. A potential candidate for a future chair would be a good choice for chair of this standing committee.

Planning Retreats

As part of many strategic planning processes, board retreats are held to engage the board and provide opportunities for boards to give direction to, and advice on, the process. Such retreats provide boards with the opportunity to have broader ranging discussions, so that the board can advise management beyond its more restrictive governance role. This is where the organization may take a longer term view in its thinking in order to inform a medium-term (three to five years) plan.

These opportunities are encouraged, but there is no one best way to hold a board retreat. Many factors need to be considered, including cost, interest in broadening the input by having other stakeholders attend, or the need for confidential discussions regarding sensitive options and propositions.

Reviewing a Strategic Plan

Given that directors are not experts in the day-to-day affairs of the organization, what should board members question or look for when reviewing a draft strategic plan?

While directors may not be experts, they can play an important role in questioning the usefulness of a proposed strategic plan. These areas of inquiry are examples of what a director may wish to consider:

- **Are the assumptions reasonable?** Effective plans start with reasonable assumptions about the future and build from there. Directors need to identify the fundamental assumptions underlying the thinking in the plan, and ensure they make sense. Sometimes, the assumptions are not clear in the plan or are not well-supported – what is the expectation for government funding growth, or for providing capital from fundraising to support facilities and equipment plans, or availability of talent to support new programs or program expansion?
- **Are the plans clear and concrete?** Strategic plans tend to deal with high-level directions. However, they should still be clear and define action initiatives in the near term. Ideally, plans should be staged so that there are a balanced number of targeted goals each year. Directors should ask about what is being done next year to prepare for the future. While not everything can be measured quantitatively, strategic initiatives should be sufficiently clear and concrete so that the board can review whether or not they have been implemented in a year, and if they have had some impact. When needed, board members can ask that they be made clearer so that progress can be assessed.

- **Are there “what if” questions and secondary effects?** As part of a proper planning process, consideration needs to be given to alternative assumptions and contingencies. This is part of what scenario planning is about. However, if scenario planning is not undertaken, board members need to ensure that critical “what if” questions are asked, and that management has considered them and is prepared for them. What ifs are often about what happens in the event of low-probability occurrences. A related concern is the secondary effects of a plan on others. For example, how will other community organizations react to the plans? How will their actions or views affect the effectiveness of the strategic plan?

Monitoring the Implementation of a Strategic Plan

Strategic planning is not something that can be undertaken annually. Once every three to five years is the norm. However, once a strategic plan is in place, it needs to be used as a living document in order to foster implementation.

The strategic plan should be reviewed annually by the board as part of a regular annual planning cycle. A strategic planning review should occur prior to the annual management operational planning and budgeting cycle. The board should review progress made on strategic directions and identify any major actions required. The board may modify strategic directions and priorities based on new knowledge, developments and external events. Implications of the review process should be written and communicated clearly to the organization as a basis for annual operational and budget planning.

Many organizations create “evergreen” or rolling plans. After each year of the strategic plan, operational targets for the next three years are established. This provides up-to-date three year operational targets at all times.

The board should have regular briefings on progress towards implementing strategic plan directions and initiatives. Progress should include indications of implementation, as well as preliminary results, where possible. Regular may mean quarterly, or it may mean that one or more directions are reviewed on a schedule at regular board meetings.

When considering any major decision, investment, or change, the board should consider the implications for its strategic plan and the corporation’s mission, vision and values. This may lead to the need for updates to the strategic plan and directional statements.

FUNCTION 2: ESTABLISH A FRAMEWORK FOR PERFORMANCE OVERSIGHT

Understanding this Function

As a fiduciary, the board must oversee the operating performance of the corporation. For most health, and human service non-profits, operating performance is primarily concerned with the effectiveness and quality of its programs and services to clients, financial performance and effective use of resources.

In this function, the focus is on the process of overseeing performance. In the following sections, we discuss the actual oversight of program quality and then financial performance. Clearly, the process of overseeing operational performance is also associated with the supervision and evaluation of the chief executive officer and communications with stakeholders.

Maintaining a Governance Perspective in Overseeing Operating Performance

Although boards govern the affairs of the corporation, they normally should not “manage” the organization’s operations. The challenge for a board is to perform its fiduciary function of overseeing performance, while not becoming excessively involved in managing the organization and details of operations. Hence, the board needs to be focused and efficient in defining its role and performing this function.

In order to govern and not become too involved in operations, boards need to establish a performance management framework to oversee operational performance. Such a framework includes various plans, policies, budgets, targets and measures. With these in place, the board can assess whether the organization’s management is in compliance, achieving targets and plans or making adequate progress toward the plans.

Each not-for-profit organization is different in terms of what it does. Nonetheless, there are some common performance issues with which boards need to concern themselves:

- **Complying with legislated standards** – Is the organization complying with legislation/regulatory standards and processes related to the operations (i.e., client service standards, staff qualifications, resources, facilities, etc.)?
- **Meeting service agreements** – Is the organization meeting service standards and other expectations stipulated in the funding agreements with government or other funders?
- **Meeting its own plans relative to financial measures, quality and services delivered** – Is the organization achieving its established objectives/targets and indicators within its internally approved budgets and plans? These may relate, for example, to client satisfaction, services delivered, client results, costs or usage rates and cost ratios.

Implementing this Function

Performance Management Framework

A performance management framework establishes the basis to:

- Establish performance objectives;
- Report on actual performance results; and
- Assess whether results are adequate and whether corrective action is needed.

Performance measurement is the discipline of establishing measures and indicators that quantify the performance objectives as a basis for planning targets and monitoring actual results. It provides information so a board can monitor and make judgments about performance.

A performance management framework includes consideration of the following:

- Selecting the relevant dimensions for oversight;
- Determining the measurement indicators of performance; and
- Designing the performance reporting tools.

The framework, therefore, provides the basis for preparing regular performance reports to the board. This allows a board to understand what performance is expected, what actually occurred, and areas that need attention.

Designing a Performance Oversight System

In selecting what to measure and monitor, there are a number of principles to consider:

- **Create an integrated overall performance reporting system** – Each board needs a simple and clear performance reporting system to monitor overall

organizational performance. The focus for such performance management is both quality of services/outcomes and financial condition and performance, as well as other key performance areas such as community engagement, organizational development, and so on. It is a leading practice to develop tools that report on all major types of performance.

- **Keep it simple but relevant** – For purposes of reporting to the board, the measurement system should be kept as simple as possible. The board should monitor as few measures as possible. With fewer measures, it is easier to communicate effectively externally and internally about what is important. Conventional wisdom in the private sector suggests keeping six to nine key measures of overall organizational performance. Dashboards described below can help simplify the presentation of data. Nonetheless, community, human service and health organizations are complex businesses, often with multiple programs and services. Therefore, it is not possible to limit the number of measures arbitrarily.
- **Gather useful and relevant information** – The measurement indicators and reporting system should be developed to meet the following specifications:
 - Actual performance compared to planned results (targets);
 - Actual performance compared to historical performance (quarter over quarter);
 - Actual performance compared to available benchmarks (other similar agencies);
 - Actual performance compared to acceptable standards or ranges (corridors);
 - Variances to the above clearly shown; and
 - Commentary from management to explain significant variances reported.
- **Consider balanced scorecard and dashboard concepts** – There has been much advancement in designing reporting tools that do balance simplicity with relevance in board performance reporting. Scorecards and dashboards are the most prevalent.

The 2010 Ontario Hospital Association Governance Survey demonstrated that the majority of hospitals now use some form of balanced scorecard/dashboard to support board oversight of performance. It appears to be growing in all parts of the not-for-profit sector.

See [Form 5.2: Balanced Scorecard](#)

See [Form 5.3: Dashboards – Quality Performance Illustration](#)

- **Some additional considerations** – In developing the measures and reporting tools, ensure mandatory and funder service agreement indicators are spotlighted.

Using Performance Measurements

The board's primary role is to oversee how well the organization is accomplishing its aims. The sections above propose how this information is provided so that the board can fulfill its responsibilities. The following are some tips about how the board should discharge its responsibilities.

- **The board questions performance issues, but management should propose and implement solutions** – What is the board to do with the information it receives? The board should respect the line between the board's role and executive management's role. Boards need to make sound assessments about the meaning of measurements reported and, therefore, should rely on management to explain variances, their causes, and potential corrective actions to be considered (including taking no action at all). Generally, the board should rely on management to address operational issues unless given reason to believe otherwise.

Management usually proposes action where performance problems are apparent. In some cases, the board may not know what corrective action is needed or warranted. A good performance reporting system reinforces management accountability and keeps management on their toes.

- **The board acts where potential risk is significant and urgent** – In certain circumstances, where the board judges there is urgency and imminent potential damage to the organization, the board can direct corrective action itself. For example, the board might feel more compelled to require action when it involves matters affecting external relations with the government, events potentially damaging the reputation of the corporation, and with major strategic projects. On the other hand, when performance is consistently positive, the board should find ways to acknowledge and reinforce good performance.
- **The board interprets performance results with care** – The board needs to show care when making judgments based on performance measures. While quantitative measurement of results is necessary and useful, the board will still need to consider the meaning of variations in measurement indicators. The following are some of the reasons for needing greater scrutiny or questioning:
 - Indicators are sometimes constructed to only partially reflect what is happening. For example, staff turnover is only one indicator and may not reflect the general quality of staffing or the care they provide;
 - Indicators like “employed for three months or more” may be aggregated so they reflect overall results in all employment programs. In short, an overall positive score may mask serious performance issues in one or more programs owing to superior results in others. Board members may need to find out how many programs are meeting or exceeding targets or standards;
 - Some indicators may show changes over a longer period of time, and improvement cannot be expected every quarter. In these cases, the board needs to assure itself that the activities that will promote success are being undertaken with discipline; and

- Uncontrollable external factors may be causing the variance. It is important that this be acknowledged and understood. The board may be interested in why the external uncertainties were not predicted or provided for in the original plan.

Organizing the Board to Perform this Function

The board should consider the following principles in establishing the performance management system:

- The board needs to approve the performance reporting and oversight system;
- The board should direct management to assist in improving the performance reporting system where there are gaps;
- The board needs to understand the meaning of the performance reporting indicators and reports; and
- Individual directors may focus on and develop more detailed knowledge of the indicators and, hence, can assist their board colleagues in interpreting the meaning of specific results.

Supporting the Board in Developing a Performance Management Framework

Overall, management needs to support the board by translating and simplifying (or aggregating) its own performance management regime for use by the board. Owing to the complexity of the operations of many health and human service businesses, it is difficult to have a few simple and easy to interpret performance indicators. Yet, to carry out its oversight function, the board cannot solely rely on the chief executive officer and management’s opinion of what to monitor.

Boards typically need to delegate some work to a committee to carry out this function. Some boards assign the task of developing performance measurements and indicators to one committee during the formative stage

of performance measurement. Having one committee oversee the design process for all performance indicators (service quality and finance), can help to create an integrated approach.

Most of the performance oversight issues are about program effectiveness (programs/services quality, client results or satisfaction) or financials (cost per unit, budget variance). Since most of the development work is usually about quality, client outcomes and program effectiveness measures, it is typical for a program or quality committee to take the lead in establishing the performance management and measurement system. There clearly needs to be coordination with the various board committees, such as the finance committee, when choosing or developing performance measures.

Committee Supports for Each Area of Operating Performance

In each area where operating performance needs to be overseen, the board can be supported in carrying out its responsibilities. This is where board committees can be very helpful.

- Committee members can be more knowledgeable about the details of the measurements and how to interpret them.
- A committee can also take the time to probe into the reasons for variances without taking the time of the full board.
- It is easier to involve other senior managers in the conversation at committee meetings where greater detail can be discussed and understood.

The relevant committee for this function – developing a performance management system – will naturally depend on the board’s committee structure. If available, this function would relate to a finance/resource, community relations, risk management and/or program/quality committee.

FUNCTION 3: OVERSEE PROGRAM EFFECTIVENESS AND QUALITY

Understanding this Function

The board provides policy direction and oversees the performance of the agency in meeting its mission, vision and values. Clearly, the effectiveness and quality of programs and services delivered are at the core of this function.

Program effectiveness and quality service are complex issues, requiring professional and technical knowledge of the field. Professionals and agency management clearly have more expertise in this area, in comparison to the board. Therefore, boards need to be careful not to become too involved in solving operations and technical issues that should be left to management and professionals. Nonetheless, boards still need to ensure that the agency is providing effective and quality services.

In the health care sector, recent legislation, particularly the *Excellent Care for All Act*, has placed more pressure on health boards to take steps to ensure they are sufficiently involved in carrying out their governance mandate in the area of quality care. This appears to be a requirement that will spread to more health-funded agencies.

Program effectiveness and quality covers a number of elements.

- **Client outcomes** – Are the programs, services and care provided having the intended impact? Are clients better off? Is there evidence to support this claim?
- **Client access and flow** – Are the right people getting served and is the delivery of service streamlined and seamless? These questions are not just being considered in terms of what happens inside one organization, but across related service organizations.

This is emerging as a corollary of the systems focus discussed earlier. It is leading to issues of alliances, integration of services, and navigation through the system.

- **Client experience and satisfaction** – Are services being delivered well in the client’s terms? This is another element of the quality mantra.

Implementing this Function

The whole area of board oversight in program effectiveness and quality care is undergoing a period of development, in some ways prompted by new government requirements and expectations.

There has been a dramatic advancement in the notion of evidence-based decision-making. More attention has been paid to the measurement and monitoring of client outcomes, quality of care, efficacy of programs, and cost-effectiveness of services. Risk management in the client and patient care field is receiving much more attention in terms of developing evidence and standards. New practices are emerging and the board’s best practice approach will continue to evolve.

The board needs specific performance measurement systems to oversee program effectiveness and quality. In the previous section on the general approach to performance oversight, the approaches to this were discussed including references to dashboards.

See [Form 5.3: Dashboard – Quality Illustration](#)

For boards to oversee program effectiveness and quality, directors need to understand the operations or agency. While directors can and should not become experts in this area, to oversee plans and targets, they need to appreciate the complexities and cause-and-effect relationships within the agency.

The danger, of course, is crossing the governance-versus-management/operations line. Becoming more knowledgeable, however, crosses no line if it helps the board collectively discharge its governance role.

To help directors become more knowledgeable about operations and quality, a number of practices are emerging.

- **Education sessions on programs and services** – Both at committee meetings and pre-board meetings, staff present aspects of services and operations for information/education.
- **Client stories** – Client stories are being presented at committee and board meetings to bring service and client outcome issues to life for directors. These stories help board members understand the client experience more concretely. Once again, these are presented to inform and educate, not as a basis for board decisions or actions.

There has been a dramatic advancement in the notion of evidence-based decision-making. More attention has been paid to the measurement and monitoring of client outcomes, quality of care, efficacy of programs, and cost-effectiveness of services.

- **Program reviews** – Some boards are creating a systematic process for reviewing programs. Typically, these are performed by the Program or Quality Committee and results are reported to the board and the chief executive officer. The process provides more time for board members to understand and comment on service quality and plans.

The purpose of this review process is to highlight areas that need addressing, and recognize the good work being done to improve quality and impact within the agency, as well as a closer, critical evaluation of these programs. This process also helps the board understand the complexities of good quality within the context of affordability.

There are various approaches used to carry out program reviews; most include the following elements:

- Each program/department (e.g., research, residential services, outreach, early intervention and prevention, counselling) is placed on a reporting cycle. The cycle may involve reporting annually or every 18 months, depending on the number of programs/departments and committee time;
- Each program provides a report using a standard template in advance of the assigned meeting. The template may include the following topics: description of unit, recent performance measures, successes, challenges, and opportunities;
- Highlights are presented by the senior staff of the program, and committee members ask questions;
- At the end, the committee chair summarizes the comments and suggestions;

- This summary of comments/suggestions may include positive comments on performance, areas requiring more attention and items where further planning or coordination is needed; and
- The chair of the committee or chief executive officer typically sends a note to the program leaders summarizing the committee's thoughts and suggestions.

The specific protocol needs to be designed to maintain the appropriate distinction between the role of the board and the chief executive officer.

Organizing the Board to Perform this Function

A Program or Quality Committee to Take the Lead

A Program or Quality Committee may have the following types of responsibilities:

- Develop a comprehensive performance measurement framework;
- Establish criteria and indicators for the review of the effectiveness and quality of services;
- Review performance of programs/services in terms of quality compliance and performance results;
- Periodically evaluate or assess selected programs.

While the Program or Quality Committee might go by an alternative name (e.g., Program Evaluation and Quality Committee, Quality and Client Service Committee), it effectively performs the same function.

FUNCTION 4: OVERSEE FINANCIAL CONDITIONS AND RESOURCES

Understanding this Function

The board's overall governance purpose is to guide the corporation to sustained success in meeting its objects. Part of doing this involves ensuring the ongoing viability and sustainability of the corporation including the provision of funds and resources needed to carry out its mission and protecting its assets from risks. This function, therefore, involves the following components:

- Overseeing financial performance and viability;
- Ensuring resources/assets are available and effectively used; and
- Overseeing risk management to protect assets and resources.

Overseeing Financial Performance and Viability

The board needs to ensure the corporation has the ability to provide the funds to meet its service and program agreements/commitments. This means paying attention to the following items:

- Ensuring funding is available for ongoing operations, which essentially means having a balanced income statement;
- Ensuring cash flow is sufficient to maintain viability; and
- Monitoring operating performance to ensure agreements and commitments are met.

Ensuring Resources/Assets are Available and Effectively Used

Not-for-profits need assets to carry out their business (e.g., facilities, program rooms, technology, offices, equipment, computers, and transportation vehicles). The corporation needs the resources to provide, maintain and, at a future time, replace those assets. The board needs to ensure these assets are available to the organization and used effectively. This means paying attention to the following:

- Ensuring availability of capital funds to maintain and replace facilities and other assets that are needed to provide services to clients;
- Ensuring that the assets are used properly and effectively; and
- Avoiding impairment of assets due to poor preventive maintenance or other causes.

Overseeing Risk to Protect Viability and Assets

It is important for an agency to be in good shape financially in order to continue providing its services. Obviously, there are risk factors that need to be considered with respect to the above two functional components. A broader view of risk management considers the following issues:

- Risks to meeting the mission and maintaining goodwill or reputation which may include quality services;
- Liabilities and losses owing to service delivery or ineffective management; and
- Business viability risks related to providing funding for operations or maintaining sources of funding.

The financial oversight function has broadened in recent years to include additional items:

- Ensuring performance meets funder service commitments, which cover both financial and service unit and quality indicators;
- Ensuring a broader consideration of resources beyond financial meaning (e.g., oversight of information technology, facilities and related assets); and
- Maintaining a greater emphasis on organizational capacity, processes and information integrity.

In the past decade, a broad view of risk has emerged that is referred to as Enterprise Risk Management. Enterprise Risk Management requires the board and management to take a more comprehensive view of the risks faced by the corporation. Quality care and client safety oversight overlap in this process. Enterprise Risk Management is discussed more fully in the next section: *Overseeing Enterprise Risk Management*.

Implementing this Function

There are a number of elements the board needs to oversee to perform this function, as described below.

In fulfilling this role, the board needs to maintain its governance responsibilities and not become excessively involved in operational decision-making.

The board needs to assure itself that management has put in place the appropriate policies, plans, processes and programs to provide the resources required for meeting those plans and to prepare for, prevent, and protect the corporation from foreseeable and material risks.

Approving Operating and Capital Budgets

Financial plans, including operating budgets and capital budgets, provide a basis for protection against predictable risks to the viability of the organization.

Additional considerations include:

- Budget planning and monitoring;
- Internal productivity comparisons to benchmarks to ensure the organization is not falling behind its peer group relative to its level of efficiency;
- Cash flow management to ensure operations are not jeopardized by lack of cash to meet short-term obligations;
- Capital planning to ensure the capital needed to maintain and replace buildings and facilities is available and used cost-effectively. This means ensuring there are adequate capital reserves and fundraising capacity to meet forecast needs; and
- Information technology (IT) resources planning – may be considered part of capital planning, given the major investments required. This is becoming a more significant item in the resources planning checklist.

Monitoring Financial Performance

As discussed, to carry out this function, the board needs a basis for assessing performance (i.e., performance indicators, targets, and regular reporting and variance identification).

In devising this list, the following key elements should be covered:

- Operating financials:
 - Variance to the current budget or prior year;
 - Margin levels – per cent contribution to overheads or fixed costs; and
 - Efficiency measures – cost per case, per result (e.g., for an employment agency cost per person employed after six months).
- Capital Measures:
 - Level of operating reserves;
 - Adequacy of reserves for building and equipment replacement; and
 - Pension funding adequacy.

- Solvency:
 - Working capital level and change.
- Forecasts/projections:
 - Ongoing revenues relative to ongoing costs (i.e., one-time revenues and costs removed).

Many sectors (colleges, child protection, day care, employment, home care, hospitals, and so on) have some standard financial performance indicators for delivery agencies that can be monitored.

Ensuring Integrity of Information

The organization's financial information systems need to be sound. One of the tasks of the board is to oversee the status of the financial reporting and control system. It does this by approving such systems in the first place and auditing or overseeing audits that provide assurances that the systems, policies and processes are sound and functioning well.

An effective system includes the following:

- An effective regime of authorities for approving expenditures (cheque signing at various amounts);
- Commitment to sign contracts at various levels (a process for monitoring compliance to authorities and controls);
- Competent and qualified staff;
- A process to detect fraud/incompetent staff; and
- A whistleblower policy.

Of course, this function leads to the audit function, which includes:

- Overseeing the external auditors and their reports on the above;
- Having an opportunity to ask auditors where issues are identified (materiality issue);

- Recommending the acceptance of the annual reports; and
- Recommending the appointment and terms of the external auditors.

See *Chapter 8, Form 8.6: Sample Committee Responsibilities*

Insurance Protection

The board should assure itself that insurance programs are adequate, given the identified and assumed risks, and are maintained at appropriate levels and regularly reviewed by management.

Procurement and Contracts

The board should be satisfied that there is an effective policy framework for managing the procurement of goods and services and the management of contracts. This should include the following:

- Request for proposal and contract-signing policy to ensure adequate level of approval and accountability based on amount;
- Compliance with procurement policy, both internal policy and government policy;
- Ensuring adequate number of competitive bidders for specified levels of contract value;
- Contract review and retention;
- Limited appointment of agents;
- Due diligence with respect to key relationships to ensure performance can be met; and
- Monitoring performance of service providers.

The board also needs to approve individual contracts based on the policies.

Investment Policy

The board should establish or approve a set of sound policies relative to the investment program, by:

- Defining the nature of acceptable investments;
- Ensuring adequate diversification;
- Reviewing portfolios; and
- Monitoring investments for compliance.

Pensions Funding

The board should ensure that its pension plans, if applicable, are adequately funded, especially when these plans are defined benefit plans.

Organizing the Board to Perform this Function

The board needs to oversee management's efforts to protect the financial condition and assets of the corporation. Since this is such an important function and one requiring some attention to specifics, most boards will need to obtain support from one or more committees to do it properly.

Finance Committee

Almost every board will establish a primary committee overseeing financial conditions and performance. The choice is about the scope of responsibilities assigned to that committee (i.e., should it include audit, risks except quality risks, IT and facilities oversight and so on). The specific mandate often affects the committee's name.

This committee should include directors with financial expertise. By appointing individual directors with finance and related skills to such a committee, the board as a whole can have greater comfort that its fiduciary duties are being given due consideration. This does not, however, relieve the whole board from its obligation in financial affairs. It simply supports the board in carrying out this function.

A Finance Committee typically has the following responsibilities:

- Approve process and guidelines for budget development;
- Approve financial authorities and control policies including signing and contracts;
- Establish performance controls for financial review and variance reporting;
- Review on a regular basis, the key cost, productivity and financial indicators, and identify issues;
- Establish investment policies and monitor status and compliance;
- Review risk management, including insurance policies and protection;
- Assess adequacy of financial information, systems and controls; and
- Liaise with the external auditors on behalf of the board and follow-up on audit reports.

Further, the Finance Committee's responsibilities may be broadened slightly to include all resources, and can thus be designated as the Resources or Stewardship Committee. The broader coverage may include overseeing information technology plans, human resources and facilities planning.

Possible Variations to the Finance Committee

The responsibility of overseeing and liaising with the external auditors, as well as assuming some oversight roles, can be handled in a number of ways:

- Include with the Finance Committee mandate the option of calling the committee "Finance and Audit";
- Create a sub-committee reporting through the Finance Committee to oversee the work of the external auditor and deal with audit reports; and
- Form a separate Audit Committee reporting directly to the board.

If a separate committee or sub-committee is formed, all of the members would be external directors (not management or *ex officio* directors).

Likewise, there may be a separate Investment Committee or sub-committee appointed to support the Finance Committee or the board if there is a major investment portfolio.

FUNCTION 5: OVERSEE ENTERPRISE RISK MANAGEMENT

Understanding this Function

It is commonly accepted that one role of the board is to identify and manage risk. The challenge of defining the board's role here is that risk cuts across virtually all aspects of board decision-making – quality, finance, and community relations.

Sources of Enterprise Risk

Risks are typically thought of as losses created by external or internal events or acts. Enterprise Risk Management considers risk from a broader perspective, including both financial/quantified and intangible losses. A broader break-up of the sources of risks can be considered in three categories:

- Liabilities and losses;
- Business viability risks; and
- Reputational risks.

Liabilities and Losses

Most corporations have direct liability for their equipment, premises and facilities, client or patient safety and protection, safe operation of internal systems, processes and protocols, staff competence. Potential loss or liability generally arises in four broad categories:

- Contractual obligations;
- Statutory liability;
- Adverse events; and
- Negligence (or other torts).

Business Viability Risks

A fundamental business risk is sustainability. This concerns the ability of the corporation to fund its commitments and ongoing services and programs. Examples of the major risks to sustainability include:

- Insufficient cash flow to meet obligations, which could arise from fraud or dishonesty;
- Lack of operating funds to provide for desired services, which may arise from a number of causes, such as budget assumptions not realized, or unexpected events impacting revenue or expenses; and
- Lack of capital funds to maintain facilities or broaden services to clients, which could arise from a number of sources, such as lack of fundraising support from the foundation, capital project overruns, or poor preventive maintenance or capital needs planning.

Enterprise Risk Management considers risk from a broader perspective, including both financial/quantified and intangible losses.

Reputational Risks

Reputational risks are primarily about the reputation of the agency, which may have consequences for its support in the community, and the ability to meet the service aspirations of clients and the community. This type of risk is the risk of lost opportunity, failing to achieve the agency’s vision or maximizing the delivery of its mission. Mission and intangible risks may arise from quality of services (client complaints or liability cases regarding quality of services or product liability) or closure of services.

Implementing this Function

Enterprise Risk Management Best Practices

In the past, risk focused more exclusively on financial performance and legal liabilities for client care and safety. This naturally included considering a narrower purview of risks. It restricted this function primarily to operating budgets, capital budgets, insurance protection and financial controls.

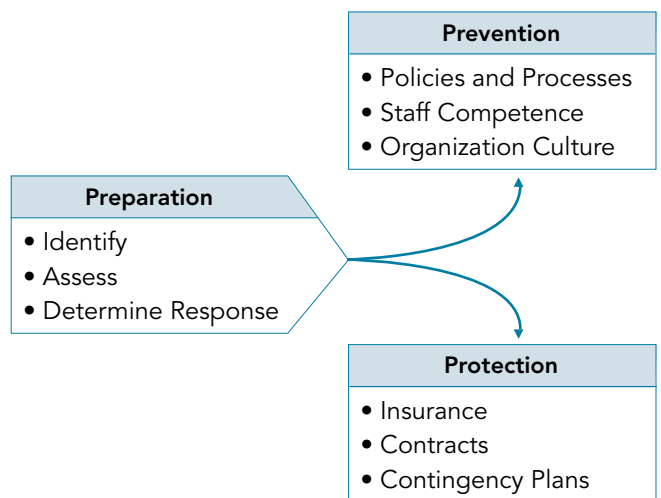
The contemporary approach, referred to as Enterprise Risk Management, involves a broader view of risk. It includes many elements referred to under financial function. *Figure 5.3: Risk Management Oversight*, shows how comprehensive the list is. It incorporates risk related to finances and assets, and overlaps that with program quality and services oversight. To some extent, this also includes stakeholder relations, as it affects reputational risks.

One framework for considering this involves three interrelated disciplines: preparation, prevention and protection, as shown in *Figure 5.4: Risk Management Strategies*.

Figure 5.3: Risk Management Oversight



Figure 5.4: Risk Management Strategies



Preparation – Preparation involves identifying and assessing potential risks, as well as determining how to respond to each risk. It includes:

- Identifying risks – Periodically conducting a comprehensive risk identification process;
- Assessing risks – Considering the likelihood and potential impact of risks, and the ways to address or respond to each; and
- Establishing responses to risks – That is, avoiding, accepting, reducing, or sharing a risk.

Prevention – Prevention includes ensuring the operating plan is achieved, as well as preventing failures in executing the plan. Strategies for prevention of loss or mitigation of risk include:

- Establishing policies and processes – Ensuring risks are avoided, where possible, and that performance is monitored so that management can take corrective action;
- Educating staff – Ensuring that employees are competent; and
- Building a pro-active organizational culture – Ensuring that the culture promotes the achievement of results, and identifies and addresses risks.

Protection – Protection includes mitigating the effects of risks on the organization through various measures. These measures include:

- Purchasing insurance to protect the corporation from the effects of risks;
- Establishing contractual protections against contingencies or risks; and
- Establishing contingency plans to diminish the impacts of potential risks and surprise events. This includes emergency preparedness for disasters and client occurrences.

Management's Risk Management Program

The board needs to assure itself that management has put in place the appropriate policies, processes and programs to prepare for, prevent, and protect the corporation from foreseeable and material risks.

Where Enterprise Risk Management has been adopted, management has typically led the development of this approach. In these cases, the board oversees management's Enterprise Risk Management program.

As part of this process, contingencies and potential surprise events should be considered, as well as the level of the organization's preparedness. Based on this assessment, the board needs to review management's plan for preventing and protecting the corporation from these risks.

Expectations for the Board

Relying on the oversight of management is not sufficient. The board and its members need to ensure that the board's actions and processes are in line with risk management needs. The following are examples of topics they must consider.

Knowledge and abilities of the board and board committees – Board members and board committees must know their functions and have the skills to perform them. The board must:

- Ensure committees that are involved in risk management are properly mandated and include appropriately skilled directors;
- Ensure activities are in place to inform each director on the nature of the board's role, and the role of the committees involved in financial matters and risk; and
- Ensure directors recognize their independence to perform their duty, including asking questions of the board and in committees, keeping themselves free from external influences, and providing the opportunity to receive independent advice where needed.

Quality information and advice – To discharge their responsibility for assessing risk, the directors need quality information from a number of sources. This would include:

- Appropriate and understandable performance management reports;
- Access to additional advice/reports, such as the advice of senior management and clinical or technical leaders, and external reports (as appropriate) to keep them apprised of the trends in the sector. Board members should also have access to external advisors, where deemed necessary. This may include asking for professional opinions and receiving third-party advice directly; and
- Management information – The board needs to use its common sense regarding the adequacy of the information coming before it, but when there is some concern, the board can request that the information be certified, and management attests to its accuracy. (The board should understand that certification is not a guarantee that the information is accurate. It is simply a higher level of evidence that it is sound.)

Participation in the key financial and quality oversight processes – The directors need to participate effectively in the processes established to plan and manage the key aspects of the organization to protect against risk. Processes related to financial and quality oversight are critical.

Matters of potential risk requiring special attention

– The directors must develop a sound relationship with the foundation board so that the corporation's capital needs can be met by the agency's (or its foundation's) resource development plans. They should also review directly major redevelopment projects in terms of budget commitment and progress status. Boards must ensure that when making commitments to capital, there are adequate operating funds to use towards capital facilities or equipment.

Question and act in response to information and changes

– Being skilled and participating is not enough to ensure that the agency is free of risks. Board members, and the board as a unit, must question management and be prepared to act when the information provided indicates a significant risk to the interests of the organization. The following actions should be considered:

- Question the reasonableness of the assumptions and the potential risks to execution of management's strategic, financial, and other plans;
- Question the level of preparedness of management for contingencies and surprise events; and
- React quickly or direct management to respond in exceptional circumstances when events emerge that create risks for the agency's reputation, performance or viability.

Organizing the Board to Perform this Function

Structuring Committees

There is no requirement to have a distinct Enterprise Risk Management Committee. In fact, because risks tend to relate to other disciplines, it may make sense for existing standing committees to address the pertinent aspects of risk within their other responsibilities.

Accordingly, many boards may take the following approach to assigning risk to standing committees.

- The **Program or Quality Committee** reviews program effectiveness, quality assurance and quality management programs related to risks and contingencies;
- The **Finance Committee** reviews financial condition risks, including adequacy of budget, efficiency relative to funding, simulations and sensitivity to revenue shortfalls, adequacy of financial reporting and controls, and need for insurance; and

- The **Audit Committee (or Finance Committee)** reviews adequacy and implementation of risk management policies and programs related to the integrity of processes and information.

Risk Management Committee

Some boards may choose to establish a Risk Management Committee to work with management to identify and address the risks to the corporation broadly.

In either case, the committee may establish a regular risk review process to ensure major risk topics are systematically addressed.

See *Form 5.4: Risk Assessment Framework Agenda Planner*

FUNCTION 6: SUPERVISE LEADERSHIP

Understanding this Function

One of the board's important functions is to ensure there is effective leadership in place to manage the organization. For not-for-profits, the leaders may be titled an executive director, president and/or chief executive officer. The title chief executive officer is used to mean the senior manager responsible to the board. The board's job is to supervise this leader and ensure there is effective leadership within the organization.

In some situations, the board has a bicameral organization with two leaders, one administrative and the other professional or artistic. This typically happens in hospitals, some research entities, cultural organizations and universities/educational organizations. This section focuses on the typical case where there is one head of management.

The board's supervisory responsibility in ensuring effective leadership involves the following:

- Defining chief executive officer expectations;
- Leading the chief executive officer recruitment process;
- Overseeing the annual chief executive officer evaluation process;
- Linking to chief executive officer compensation;
- Approving a succession plan for the chief executive officer.

Implementing this Function

Defining Chief Executive Officer Expectations

In the case of either a selection process or an annual evaluation, the board needs to establish clear expectations and criteria for selecting or evaluating a chief executive officer. For evaluation or appraisal, there ought to be a mutually agreed upon set of criteria. Judging the performance of a chief executive officer starts with a review of the job description. A job description which describes key objectives, as opposed to activities, provides the best starting point. See *Figure 5.5: Chief Executive Officer Key Results Areas*.

Figure 5.5: Chief Executive Officer Key Results Areas

Chief Executive Officer Key Results Areas

- Level and quality of services delivered within approved budget.
- Strategic direction in place, clear and supported by key stakeholders.
- Cost-effective and sound administration of human, managerial, and financial resources.
- Effective and collaborative relationships with appropriate agencies and organizations in the community.
- Respectful and effective board relations.

Each board will need to determine its own list of evaluation criteria. However, the criteria should fall under two broad categories:

- **Achievement of annual key results** – The chief executive officer establishes annual goals, objectives or priorities relative to the key result areas. Did the chief executive officer achieve the stated goals/objectives regarding the organization's results and/or successfully complete defined projects? The results need to be linked to the organization's strategic plans and to other targets.
- **Leadership behaviour and/or skills demonstrated** – Does the chief executive officer demonstrate the behaviour and skills expected of a leader in his/her role? Of course, the behaviours and competencies need to be articulated as criteria. There are many lists of competencies expected of executives that may be used as a starting point.

Leading the Chief Executive Officer Recruitment Process

As indicated earlier, the recruitment process begins with a clear sense of the characteristics and skills required to perform the chief executive officer role. The board typically delegates the process to an ad hoc or standing committee.

The process should include the following steps:

- Define the profile desired, including criteria for assessment of candidates;
- Assess the internal pool of candidates, potentially using succession plans;
- Determine the scope of the search based on available internal candidates and the process for recruitment and evaluation;
- Conduct a search, either by the committee or with professional assistance;
- Evaluate the candidates; and
- Identify the proposed candidate for board review and approval.

For large agencies, launching a national search with the assistance of a search firm is the typical approach to recruiting a new chief executive officer. As succession plans are developed, it is possible that boards will be able to narrow and simplify these recruitment processes over time. However, smaller agencies need to look externally with an eye to cost. Hence, they may rely on a board-led search process.

Overseeing the Annual Chief Executive Officer Evaluation Process

For the board to discharge its overall responsibility as supervisor of the chief executive officer, a regular chief executive officer evaluation or appraisal process is critical.

Undertaking an evaluation process provides the following benefits:

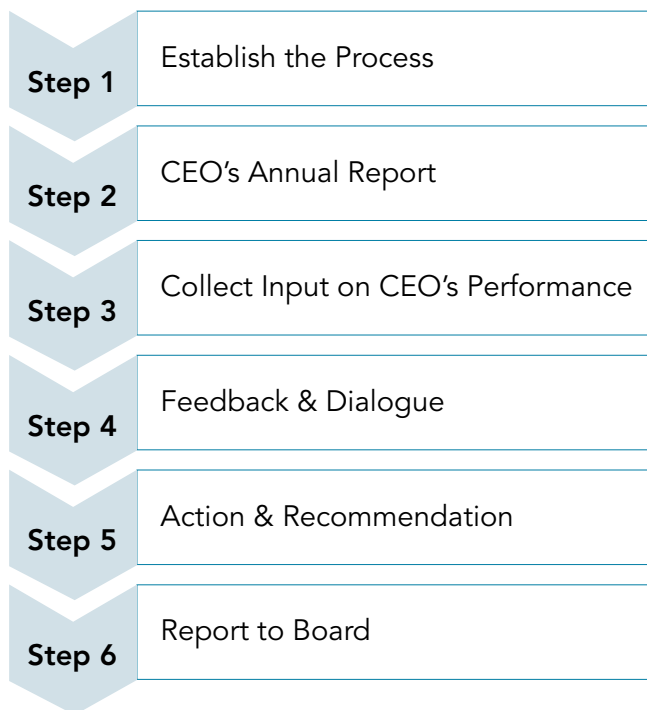
- Clarifies expectations between the board and the chief executive officer;
- Provides feedback to the chief executive officer as a basis for continuing positive performance and taking corrective action;
- Forms a basis for establishing an objective, professional relationship between the board and the chief executive officer, and for increasing trust;
- Forms a basis for providing the chief executive officer with developmental support, where helpful;
- Provides an objective and fair basis for determining compensation decisions; and
- Provides a basis for addressing the issue of succession planning in a timely way.

It is proper practice for chief executive officers to establish annual goals and objectives. Therefore, it is advisable that boards review and approve chief executive officers' annual goals and review performance annually.

Consider a Six-Step Annual Chief Executive Officer Evaluation Process

The chief executive officer evaluation process typically follows the six steps described below and shown on the left. The process may take place over two to three months.

Figure 5.6: Six-Step Process



Step 1: Establish the Process

The board approves the process for chief executive officer evaluation. In developing the process, the assigned committee and board chair should work with the chief executive officer. It is best if there is a mutually agreed upon process (criteria, tools, sources of input and feedback process), access to information and input (privacy and confidentiality considerations), and role descriptions (chair, committee, individual directors).

Step 2: Receive the Chief Executive Officer's Annual Report

Part of the process of evaluation is an annual 'state of the union' report from the chief executive officer to the board on the discharge of his/her duties, and the results of his/her performance.

The chief executive officer should present this report to the full board as part of the regular annual operational planning process. The report includes the establishment of annual objectives for the following year as well as a review by the chief executive officer on last year's performance relative to annual objectives.

Step 3: Collect Input on the Chief Executive Officer's Performance

Based on the agreed process, information is collected from appropriate (and agreed upon) sources on the chief executive officer's performance and skills. This includes the chief executive officer's self-appraisal.

Step 4: Digest and Discuss Feedback

Once collected, the chair or committee needs to summarize the feedback and then digest its meaning and prepare a summary opinion. The summary forms the basis for a discussion between the chair and/or committee with the chief executive officer about the feedback and its implications.

Step 5: Make Recommendations

Based on the discussion, the chair and committee will make appropriate decisions or recommendations to the board. These will include:

- Recommendations related to the chief executive officer's development that responds to feedback or the chief executive officer's identified needs. This should include a discussion of succession; and
- Recommendations related to compensation or bonus, as provided in the chief executive officer contract or terms of employment and the regulations pertaining to chief executive officer and executive compensation.

Step 6: Report to the Board

Finally, the chair and committee inform the board that the process was followed as set out, and seek approval for pertinent implications or recommendations will need to be approved.

Inputs to the Chief Executive Officer Evaluation

While the board is responsible for making judgments about the chief executive officer's performance, there is a strong argument that input from beyond the board is needed. Input could be collected from other sources, such as other directors, members of senior management and senior professional staff, or external representatives (e.g., provincial association office, family or client organizations, and local agencies).

Collecting feedback on the performance of the chief executive officer can be conducted in a number of ways. A number of options include:

- **Chief executive officer's self-assessment** – Input should come from the chief executive officer on his/her view of his/her performance and skills.

- **Committee or panel discussion** – Input can be gathered by a committee or panel of board members through a discussion process. Each criteria is discussed and the group summarizes its opinion using a simple rating scale (exceeds expectations/meets expectations/does not meet expectations).
- **Structured evaluation survey** – A structured survey instrument can be used to canvass opinions on chief executive officer performance. This can be from the board or from a broad set of sources. A designated person (chair or third-party) collects and summarizes the confidential surveys. The results form the basis for a discussion with the chief executive officer.
- **Multi-rater survey instrument** – This is often referred to as a '360 degree feedback'. In this approach, people with different perspectives of the chief executive officer's performance (board members, senior management, and externals) are asked to provide input using a structured questionnaire. Either the organization designs its own survey based on the criteria (competencies and leadership skills) or uses a third-party survey.

See [Form 5.5: Chief Executive Officer Annual Priorities Review](#)

See [Form 5.6: Chief Executive Officer Confidential Board Panel Appraisal Form](#)

See [Form 5.7: Chief Executive Officer Performance Evaluation and Compensation Policy](#)

Link to Chief Executive Officer Compensation

Chief executive officer compensation is also an important matter for board oversight. In establishing the employment contract with the chief executive officer, the board will define the terms of compensation and potential incentive bonus. Since compensation is disclosed publicly, there is a degree of transparency in these matters not common in other corporations.

The board needs to establish a compensation policy and process. Boards should keep in mind a number of principles in developing a compensation policy and process:

- Being competitive in order to attract good candidates;
- Being equitable internally and within community expectations;
- Linking pay to performance; and
- Being fiscally responsible so it can defend its decisions.

In some sectors, boards need to consider government or funder-imposed guidelines regarding chief executive officer and senior management compensation. For example, hospitals and other corporations need to consider the provisions of the *Excellent Care for All Act* and the *Public Sector Compensation Restraint to Protect Public Services Act*.

The board or assigned committee will need to obtain information and advice to ensure their compensation and incentive arrangements are in line with sector practice and any regulations.

Once the compensation arrangements are set, there needs to be a clear link between the results of the chief executive officer evaluation and the decision about compensation and bonus. That is why it is suggested that the process be linked, and that the same committee assigned the responsibility to conduct the evaluation also make recommendations regarding compensation.

In principle, there should be a strong link between achieving performance results and financial incentives. However, the board needs to be careful not to overemphasize the achievement of short-term (annual) results to the detriment of the underlying strength and sustainability of the organization. This is one factor that can contain the size of bonus incentives relative to the base compensation. It is also a reason why the criteria chosen need to reflect additional longer-term factors,

such as building/people/organizational capacity, and external relationship management, confidentiality, diverse inputs, and rigour.

Approving a Succession Plan for Chief Executive Officer

Considering that chief executive officer turnover is occurring at an increasing rate, and that many baby-boom generation executives are retiring, boards need to ensure there will be effective leadership continuity. While this dimension of governance is getting more attention, it is still a function requiring much more attention by boards in the future.

See [Form 5.8: Chief Executive Officer Succession Planning](#)

Succession planning has two dimensions:

- Emergency or contingent coverage for the chief executive officer; and
- The process of developing candidates to be future chief executive officers when needed.

Considering that chief executive officer turnover is occurring at an increasing rate, and that many baby-boom generation executives are retiring, boards need to ensure there will be effective leadership continuity.

Whether in an emergency or chief executive officer retirement or replacement situation, the size of the agency affects the appropriate process. Smaller agencies are less likely to have an obvious candidate for succession given a more differentiated management structure. As a result, having one or more apparent successors is less likely. Moreover, such agencies may need more than one potential emergency successor to step in.

- **Emergency succession**

Some organizations have emergency succession plans. Such plans consider who assumes the role as interim chief executive officer if there is a sudden need and how other roles are covered off. This form of contingency plan is less about succession and more about risk management. Boards are preparing for the unlikely but significant event that a chief executive officer cannot continue with his/her duties.

To do this, every year, the chief executive officer should identify one or more successors to take over in an emergency situation. The plan should also outline the steps to prepare such candidates for this possibility.

The board's policy for emergency succession should direct the current chief executive officer to prepare the candidate for the interim role. This would mean exposing an interim successor to the board as well as to issues and processes usually managed at the level of the chief executive officer. Having such individuals participate in board meetings would contribute to this training.

There may be a supporting communications plan given the importance of a speedy response to ensure stability. The issue of salary for the interim chief executive officer may also be pre-planned to clarify the process.

- **Succession planning involves leadership development**

Effective succession planning does not necessarily mean an heir apparent is identified to replace the current chief executive officer at some point in the future. That would be simply impractical. It would only be possible if the chief executive officer has announced a retirement date. Even in that case, the board would want to maintain flexibility to decide about what to do about recruitment.

Succession planning is really about improving the depth of executive talent below the chief executive officer. A sound succession plan should mean there is a depth chart for executive management roles. This means that for each executive position, including the chief executive officer and vice-president, there is a list of potential candidates, an assessment of their readiness to assume the role and the development efforts undertaken to ready them. Succession planning clearly involves leadership development.

Potentially, a succession plan includes one or more candidates for the chief executive officer role who can take over when the chief executive officer retires or moves on. Notwithstanding that, boards may still choose to include a broader search for candidates.

Similar to some other governance functions, the board is not in a position to prepare a succession plan. The chief executive officer must develop leadership talent in the context of succession planning. The board needs to make sure it gets done.

To ensure this function is fulfilled, succession planning should be included in the chief executive officer's annual review process and the chief executive officer should report on succession planning annually.

See [Form 5.8: Chief Executive Officer Succession Planning Policy](#)

Organizing the Board to Perform this Function

The board as a whole needs to approve the processes for selecting, supervising, and compensating the chief executive officer. Moreover, individual directors should have input in the evaluation process and receive a report on the results, including recommendations. While the board needs to be assured that the chief executive officer is being supervised appropriately, each director does not need to be involved in the details of the evaluation process.

Establishing a Standing Committee

Emerging good practice suggests establishing a standing committee with a mandate for organization and human resources needs including chief executive officer evaluation, succession planning, selection and compensation.

This committee may only need to meet annually or when the need arises. It can be a small committee composed exclusively of independent board members. Typically, the chair or incoming chair should lead this process for the board and, hence, chair the committee.

There are optional names for such a committee (e.g., Organization and Human Resources or Management Resources and Compensation Committee).

See [Form 5.9: Guidelines for a Management Resources and Compensation Committee](#)

FUNCTION 7: OVERSEE STAKEHOLDER RELATIONSHIPS

Understanding this Function

Overseeing stakeholder relations has become an increasingly important function of the board over the past decade. In considering the quality of stakeholder relations, boards need to consider the concepts of accountability, transparency and engagement that provide a foundation for this function.

In a broad sense, the board needs to ensure that the corporation develops effective stakeholder relationships so that it has stakeholder support for its objectives. Stakeholder groups have an interest in the agency's affairs and the potential to positively or negatively influence the corporation's well-being.

For stakeholder relations to be effective, one needs to recognize the distinction between being accountable to a stakeholder and promoting a good relationship. The

In considering the quality of stakeholder relations, boards need to consider the concepts of accountability, transparency and engagement that provide a foundation for this function.

latter uses transparency and engagement as means of promoting a favourable image.

Boards have a number of accountability requirements:

- Boards need to report to the members of the corporation annually;
- Most not-for-profit corporations have contracts or service agreements with government funders which require reports on their performance from time to time; and
- Some local or regional “branches” have an obligation to report to provincial or national organizations on a periodic basis.

With respect to community engagement, those agencies funded by LHINs have a legislated obligation to “*engage the community of diverse persons and entities in the area where it provides health services when developing plans and setting priorities for the delivery of health service (Section 16(6)).*” Government funders typically have the same implicit or explicit policy expectation of agencies within other sectors.

This suggests that boards should:

- Identify a list of stakeholders relevant to the organization;
- Examine why and for what purpose the corporation is “relating” with each stakeholder group; and
- Define principles of how the organization should relate with each stakeholder group. The website www.epicontario.ca makes a useful distinction between four forms of engagement or relationships: inform and educate, gather input, consult, and involve.

Having stakeholders agree with everything the agency is doing is not necessarily achievable or even a measure of success; success means that stakeholders understand

the goals of the corporation and appreciate the rationale the board used in making a contentious decision. This is a more appropriate definition of good stakeholder relations.

Implementing this Function

Not-for-profits, especially those funded publically, are going through a formative stage in their approach to stakeholder relations and community engagement. There is increased activity and experimentation with approaches. However, there is no consensus on what defines best practice. There are some basic concepts and resources to help agencies and their boards address this important function.

Basic Requirements for Managing Stakeholder Relations

There are three basic requirements when managing stakeholder relations:

- **Develop a framework and plan** – The board needs to approve an overall policy direction for discharging its accountability, engagement and communications efforts with stakeholders.
- **Develop a plan using multiple tools** – The right approach needs to be tailored to the audience and the objectives of the relationship. Some tools support obtaining good input from stakeholders and others create more collaboration and engagement. Effective tools typically involve two-way communication. Further multiple tools are usually needed to promote effective relationship. The key is to consider multiple approaches and engage the audience by creating a two-way process of communication.
- **Monitor the status of stakeholder relationships** – Having a plan and using some tools are insufficient on their own. The board needs to receive reports about the status of the relationships with key stakeholders periodically.

Beyond the Annual General Meeting

The board reports annually to the corporation's members at an Annual General Meeting. The approach and value of this meeting will depend on the definition of members, which varies among corporations. Some organizations have a closed membership in which the members are the directors. Others have broad memberships, including individuals from many stakeholder groups.

Some boards will use the Annual General Meeting as an occasion to account to both members and representatives of broader stakeholder groups. The use of the Annual General Meeting for developing support and relations with stakeholders has limitations, especially given demands on everyone's time.

The Annual Report provides a basis for accounting and communicating the agency's plans and performance. While it serves as a foundation document, the Annual Report alone is insufficient for meeting this purpose.

The key to stakeholder relations is using a multi-faceted approach. Additionally, an agency may wish to "piggy-back" on, or take advantage of, other processes and opportunities to engage the community. For example, a strategic planning process is a great opportunity to gather input and opinions from stakeholders about the agency's performance and plans.

Organizing the Board to Perform this Function

The board itself is directly involved in certain aspects of overseeing stakeholder relationships. Generally, the board provides only policy direction and oversight.

Typically, the implementation of this function is a joint board/management responsibility under the following guidelines:

- The chair is the external spokesperson for the board;
- The chair and chief executive officer typically share or divide responsibilities for relating to external stakeholders. The chief executive officer typically plays the more visible role as the spokesperson for the organization; and
- The chair and chief executive officer need to work closely together to ensure a consistent message to external stakeholders.

Typically, the board is not highly involved in stakeholder communications unless there is a challenge or issue (for example, community or client activism, or a funder or government challenge regarding funding).

Boards are much more involved in overseeing the status of stakeholder relations today than a decade ago. Now, boards receive regular reports from management or a board committee, and periodically receive survey results or meet with their community advisory committee, where applicable.

Using Committees

Many boards have formed a committee to provide support for this function. These have been called Public, Community Relations or Communications Committees.

This committee's role may include reviewing communications plans and strategies, giving advice on communications tools and documents, and evaluating stakeholder relations and results.

A growing number of boards have formed community advisory or liaison committees. Most are led by a board member or have a board member as a liaison with the board. Members otherwise represent sectors of the community and stakeholder groups (business, client groups, families, and so on).

These liaison or advisory committees may report to the board or to the chief executive officer depending on their purpose.

FUNCTION 8: MANAGE THE BOARD'S OWN GOVERNANCE

Understanding this Function

The board's overarching governance purpose is to guide the corporation in meeting its objects. To do that, the board needs to decide on how it will govern. Therefore, the board must be responsible for its own governance.

Good governance is the result of having the right conditions in place and using them well. This entails having a high-functioning board, which has a clear knowledge of its proper role, and sound governance structures and processes in place.

As discussed in the previous chapter, the board needs to establish its governance model and approach to governance. In doing so, the board needs to cover a number of elements, including:

- Articulating the role and functions of the board;
- Clarifying the relationship between the board and management;
- Establishing the policies and practices used to promote a quality board; and
- Defining the structure and processes for how the board conducts its business.

Implementing this Function

This Guide provides a framework to establish the governance approach and the policies and practices of good governance.

Adopt a Statement of the Board's Role

To assist in clarifying how the board intends to govern, the board should adopt a formal statement of its role. While the board cannot limit its broad authority and accountability by such a statement, a formally adopted role statement is a useful tool for the board and can serve various purposes:

- It provides a useful educational tool for new directors to help them understand the areas in which the board performs a governance role;
- It provides a reference point for the development of the board's annual work plan and the organization's strategic plan and strategic directions;
- It assists the board in determining which committees should be established and the terms of reference for those committees;
- It provides an understanding of the areas in which the board exercises a governance role in order to make board evaluations effective; and
- It signals to the public the proper role of the board as a basis for clarifying expectations.

See *Form 5.1: Sample Statement of the Roles and Responsibilities of the Board*

Establish a Mechanism for Evaluating Effectiveness

Part of this function should define how the board intends to evaluate whether it is governing well. There are a number of dimensions to consider when assessing whether the board is performing its governance function well.

- The board's performance of its roles – The board needs to evaluate whether it is performing its key functions.

See *Form 5.10: Assessing Board Performance*

- The board's quality indicators – A board can determine the criteria for assessing governance quality and periodically monitor those indicators.

See *Form 5.11: Governance Quality Indicators*

- Evaluations of governance process and structure – [Chapter 7](#) provides approaches for reviewing and obtaining feedback on aspects of board quality, processes and structure, from its meetings to director performance.

Organizing the Board to Perform this Function

The board as a whole must decide how it will conduct its own business and how it will evaluate its conduct. Many boards delegate the preparatory evaluation work to a Governance Committee to support them in undertaking this function.

A Governance Committee can be very helpful to a board in performing the following tasks:

- Assessing the current state of governance practices and identifying gaps;
- Developing and monitoring the quality of governance indicators;
- Developing evaluation tools for assessing meetings, peer reviews or overall governance; and
- Developing draft by-laws, policies and procedures to improve and clarify governance.

The work of the Governance Committee needs to be reviewed and approved by the board as a whole before being implemented.

Supplementary Functions of Boards

The functions described above are generic for most not-for-profit corporations. For some, the board may be called upon or wish to perform additional functions. Some of these additional functions may emerge from the special legislation within which they function or from other special circumstances.

Resource Development

Resource development is the general term for fundraising. The role of the board in resource development will vary significantly depending on the nature of the organization and the situation.

For some not-for-profit charities (foundations), fundraising is their prime object which will be the centre-piece for governance. For others, it may be less central to governance.

In larger not-for-profit delivery agencies, management may lead the fundraising efforts, obtain board participation as needed, and get board approvals for plans and events.

Fundraising may be a supplementary function that requires some special board attention in other not-for-profit. Smaller corporations may rely on board expertise to oversee and plan the fundraising and resource development program. Most of these boards will form a special committee to undertake this function.

Some not-for-profit corporations, have an independent foundation that raises funds for the organization. In this case, the agency will need to establish a clear relationship and means of communication with the foundation. This often involves cross-over board membership and/or joint meetings. It is important to ensure that these relationships are clear and regularly reviewed so that effective working relations are maintained.

Real Estate

Not-for-profit corporations often own their facilities. From time to time, the agency may need to expand or redevelop its facilities. As a result, issues about selling, purchasing, redeveloping and constructing facilities emerge.

Major real estate projects involve significant dollars, create significant cash flow issues and potential exposure to risk, and involve signing complex contracts with architects, developers and/or contractors. The chief

executive officer and management may not have the experience and skills to deal with these on their own. In fact, they may not be comfortable dealing with these decisions without support. Owing to all of these factors, the board will frequently become involved more actively in these projects.

Often, a board will recruit one or more directors with real estate development or construction experience when it anticipates these issues on the horizon. The board may constitute a special committee with the right mix of skilled directors to oversee the project on behalf of the board.

Form 5.1

Sample Statement of the Roles and Responsibilities of the Board

Purpose

To ensure that the board has a shared understanding of its governance role, the board has adopted this Statement of the Roles and Responsibilities of the Board.

Responsibility of the Board

The board is responsible for the overall governance of the affairs of the corporation.

Each director is responsible to act honestly, in good faith and in the best interests of the corporation and in so doing, to support the corporation in fulfilling its mission and discharging its accountabilities.

Strategic Planning and Mission, Vision and Values

The board participates in the formulation and adoption of the organization's mission, vision and values.

The board ensures that the organization develops and adopts a strategic plan that is consistent with its mission and values, and which will enable the organization to realize its vision. The board participates in the development of and ultimately approves the strategic plan.

The board oversees operations for consistency with the strategic plan and strategic directions.

The board receives regular briefings or progress reports on the implementation of strategic directions and initiatives.

The board ensures that its decisions are consistent with the strategic plan and the mission, vision and values.

The board annually conducts a review of the strategic plan as part of a regular annual planning cycle.

Performance Measurement and Monitoring

The board is responsible for establishing a process and a schedule for monitoring and assessing performance in areas of board responsibility, including:

- Fulfillment of the strategic directions in a manner consistent with the mission, vision and values;
- Oversight of management performance;
- Quality of programs and client services;
- Financial conditions;
- External relations; and
- The board's own effectiveness.

The board ensures that management has identified appropriate measures of performance.

Program and Quality Oversight

The board is responsible for establishing policies and plans related to program effectiveness and quality.

The board ensures that policies and improvement plans are in place related to program quality, client safety, client experience and access.

The board monitors quality performance against the board-approved program and service improvement plan, performance standards and indicators.

The board ensures that management has plans in place to address variances from performance standards indicators, and the board oversees implementation of remediation plans.

Financial Oversight

The board is responsible for stewardship of financial resources, including ensuring availability and overseeing the allocation of financial resources.

The board approves policies for financial planning, and approves the annual operating and capital budget.

The board monitors financial performance against budget.

The board approves investment policies and monitors compliance.

The board ensures the accuracy of financial information through oversight of management and approval of annual audited financial statements.

The board ensures management has put measures in place to ensure the integrity of internal controls.

Risk Identification and Oversight

The board is responsible for being knowledgeable about risks inherent in the organization's operations and to ensure that appropriate risk analysis is performed as part of board decision-making.

The board oversees management's risk management program.

The board ensures that appropriate programs and processes are in place to protect against risk.

The board is responsible for identifying unusual risks to the organization and for ensuring that there are plans in place to prevent and manage such risks.

Oversight of Management

The board recruits and supervises the chief executive officer by:

- Developing and approving the chief executive officer job description;
- Undertaking a chief executive officer recruitment process and selecting the chief executive officer;

- Reviewing and approving the chief executive officer's annual performance goals;
- Reviewing chief executive officer performance and determining chief executive officer compensation;
- Ensuring succession planning is in place for the chief executive officer and senior management; and
- Exercising oversight of the chief executive officer's supervision of senior management as part of the chief executive officer's annual review.

Stakeholder Communication and Accountability

The board identifies the organization's stakeholders and understands stakeholder accountability.

The board ensures the organization appropriately communicates with stakeholders in a manner consistent with accountability to stakeholders.

The board contributes to the maintenance of strong stakeholder relationships.

The board performs advocacy on behalf of the organization with stakeholders where required, in support of the mission, vision, values and strategic directions of the organization.

Governance

The board is responsible for the quality of its own governance.

The board establishes governance structures to facilitate the performance of the board's role and enhance individual director performance.

The board is responsible for the recruitment of a skilled, experienced and qualified board.

The board ensures ongoing board training and education.

The board assesses and reviews its governance by periodically evaluating board structures, including board recruitment processes and board composition and size, number of committees and their Terms of Reference, processes for appointment of committee chairs, processes for appointment of board officers, and other governance processes and structures.

Legal Compliance

The board ensures that appropriate processes are in place to ensure compliance with legal requirements.

Amendment

This statement may be amended by the board.

Approval Date:

Last Review Date:

Form 5.2

Balanced Scorecards

The balanced scorecard approach was initially developed by Robert Kaplan and David Norton for use in the private sector to ensure corporations considered non-financial performance. See *The Balanced Scorecard: Translating Strategy into Action* by Robert Kaplan and David Norton (1996, Harvard Business School Press 1996).

The idea is essentially that financial performance is a lagging indicator of success while others, such as staff satisfaction and new product innovations, are leading indicators. Therefore, senior management and the board need to watch these latter two indicators, since they predict how well the company will do in the future.

The four standard perspectives relevant to hospitals are:

1. Patient or consumer perspective;
2. Financial perspective;
3. Internal processes perspective; and
4. Innovation and learning, or community engagement perspective.

In this approach, senior management develops a few objectives in each perspective area that are consistent and support the organization's vision, mission or strategic direction. For each objective, measures are developed with performance indicators that can be used to evaluate progress and achievement.

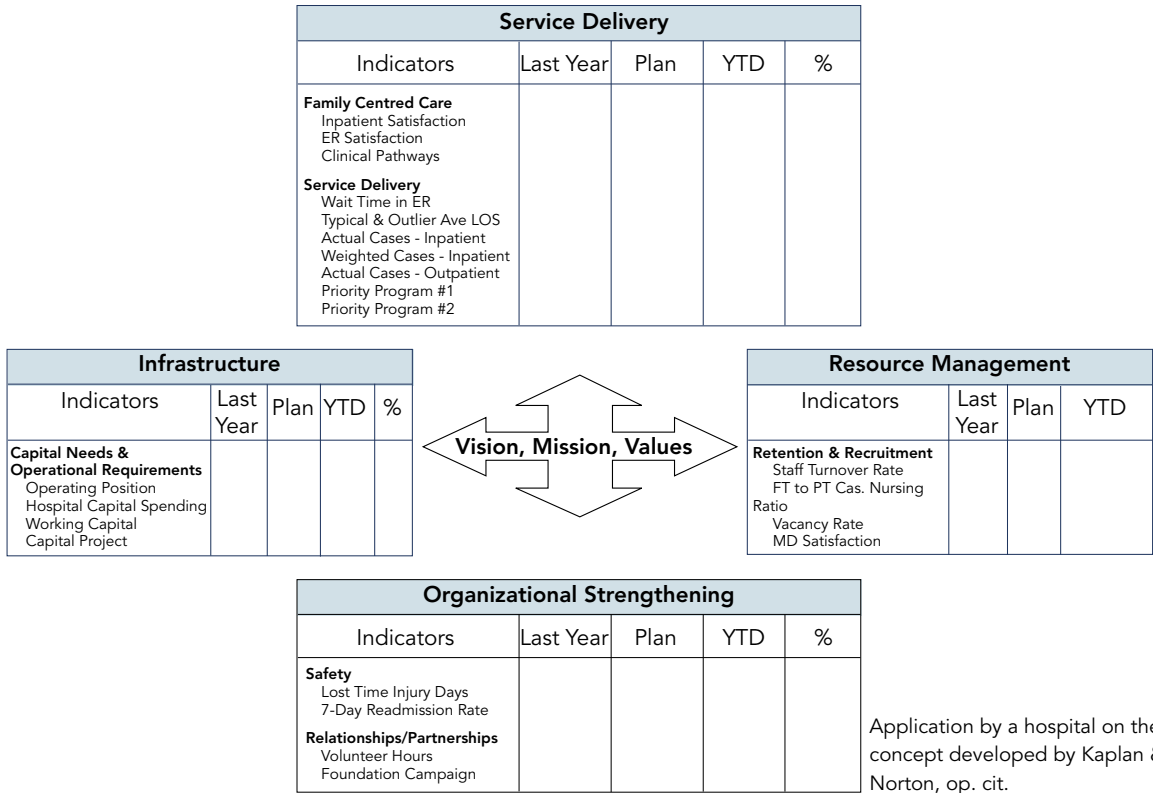
As a balanced approach, the method appears to suit the health sector. In fact, many hospitals have adapted the balanced scorecard approach to their situation, and report that it is serving them well. Graphic A is an example of measures used adapting the four perspectives. Graphic B shows another example of a reporting template using the four dimensions or perspectives. It includes columns to be completed with reporting information.

Graphic A: Common Performance Measures

Common Performance Measures	
Patient Access & Outcomes	Financial Health
<ul style="list-style-type: none"> • Client satisfaction • Service volumes (clients and units per program) • Percent clients reaching outcomes • Average length of enrolment 	<ul style="list-style-type: none"> • Surplus as a percentage of budget • Actual to expected cost per unit of service • Administration as a percentage of total expenses • Increase in non-governmental sources of revenue
Organizational Effectiveness	Innovation and Development
<ul style="list-style-type: none"> • Staff satisfaction and effectiveness • Turnover • Safety record • Percent departmental processes with updated IT support 	<ul style="list-style-type: none"> • Research funding • New programs launched for high priority groups • Number of partnership projects

1 of 2

Graphic B: Balanced Scorecard Approach



Form 5.3

Dashboards – Quality Performance Illustration

Dashboards typically display a conclusion about whether or not there is an issue with performance. This simplifies interpretation for the board. For each indicator, there is a colour with an obvious meaning:

- Green means the performance is above standard or within the performance range;
- Yellow means warning, suggesting the performance is below standard or low in the range; and
- Red means below standard.

To make this approach work, there must be some pre-defined rules about when each colour is used. The pre-established criteria or standards for judging performance variances will determine how the reporting looks each month or quarter. The board needs to understand how rigorous the standards are.

The dashboard example on the next page outlines performance using quality dimensions.

Many organizations are now fine-tuning their dashboard practices to better serve the board.


- Reporting different measures for different periods – developing certain indicators for monthly or quarterly reporting and others for annual review by the board. This reduces the indicators reviewed at any one time.
- Simplifying dashboards while providing summary back-up – Dashboards are getting simpler and easier to understand. These are often supplemented by back-up sheets that offer more specifics about indicators and a brief commentary from management explaining variances. This allows some board members to examine certain quality indicators, while others may focus elsewhere.
- Creating more transparency and comparative benchmarks – Dashboards have been easy to interpret since the green, yellow and red scheme is intuitive. However, it can be deceptive, since it isn't obvious what method underlies the determination of colour. Some dashboards now show the standard for determining status for greater transparency. Also, whether a balanced scorecard or dashboard method is used, the comparisons to benchmarks and comparable hospitals have been under-developed. This aspect of performance reporting is improving.


Quality Dimension	Indicator	Hospital Trend	Current Results Against			
			Target (Ministry or Hospital)	Provincial / Peer Average	LHIN Average	Hospital Previous Performance
Work Life	Occupational Incidents	v				
Safe	Rate of Adverse Events – Labour & Delivery	v				
	Rate of Adverse Events – In Hospital Fractures	v				
	Rate of Adverse Events – Surgical	^				
	<i>C. Difficile</i> Rates	^				
	MRSA Colonization Rates	v				
	MRSA Infection Rates	—				
	VRE Colonization Rates	^				
	VRE Infection Rates	v				
	Central-Line Infection					
	Ventilator Associated Pneumonia					
	Surgical Site Prevention					
	Hand Hygiene Compliance					
Effective	HSMR	^				
	Medical Readmission Rates	^				
Timely	ED Left Without Being Seen	^				
	ED Wait Time – Admission to Left ED	v				
	ED Wait Time – Total Time Spent in ED	v				
Timely & Equitable	Wait Time – CT	v				
	Wait Time – MRI	v				
	Wait Time – Hip Replacement	v				
	Wait Time – Knee Replacement	^				
	Wait Time – Cataract surgery	v				
	CCO Wait Time – Cancer Surgery	v				
Efficient	Conservable Beds	^				
	Cost Per Equivalent Weighted Case	^				


Quality Dimension	Indicator	Hospital Trend	Current Results Against			
			Target (Ministry or Hospital)	Provincial / Peer Average	LHIN Average	Hospital Previous Performance
Continuity of Services	Admit No Beds	v				
	ALCs as a % of Total Patient Days	v				
Population Focus	Top 10 CMGs	—				
Patient Centred	Patient Satisfaction – ED	—				
	Patient Satisfaction – Acute Inpatient	^				


Legend No comparator available

Trend Improving ^

Tracking positively against comparator 

Tracking around/similar to comparator 

Tracking unfavourably against comparator 

No data available 




Diminishing v

Stable —

Form 5.4 Risk Assessment Framework Agenda Planner

	Risk	Internal Audit	Committee Agenda Plan					
			Aug	Oct	Dec	Feb	Apr	Jun
Finance – Legal/Regulatory Compliance								
Taxes (Payroll, Commodity, Property)	High Risk	x						✓
Financing	High Risk		✓	✓		✓		✓
Pension Plan	Medium Risk			✓				
Finance – Operational								
Operating Results & Forecasting	High Risk	x	✓		✓	✓		✓
Working Capital Management	High Risk		✓		✓	✓		✓
Procurement Management (Contracts, etc.)	Medium Risk	x	✓					
Accounts Receivable & Revenue Management	High Risk	x						
Signing Authority & Delegations	High Risk	x						
Investments (Decisions, Policy)	High Risk							✓
Legal Claims	High Risk							✓
Insurance (Comprehensive, Asset)	High Risk		✓					✓
Facilities & Infrastructure – Legal/Regulatory Compliance								
Fire and Building Code	High Risk							
Occupational Health & Safety Act	High Risk							
Facilities & Infrastructure – Operational								
Facilities Management – Repairs & Maintenance	High Risk							
IT – Operational								
Privacy Legislation	Medium Risk	x		✓				
IT Infrastructure & Operations (Networking)	High Risk	x	✓					
Data Quality & Integrity	High Risk	x						
IT Partnership Management	Medium Risk	x			✓			

Legend:

Low Risk	
Medium Risk	
High Risk	

Form 5.5 Chief Executive Officer Annual Priorities Review

Priorities	Status				Comments	Primary Strategic Indicator Linkage
	Q1	Q2	Q3	Q4		
1. Realizing Quality and Efficiency						
Priorities	Status				Comments	Primary Strategic Indicator Linkage
	Q1	Q2	Q3	Q4		
2. Building HR and Organization						
Priorities	Status				Comments	Primary Strategic Indicator Linkage
	Q1	Q2	Q3	Q4		
3. Leading Governance Excellence						
Priorities	Status				Comments	Primary Strategic Indicator Linkage
	Q1	Q2	Q3	Q4		
4. Balancing Budget through process streamlining						

Completed, or currently on target

Behind target somewhat

Significantly behind target, completion not expected prior to year end

* Key Priority

Form 5.6

Chief Executive Officer Confidential Board Panel Appraisal Form

Criteria	Rating (1-5) 5 Outstanding 4 Exceeds Expectations 3 Meets Expectations 2 Below Expectations 1 Unacceptable	Comments
Leadership <ul style="list-style-type: none"> • Strategic vision and planning • Board support and effectiveness • Executive directions 		
Operations Management <ul style="list-style-type: none"> • Quality and service results • Resource use • Administrative controls 		
Financial Management <ul style="list-style-type: none"> • Operating costs • Financial reporting • Capital reserves and planning • Risk management 		
People Management <ul style="list-style-type: none"> • Management team development • Motivation and communications • Staff morale • Labour relations 		
Relationship Management <ul style="list-style-type: none"> • Funders and Ministry • Community leaders • Other related organizations 		

Form 5.7

Chief Executive Officer Performance Evaluation and Compensation Policy

The chair shall appoint an Evaluation & Compensation Committee of at least four members.

The Evaluation and Compensation Committee shall review the process of performance evaluation and complete the chief executive officer performance appraisal on an annual basis. The following criteria will be used to assess performance:

- Proven strategic thinking
- Creative and decisive visionary leadership
- Unquestionable credibility and integrity
- Role model with stamina and resilience
- Clear and sophisticated understanding of the “ service sector culture” and the Ontario service system
- Commitment to research, innovation and education
- Outstanding people leadership strengths
- Ability to manage board relations
- Clear strategic, collaborative and organizational leadership skills
- Demonstrated capability in community, public and media relations

The pay rate for the chief executive officer position will be established at the 50th Percentile of peer sized organizations in the sector from Association surveys. This defined market and standard will be reviewed every three years to determine if it is still appropriate.

Procedure

The Evaluation & Compensation Committee will review annually the process of soliciting input prior to the completion of the Performance Appraisal. Each year the Committee will complete the evaluation using the following procedure:

1. The chief executive officer’s goals and priorities will be established at the beginning of the year and reviewed quarterly and prior to the completion of the performance evaluation.
2. The chief executive officer will complete a self-evaluation for the review with the committee.
3. The committee will determine the best way of soliciting input from other board members and stakeholders. Each board member will have an opportunity for input.

4. The committee will meet to review all relevant factors that will go into the final evaluation. This will include:
 - a. A review of chief executive officer annual goals and priorities.
 - b. A review of strategic planning initiatives.
 - c. Input from stakeholders.
 - d. An anecdotal review of major events and milestones of the past year.
5. Some of these items will be measurable, but many will require the exercise of judgment by the committee members. This judgment must be exercised in good faith in a manner consistent with the Mission, Vision and Values.
6. At a final meeting with the chief executive officer, the committee will review its determinations, review the chief executive officer's self-assessment, and finalize the evaluation.
7. At this point, the committee will meld the results of the evaluation with the incumbent's position relative to the target compensation peer market. A recommendation to the board will include this review and the comparison between relative market position and relative performance.
8. The motion to the Board will include a one-page summary of the process and outcomes.
9. Following approval, the committee will work with the chief executive officer to set goals and priorities for the coming year.
10. Following the conclusion of the process, the committee will meet to review its own internal procedures, forms, membership and administrative support to assure continuous improvement in the future.

Form 5.8

Chief Executive Officer Succession Planning

Purpose

To ensure succession planning for the role of the chief executive officer in order to enable:

- Maintenance of continuity of leadership for the organization during a temporary vacancy of the chief executive officer; and
- Encourage leadership growth and development within the organization.

Policy

1. The chief executive officer is expected to cultivate management talent at the senior ranks of the organization including one or more successors to his/her position through internal succession planning.
2. The chief executive officer is expected to identify a member of senior management capable of filling the role of interim chief executive officer if a temporary vacancy of the chief executive officer position occurs and provide appropriate development to that person so that he/she is familiar with the issues related to the board and overall corporate issues.
3. The chief executive officer will report on the succession plan annually to the board, including the following:
 - a. Identification to the chair in writing at the beginning of each fiscal year which member (or members) of senior management is recommended to fill the role of interim chief executive officer should a vacancy in the chief executive officer position occur.
 - b. The status of management talent within the top ranks of senior management including the potential successors to the role of chief executive officer and the next level of management.
 - c. Activities undertaken throughout the year to promote leadership development and succession planning including activities undertaken to keep one or more senior managers informed of overall operational activities.
4. For the purposes of the Policy, a temporary vacancy in the position of chief executive officer is as determined by the board from time to time in consultation with the chief executive officer and may include the period of time in which the chief executive officer is on a leave of absence, an extended vacation or has left the position and a competition pursuant to recruitment policy is under way. It is not generally meant to be periodic and/or occasional coverage of the chief executive officer duties and responsibilities of the kind that is set out in job responsibilities for senior staff positions.
5. In the event of the need for the appointment of an interim chief executive officer, the board shall formally make such an appointment and shall determine any temporary salary modification. Any communication relative to the appointment shall be sent in the name of and approved by the chair.

Form 5.9

Guidelines for a Management Resources and Compensation Committee

Composition

- Chair serving as chair
- Vice-chair
- Chairs of the two standing committees (resources, quality)
- One other board member appointed by chair

Purpose

- Develop and recommend to the board a policy and process for chief executive officer evaluation, compensation policy for the chief executive officer, succession planning and emergency interim chief executive officer planning, and leadership development.
- Annually approving the performance objectives of the chief executive officer.
- Evaluating the performance of the chief executive officer based on agreed-upon annual objectives.
- Determining compensation policy and recommended annual compensation of the chief executive officer, consistent with any regulatory and market surveys.
- Participating in the development of learning plans and activities for the chief executive officer.
- Overseeing and assuming responsibility for the succession planning process for the chief executive officer.

Form 5.10

Assessing Board performance

Board Functions	What Needs to be Assessed	Board Approach to Performance Assessment
Approve Goals and Strategic Directions	<ul style="list-style-type: none"> Quality of strategic plan Implementation of the strategic plan 	<ul style="list-style-type: none"> Need to assess qualitatively and quantitatively the progress in accomplishing goals (outcomes) and implementing the strategic initiatives
Establish Framework for Performance Oversight	<ul style="list-style-type: none"> Performance measurement and indicators Performance reporting 	<ul style="list-style-type: none"> Board needs performance measures/indicators to monitor performance against standards, targets and history
Oversee Programs and Quality	<ul style="list-style-type: none"> Program effectiveness Client experience Access and flow 	<ul style="list-style-type: none"> Process Improvement Plan assessment Performance indicators for client outcomes Compliance with policies and best practices related to quality
Oversee Financial Condition & Assets	<ul style="list-style-type: none"> Financial health – operating and balance sheet Financial risk management Financial controls and information 	<ul style="list-style-type: none"> Assessment of reliability/adequacy of reserves and operating revenues Client/industry opinions Policy/process audit
Enterprise Risk Management	<ul style="list-style-type: none"> Risk identification & assessment Risk prevention & protection Broadly defined 	<ul style="list-style-type: none"> Quality and completeness of risk management plan Risk reporting and review process
Supervise Management	<ul style="list-style-type: none"> Performance of chief executive officer through annual evaluation Quality of management talent 	<ul style="list-style-type: none"> Evaluation against annual objectives and organizational results Evaluation of skills and behaviors
Stakeholder Relations	<ul style="list-style-type: none"> Quality of stakeholder relationship Level of stakeholder support and approval 	<ul style="list-style-type: none"> Qualitative assessment of quality of relationships and stakeholder approval Feedback and surveys of stakeholders
Manage Board's Own Governance	<ul style="list-style-type: none"> Conditions for good governance in place Effective board behaviour and use of board practices 	<ul style="list-style-type: none"> Governance quality indicators

Form 5.11

Governance Quality Indicators

Indicator	Target*	Actual	Analysis & Action Plan
Board Orientation <ul style="list-style-type: none"> • % of new trustees that attend board orientation. 	100%		
Feedback Evaluation Forms related to monthly board meetings <ul style="list-style-type: none"> • % of completed feedback evaluation forms. 	75%		
Strategic Agenda Items <ul style="list-style-type: none"> • % of agenda items at each board meeting related to strategy, program and quality services. • % of board meetings where 50% of agenda items reflect an aspect of strategic direction or part of subjects in strategic plan. 	50% 100%		
Evaluation of President & CEO <ul style="list-style-type: none"> • % of trustees that complete president & chief executive officer annual evaluation. 	100%		
Attendance at Board Meetings <ul style="list-style-type: none"> • % of trustees that attend 75% of board meetings in person. 	100%		
Attendance at Key Committees <ul style="list-style-type: none"> • % of trustees that attend at least 4 meetings each fiscal year in person of one standing committee. 	100%		

*The figures listed here are only examples

Chapter 6

Duties and Obligations of Individual Directors

UNDERSTANDING THE DUTIES OF DIRECTORS

Fiduciary Duties

Directors stand in a fiduciary relationship to the corporation they serve. The fiduciary duties of a director are owed only to the corporation and not to any one particular stakeholder or other interest group. These duties are among the highest standard of conduct that the law imposes.

All directors, including *ex officio* directors, owe the same duties and are subject to the same obligations, regardless of how they may have been elected or appointed to the board.

Directors are required to discharge the standard of care applicable to them in their capacity as a fiduciary and to also adhere to the rules of fiduciary conduct.

Standard of Care

If there is no standard of care set out in the relevant governing legislation, directors are subject to the common law standard of care applicable to a director. This is the case for corporations governed by the *Corporations Act* (Ontario).

The common law standard of care requires a director to apply the level of skill and judgment that may reasonably be expected of a person with his/her knowledge and experience. Thus, the reasonableness of a director's

conduct is assessed in the context of the following subjective factors:

- It depends on the personal knowledge and experience of each director.
- Directors possessing special skill and knowledge are expected to apply that skill and knowledge to matters that come before the board. Accordingly, a director with financial expertise may be held to a higher standard of care with respect to financial matters than would be expected of a director who did not possess that specialized expertise.

The *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario) have set out a statutory standard of care that applies to directors and officers and that is similar to the prudent person standard that applies to directors of business corporations. It is an objective standard of care that requires a director or officer to:

- Act honestly, in good faith with a view to the best interests of the corporation; and
- Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Directors and officers are also required to comply with the applicable Act and regulations, the corporation's articles (letters patent) and by-laws.

Rules of Fiduciary Conduct

In addition to the standard of care, directors are required to abide by what is sometimes referred to as the rules of fiduciary conduct. These rules include the following duties:

- Acting in the best interests of the corporation;
- Acting in good faith;
- Exercising power honestly;
- Maintaining loyalty;
- Respecting confidentiality;
- Obedience; and
- Avoiding conflicts of interest.

Best Interests of the Corporation

One of the greatest challenges facing a corporation's board of directors is determining what is in the best interests of the corporation. Unlike a for-profit corporation, where best interests will be defined with reference to enhancing shareholder value, the test for best interests is more difficult to define in the case of a not-for-profit corporation. It is for this reason that a board needs to have a clear understanding of the corporation's mission, vision, values and its accountabilities. Directors must act in the best interests of the corporation as a whole and, in doing so, must take into account all relevant factors. A director breaches his or her duty to act in the best interests of the corporation where the director prefers the interests of a particular group, person or entity over the interests of the corporation as a whole.

This does not mean that the directors cannot take into account the interests of particular groups that may be affected by board decisions, but they cannot act solely in the interests of one group if to do so would not be in the best interests of the corporation as a whole.

Acting in Good Faith

The duty of good faith requires directors to act for a proper purpose and not to exercise their powers for a collateral purpose.

Acting Honestly

Directors are required to exercise their powers honestly. For example, directors are not permitted to exercise their powers for a personal benefit.

Maintaining Loyalty

The duty of loyalty requires the directors to act in the interests of the corporation and not in the interests of any party that they may feel they represent. It is important that all directors, including *ex officio* directors, recognize that their duty of loyalty is to the corporation.

Respecting Confidentiality

Understanding the duty of confidentiality can sometimes be challenging for a board especially one that has board meetings that are open to the public. The general rule is that all matters and discussions in a boardroom are confidential.

Charitable or not-for-profit corporations that are publicly funded or funded by donor contributions operate with a strong sense of transparency and accountability. Accordingly, many organizations and their boards have adopted communication practices and other policies to ensure that the corporation is seen by those to whom it is accountable, as operating in an open and transparent manner.

For an individual board member, the duty of confidentiality means they must respect the confidentiality of matters that are not, or will not be, disclosed to the public, especially matters that are

dealt with *in camera*. It is also important for a director to recognize that the board has an official spokesperson and, notwithstanding that a meeting may have been opened to the public, it is only the board chair or another officer or director designated by the board who can speak on behalf of the board. Directors must respect policies regarding communications with the media and, while they may see themselves as representatives of the organization in the community, they must be careful that they do not disclose confidential information or be seen to be speaking publicly on behalf of the board.

See [Form 6.1: Sample Board Policy on Confidentiality](#)

Obedience

The duty of corporate obedience is often described as the duty of board solidarity.

Boards are considered to be democratic in nature. The decision of the majority governs. A director who is opposed to a corporate decision that has been validly taken has a duty to respect and adhere to that decision. The duty of obedience also includes obligations to ensure that the corporation operates within the laws to which it is subject.

A director who is opposed to a corporate decision that has been validly taken has a duty to respect and adhere to that decision.

It is the duty of the board chair to ensure that meetings and board proceedings follow a proper process and are conducted in accordance with the by-laws and rules of order. It is the duty of each board member to respect the role and authority of the chair in this regard.

Avoiding Conflict of Interest

A director must not personally profit from his or her position as a director. Most directors are familiar with the prohibition on entering into a contract with a corporation they serve without first declaring their conflict of interest and refraining from voting. It is well understood that a conflict of interest includes a situation where a director has a financial interest in a matter or transaction with the corporation. However, a conflict of interest is broader and includes improper use of information or appropriation of an opportunity that belongs to the corporation.

The *Corporations Act* (Ontario) provides a “safe harbour” that will relieve a director of any liability where the director is in any way directly or indirectly interested in a contract or proposed contract with a corporation provided the director makes the required disclosures and refrains from voting on the matter.

There are also “safe harbour” provisions in the new *Canada Not-for-Profit Corporations Act* and *Not-for-Profit Corporations Act* (Ontario). Under these Acts, a director or officer who is a party to a material contract or transaction, a proposed material contract or transaction or who is a director or officer of, or has a material interest in a party to a material contract or transaction or proposed material contract or transition with the corporation, is required to:

- Make disclosure, or request to have entered in the minutes the nature and extent of the interest;
- Refrain from voting; and

- In the case of the new *Not-for-Profit Corporations Act* (Ontario), subject to some limited exceptions, not attend any part of the meeting where the contract or transaction is discussed.

Directors and officers should ensure they declare conflicts in accordance with the requirements of applicable legislation which may prescribe the manner in which the disclosure is to be made.

See [Form 6.2: General Principles Regarding Conflict of Interest](#)

See [Form 6.3: Sample Board Policy on Conflict of Interest](#)

Conflicts of “Duty and Duty”

Directors should also avoid situations that might involve a conflict of “duty and duty”. This can arise, for example, where a director sits on the board of another corporation that may contract with the organization or may seek to take advantage of an opportunity that is also available to the organization.

The director may find himself or herself in a conflict of “duty and duty” if the director learns of information in one boardroom that may be important and material to the affairs under consideration in the other boardroom. In such a situation, the directors may find themselves in a position where their duties of disclosure are in conflict with their duty to hold information in confidence. Accordingly, while overlapping directorships are not prohibited, a director who sits on more than one board should be mindful of the potential conflicts that may arise.

It is a good governance practice to adopt a board Code of Conduct that sets out a director’s duties. A board Code of Conduct deals with the behaviour of the board and individual directors inside and outside the boardroom and is to be distinguished from a corporate code of ethical behaviour and business conduct, which may also apply to the board.

See [Form 6.4: Sample Board Code of Conduct](#)

Business Judgment Rule

The “business judgment rule” is a common law principle pursuant to which the courts will presume that a decision made by a board of directors has been made on an informed basis, honestly, in good faith, and in the best interests of the corporation. In other words, the court will not second guess the decision of the directors where a proper process has been followed and the directors have met the fiduciary standard.

Directors are not accountable for an error in judgment provided they have followed a reasoned and informed process and discharged their fiduciary duties. Directors are not guarantors that every decision they make will, with the benefit of hindsight, prove to have been the best decision in the circumstances. However, they are required, in every case, to act honestly, in good faith, and in the best interests of the organization and meet the standard of care as set out above. Provided they have done so in a reasoned and informed manner, they will be able to avail themselves of the “business judgment rule”, which provides that directors are not accountable for errors of judgment where such a process has been followed. Consequently, it is important for directors to follow proper meeting processes, document their consideration of issues and the basis for their decisions. If professional advice is required for a reasoned and informed decision, it should be obtained, and such advice should be documented as part of the directors’ consideration of an issue.

Reliance on Others

Directors are entitled to assume that those on whom they rely, particularly officers and senior management, have performed their duties honestly. Directors are not allowed to do so in the face of evidence to the contrary. However, in the absence of any grounds to suspect otherwise, the directors are entitled to assume that officers and senior management have acted honestly in performing their duties.

Under both the Canada *Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario) directors and officers are provided with a due diligence defense for certain of the duties imposed under those Acts.

For example, the *Not-for-Profit Corporations Act* (Ontario), includes a statutory “reasonable diligence” defence to certain duties under that Act where the director has exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances. This includes reliance in good faith on certain financial statements, financial reports, reports or advice of an officer or employee, reports of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by them.

Director Dissent

Under the Canada *Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario), a director is deemed to have consented to resolutions passed or actions taken at a meeting of directors or a committee of directors unless steps are taken to record the director’s dissent in the manner and within the time set out in the applicable Act. This will apply whether or not the director was at the meeting when the resolution was passed or the action was taken.

UNDERSTANDING DIRECTOR LIABILITY

The Principle of Limited Liability and the Importance of Governance

Corporations are considered to be separate legal entities from their members and directors and, accordingly, the principle of limited liability applies. The principle of limited liability means that the directors and members are not personally liable for corporate obligations. Only the assets of the corporation can be looked to in order to satisfy the liabilities of the corporation.

This principle is reinforced in the *Corporations Act* (Ontario) which provides that a member shall not, as such, be responsible for any act, default, obligation or liability of the corporation. A similar provision is included in the Canada *Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario).

There are, however, some exceptions to the principle of limited liability. Directors and, in some cases, officers, can be personally liable if liability is imposed by statute, if civil liability is imposed upon them, or if a court chooses to “pierce the corporate veil”.

- **Piercing the corporate veil** – There are some circumstances in which a court will disregard the separate legal existence of the corporation and look through to the directors to hold them personally liable for actions that have been undertaken by the corporation. The situations in which a court will do this are usually fact-specific, and often involve situations where the court views the corporation as a mere “sham”, formed for the purposes of fraud, as an agent for the directors, has been formed for the purposes of an illegal activity, or has been used for fraudulent purposes. These cases often involve situations where the activities of the corporation have been directed by one or more shareholders, and are less likely to arise in the context of a not-for-profit corporation.
- **Civil liability** – Directors have been found to be personally liable when they personally engage in conduct that is contrary to the “reasonable person” standard. For example, directors who make representations that they know, or ought to know, are not true can be found personally liable, even if the acts were done at the behest of the corporation. Consequently, a director acting on behalf of a corporation should ensure that he or she has a reasonable basis on which to act for the organization, and should ensure that it is clear to any party that the acts undertaken by the director are on behalf of the organization and not in the director’s personal capacity.

- **Liability imposed by statute** – There are a number of statutes that potentially expose the directors and sometimes the officers to personal liability. The potential for personal liability arising under statute generally falls into three categories:
 - Liability for unpaid wages, which will usually arise where the corporation is insolvent;
 - Liability for amounts the corporation has failed to deduct, withhold and/or remit under the *Income Tax Act* (Canada), *Canada Pension Plan* and other similar statutes;
 - Liability for non-compliance with specific legislation or where the director or officer has authorized, consented to, acquiesced, or participated in the commission of an offence by the corporation under a specific statute such as the *Environmental Protection Act*, the *Occupational Health and Safety Act* or the *Employment Standards Act*. There are numerous statutes that potentially expose the directors and, in some cases, officers, to liability in circumstances where the corporation has failed to comply with the statutory requirements or committed an offence under the statute and the directors and, in some cases, the officers, have directed, authorized, consented to, acquiesced or participated in such non-compliance or the occurrence of the offence.

Except in the case of liability arising for nonpayment of wages, directors and officers may be entitled to avail themselves of a “due diligence defence” in respect of most statutory offences. This means that a director will not be liable, even in circumstances where the corporation may have committed an offence, if it can be demonstrated that the director exercised due diligence to prevent the occurrence of the offence. What steps will constitute due diligence will depend on the circumstances of each case and the particular action that has given rise to the potential liability. However, good governance practices and processes can contribute to the establishment of a due diligence defence in the event that directors are facing potential personal liability.

In addition to a due diligence defence, directors can be protected against personal liability through insurance. Directors may also be indemnified for certain expenses and liabilities pursuant to applicable legislation and the organization’s by-laws.

DUTIES OF EX OFFICIO AND NON-VOTING DIRECTORS

Duties of Ex Officio Directors

The term *ex officio* means “by virtue of office” and simply describes how a director comes to the board. The general rule is that *ex officio* directors owe the same obligations and are subject to the same duties as elected directors. *Ex officio* directors are entitled to vote unless the articles or letters patent, by-laws or legislation provides otherwise.

Ex officio directors are permitted for Ontario corporations whether subject to the *Corporations Act* (Ontario) or the *Not-for-Profit Corporations Act* (Ontario). However under the *Canada Not-for-Profit Corporations Act*, *ex officio* directors are not permitted.

The general rule is that *ex officio* directors owe the same obligations and are subject to the same duties as elected directors.

Duties of Non-Voting Directors

Whether or not a non-voting director owes all of the same fiduciary duties as a voting director, or will be held to the same standard in respect of those duties, is not clear. There is nothing at common law or in legislation that sets out the duties and obligations of non-voting board members.

As outlined above, voting directors owe fiduciary duties to the corporation they serve as they stand in a per se fiduciary relationship with the corporation. A director is defined as someone who governs and manages the affairs of a corporation. The question is, if the director does not vote, can they be considered to be governing and managing the affairs of the corporation?

In some very limited circumstances, the courts have imposed fiduciary duties on individuals where they have exercised the powers of directors whether or not they have been elected or appointed to the board. Generally speaking, the courts will find that an individual is a fiduciary where there is scope for the exercise of some discretion or power, and that power or discretion can be exercised unilaterally to affect the legal or practical interest of another who is vulnerable to or at the mercy of the party holding the discretion or power.

The degree to which a non-voting board member may be subject to fiduciary duties may, therefore, depend on whether they are seen to perform the functions of a director or to exercise a discretion or power by virtue of their position, even in the absence of a right to vote.

Non-voting members will likely, at a minimum, have duty to attend meetings and participate in discussions, and have a corresponding entitlement to notice of meetings and to receipt of all materials provided to voting directors. Depending on the role performed by the non-voting director, it is also likely that such director will owe the duty of diligence, the duty to disclose to the corporation material information, the duty of confidentiality and the duty to maintain board solidarity.

Their power in these matters does not depend on their ability to vote. Similarly, if a non-voting director has a conflict of interest in a matter before the board, the non-voting director should declare that conflict of interest and not attempt to influence the outcome of the board decision.

In addition, if a non-voting board member is also an employee or office holder, such as a chief executive officer or executive director, they will owe duties to the corporation by virtue of their employment or office.

While it is unclear whether a non-voting board member will always be held to the same standard as a voting director in the discharge of their duties, it would be prudent for non-voting board members to exercise the same degree of diligence as voting directors. In particular, non-voting directors should:

- Act in good faith and in the best interest of the corporation;
- Avoid conflicts (in particular, to refrain from participating in a discussion if it is a conflict of interest);
- Be diligent (i.e., attend meetings and become as fully informed as possible regarding all aspects of the corporation);
- Comply with articles or letters patent, by-laws and board governance policies;
- Disclose material information that is relevant to a significant matter before the board; and
- Maintain confidentiality and board solidarity.

Given that non-voting directors may be held to the same or substantially similar duties as voting directors, they should be entitled to the same indemnity and have the same insurance coverage.

As non-voting board members do not exercise a vote in decision-making, it may be less clear that they are held to the same legal standard as voting board members. For clarity, non-voting board members should sign a yearly declaration and undertaking confirming that they are subject to the same fiduciary duties as voting board members (e.g., confidentiality, loyalty, avoidance of conflicts, good faith, etc.) and that they undertake to comply with the by-laws and all policies applicable to voting board members.

See [Form 6.1: Sample Board Policy on Confidentiality](#)

See [Form 6.4: Sample Board Code of Conduct](#)

See [Form 6.5: Sample Position Description – Board of Directors](#)

See [Form 6.6: Tips for Directors](#)

See [Form 6.7: Annual Director Declaration and Consent](#)

FREQUENTLY ASKED QUESTIONS

1. What are the duties of *ex officio* directors?

The term *ex officio* means “by virtue of office” and simply describes how a director comes to the board. *Ex officio* directors owe the same obligations and are subject to the same duties as elected directors. In particular, *ex officio* directors vote unless the by-laws specify otherwise. The applicable governing legislation should be reviewed to ensure that *ex officio* directors are permitted.

2. How does a board foster and promote a culture of respectful board behaviour?

There are two critical components in ensuring a culture of respectful board behaviour: the role and performance of the board chair, and the expectations of peers on the board.

There must be an expression either in the board’s Code of Conduct or in the director’s Position Description of the behaviour that is required of a director. These behavioural attributes need to form part of the process

for recruiting directors. Accordingly, potential candidates for the board must be evaluated on the basis of their ability to contribute in a respectful manner to board processes. These behavioural expectations must then be reinforced both during the board orientation session and through ongoing board education sessions.

It is critically important that the board, as a whole, conduct periodic education sessions on duties and expectations of directors. An open discussion during a board meeting education session on the expectation of directors will create a standard amongst board members that will result in peer pressure being brought to bear on those individuals falling below that standard. However, it is ultimately the chair who is responsible for setting the tone and ensuring that the board conducts itself, not only in accordance with the proper process, but at an appropriate standard of respectful behaviour. The chair does this by building relationships with individual directors, leading through example and relying on board processes such as director evaluations and board mentoring and education programs to ensure that directors falling below the standard are given the opportunity to access resources that will allow them to improve their behaviour.

3. Should a board member sign a declaration or a written statement that the board member will adhere to the board’s codes of conduct and confidentiality policies?

Whether or not a director is asked to sign a declaration with respect to the board’s Code of Conduct and other board policies such as a confidentiality policy, it is inherent in the director’s fiduciary duties that those policies be followed. The fiduciary duties the director owes to the corporation require the director to adhere to the rules of fiduciary conduct. Adhering to the rules of fiduciary conduct is not simply a good governance practice, but is an inherent component of the director’s fiduciary duties.

Accordingly, there is a risk that in signing a written declaration, a director may conclude they are only bound to adhere to things that have been reduced to writing. The fiduciary duties, simply stated, are to act honestly, in good faith and in the best interests of the corporation and to act with integrity, honesty, loyalty and to avoid conflicts. It is important that a board educate its directors on the rules of fiduciary conduct and the importance of adhering to those rules. It is also important that a board formulate written descriptions of those rules through a director Position Description, a Board Code of Conduct (to be distinguished from the organization's code of ethical behaviour and corporate conduct) and other policies such as conflict of interest and confidentiality

policies. Requiring directors to sign a declaration provides evidence that the director was made aware of the policies but will not, in and of itself, be sufficient to ensure that a director understands and adheres to the policies.

An annual declaration may provide for a general declaration of conflicts and also for consent to act as a director and participate in telephone meetings.

See [Form 6.7: Annual Director Declaration and Consent](#)

An example of a simple form of declaration follows.

A Simple Form of Declaration

I confirm that I have read the following board policies:

- Board Code of Conduct
- Duties and Expectations of the Director
- Conflict of Interest Policy
- Confidentiality Policy
- Attendance Policy
- [Etc.]

I confirm that, as a director, I am bound to adhere to and respect these and other policies applicable to the board and I undertake to do so.

Date: _____

Signature: _____

[Name of Director]

4. Does a director with a conflict have to leave the room during the vote?

The general corporate legislation that applies to the corporation may contain a “safe harbour” that relieves a director of liability when a conflict arises. Where a “safe harbour” is permitted, the governing legislation must be strictly followed. For example, the *Corporations Act* (Ontario) requires the director to declare his or her interest and refrain from voting. There is no statutory requirement for the director to leave the room during the discussion and vote on the matter at issue. This will change under the new *Not-for-Profit Corporations Act* (Ontario) where, except for certain specific exceptions set out in that Act, a director must not only declare the conflict and refrain from voting but must not be present during any discussion or vote on the matter.

Although not now a requirement under the *Corporations Act* (Ontario), many by-laws or conflict of interest policies will require a director not only to leave the room during the discussion and vote, but to also refrain from attempting to influence the outcome of the matter in issue. A director should also make reference to the corporation’s by-law, board governance policies and the rules of order adopted by the corporation which may address specific procedures to be followed where there is a conflict.

5. What should be included in a conflict of interest policy?

The common practice is for the by-laws to repeat the “safe harbour” provisions set out in the relevant legislation. Many not-for-profit corporations have adopted conflict of interest policies that go beyond the provisions of the governing legislation and include the following:

- A statement as to the purpose of the policy.
- An overview of director’s fiduciary duties.
- A definition of conflict of interest including the scope of behaviour to which the policy applies. The policy should make clear that the categories of conflict of

interest cannot be exhaustively defined and should include examples of conflict of interest to assist the directors in determining when their behaviour falls within the policy.

- The policy should set out a procedure to deal with:
 - Declaration of a conflict.
 - When it must be declared.
 - To whom the conflict must be declared.
 - Making it clear that the director is not entitled to vote on any matters where there is a conflict of interest.
 - Specifying whether or not the director can be included in the quorum. Applicable legislation should be reviewed. If the legislation is silent, as it is in the case of the *Corporations Act* (Ontario), there is some case law that suggests that the director may not be included in the quorum.
 - Whether the director must be physically absent during the discussion and vote. Applicable legislation should be reviewed.
 - A requirement that the director not attempt to influence the outcome of the vote. This would apply to the director’s behaviour both within the boardroom and outside of the boardroom.
 - Process for others on the board to raise a perceived conflict of interest involving another director.
 - Consequences for failure to comply with the policy.

6. What are some examples of how directors exercise due diligence, particularly in ensuring legislative compliance?

What constitutes sufficient due diligence will depend on the context of the board, the particular issue that is being considered, and director involvement. There are many ways in which a board exercises due diligence to meet legislative compliance. Generally speaking, boards must rely on management to ensure that the corporation is operating in accordance with applicable legislation. The board’s due diligence may include the following:

- Understanding how the organization maintains and monitors compliance, stays abreast of new requirements and reacts to circumstances of non-compliance.
- Supervising management and, in particular, the chief executive officer.
- Making the requirement for compliance part of the chief executive officer's role and evaluating performance with reference to that role.
- Reviewing indicators that confirm compliance (e.g., sentinel events such as unusual workplace injuries).
- Receiving periodic compliance certificates from management (e.g., a certificate that remittances and required reportings or filings are made).
- Using the annual audit and external accreditation processes, where applicable, to verify some aspects of compliance. It is important to recognize the limits of an audit and of accreditation processes, and these should not be solely relied upon to verify compliance.
- Periodically reviewing with management, usually through committees, key areas of risk and how compliance in key areas is managed. In the context of an operating organization, significant areas of legislative compliance risk might include environmental, building code, occupational health and safety, employment law, withholdings and remittances.
- Ensuring appropriate competencies for those in positions of responsibility.
- Ensuring the organization has business conduct policies that set a culture of compliance.
- Ensuring the organization has adopted an appropriate whistle-blower policy.
- Considering an external audit of select areas of risk, where appropriate, in the context of the organization's activities.

Form 6.1

Sample Board Policy on Confidentiality

Purpose

To ensure that confidential matters are not disclosed until disclosure is authorized by the board.

Policy

The directors owe to the corporation a duty of confidence not to disclose or discuss with another person or entity, or to use for their own purpose, confidential information concerning the business and affairs of the corporation received in their capacity as directors unless otherwise authorized by the board.

Every director shall ensure that no statement not authorized by the board is made by him or her to the press or public.

Application

This policy applies to all board and non-board committee members.

Confidential Matters

1. All matters that are the subject of closed sessions of the board are confidential until disclosed in an open session of the board.
2. All matters that are before a committee or task force of the board are confidential unless they have been determined not to be confidential by the chair of the relevant committee or task force or by the board.
3. All matters that are the subject of open sessions of the board are not confidential.

Procedure for Maintaining Minutes

1. Minutes of closed sessions of the board shall be recorded by the secretary or designate or if the secretary or designate is not present, by a director designated by the chair of the board.
2. All minutes of closed sessions of the board shall be marked confidential and shall be handled in a secure manner.
3. All minutes of meetings of committees and task forces of the board shall be marked confidential and shall be handled in a secure manner.
4. Notwithstanding that information disclosed or matters dealt with in an open session of the board are not confidential, no director shall make any statement to the press or the public in his capacity as a director unless such statement has been authorized by the board.

Amendment

This policy may be amended by the board.

Approval Date:

Last Review Date:

Form 6.2

General Principles Regarding Conflict of Interest

Included in the fiduciary duty that a director owes to the corporation is a requirement that the director must avoid situations where the interests of the director will be in conflict with the duties that are owed to the corporation.

Conflict of interest is often expressed as a conflict between the personal interest of the director and the fiduciary duties the director owes the corporation. There may also be situations that are better described as a conflict between “duty and duty”. These are situations where the duties the director owes to the corporation are in conflict with duties owed elsewhere, for example to another corporation.

Types of Conflicts of Interest

Situations in which a conflict of interest may arise cannot be exhaustively enumerated, but include the following:

- **Transactions with the Corporation**

The *Corporations Act* (Ontario) provides a “safe harbour” for a director who is in a conflict of interest by virtue of being directly or indirectly interested in a contract or proposed contract with the corporation. Provided the director has declared the interest and refrained from voting, the director will not be accountable for any profit realized from the contract and the contract is not voidable by reason only of the director being in a fiduciary relationship with the corporation that is a party to the contract.

Under the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario) the “safe harbour” arises where a director or officer:

- is a party to a material contract or transaction with the corporation, or
- is a director or officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the corporation.

- **Acting for an Improper Purpose**

It is a breach of the duties of the director if the director acts for self-interest or a collateral purpose. The director must act in the best interests of the corporation. The courts will examine what was uppermost in the mind of the director when the decision was made and the director’s primary motivation must be in the best interest of the corporation.

- **Appropriation of Corporate Opportunity**

A director will be in breach of duties owed to the corporation when the director diverts to his or her own use and benefit an opportunity in which the corporation had an interest.

- **Serving on Other Corporations**

A director who is director of two corporations that are transacting with one another will be in a conflict of interest. A director who serves as a director of more than one corporation may also be in a position where there is a conflict of “duty and duty”. This may arise where the director serves as a director of two corporations that are competing with one another. For example, if two corporations are both seeking to take advantage of the same

opportunity. A director may be in possession of confidential information received in one boardroom that is of importance to a decision being made in the other boardroom. The director cannot discharge the duty to maintain such information in confidence while at the same time discharging the duty to make disclosure.

- **Misuse of Confidential Information**

Directors have a duty to hold information in confidence and to use it only for purposes of the corporation and not for personal gain.

What is the Extent of Disclosure that Must be Made by a Director?

The disclosure required will vary with the facts and circumstances of each case but must be sufficient to inform the corporation fully of the nature and extent of the director's interest.

Procedures When Conflicts Arise

The *Corporations Act* (Ontario) requires the director to make disclosure and refrain from voting. The process set out in the *Corporations Act* (Ontario) applies to a direct or indirect interest (usually a personal or financial interest) in a contract or proposed contract.

Under the *Canada Not-for-Profit Corporations Act* a director is required to disclose the conflict and refrain from voting.

Whether or not a director must also absent themselves from the portion of the meeting where the matter is discussed will depend on the applicable legislation and any policy or rules of order that have been adopted by the corporation. The *Not-for-Profit Corporations Act* (Ontario) requires a director to disclose the conflict, refrain from voting and be absent during any discussion.

Not all conflicts may be addressed through the provisions in the applicable legislation. There is some case law to suggest that a corporation can approve the director's actions in connection with a corporate opportunity if the director has made full disclosure of the opportunity. Where that situation arises, both the director and the corporation should obtain independent legal advice.

In some cases, a director may have no option but to resign.

Form 6.3

Sample Board Policy on Conflict of Interest

Purpose

All directors have a duty to ensure that the integrity of the decision-making processes of the board are maintained by ensuring that they and other members of the board are free from conflict or potential conflict in their decision-making. It is inherent in a director's fiduciary duty that conflicts of interest be avoided. It is important that all directors and officers understand their obligations when a conflict of interest or potential conflict of interest arises.

Application

Applies to all directors and officers including *ex officio* directors, and all non-board members of committees.

"Officers" means officers appointed by the board including the president, a vice president, secretary or assistant secretary, treasurer or assistant treasurer, general manager and others who perform functions for the corporation similar to those normally performed by such officers.

Policy

Directors, officers and non-board committee members shall avoid situations in which they may be in a position of conflict of interest or perceived conflict of interest. The by-laws contain provisions with respect to conflict of interest that must be strictly adhered to.

In addition to the by-laws, the process set out in this policy shall be followed when a conflict or potential conflict arises.

Description of Conflict of Interest

A conflict of interest arises in any situation where a director's duty to act solely in the best interests of the corporation and to adhere to his or her fiduciary duties is compromised or impeded by any other interest, relationship or duty of the director. A conflict of interest also includes circumstances where the director's duties to the corporation are in conflict with other duties owed by the director such that the director is not able to fully discharge the fiduciary duties owed to the corporation.

The situations in which potential conflict of interest may arise cannot be exhaustively set out. Conflicts generally arise in the following situations:

1. Transacting with the Corporation

When a director transacts with the corporation directly or indirectly.

When a director has a material direct or indirect interest in a transaction or contract with the corporation.

2. Interest of a Relative

When the corporation conducts business with suppliers of goods or services or any other party of which a relative or member of the household of a director is a principal, officer or representative.

3. **Gifts**

When a director or a member of the director's household or any other person or entity designated by the director, accepts gifts, payments, services or anything else of more than a token or nominal value from a party with whom the corporation may transact business (including a supplier of goods or services) for the purposes of (or that may be perceived to be for the purposes of) influencing an act or decision of the board.

4. **Acting for an Improper Purpose**

When directors exercise their powers motivated by self-interest or other improper purposes. Directors must act solely in the best interest of the corporation. Directors who are nominees of a particular group must act in the best interest of the corporation even if this conflicts with the interests of the nominating party.

5. **Appropriation of Corporate Opportunity**

When a director diverts to his or her own use, an opportunity or advantage that belongs to the corporation.

6. **Duty to Disclose Information of Value to the Corporation**

When directors fail to disclose information that is relevant to a vital aspect of the corporation's affairs.

7. **Serving on Other Corporations**

A director may be in a position where there is a conflict of "duty and duty". This may arise where the director serves as a director of two corporations that are competing or transacting with one another. It may also arise where a director has an association or relationship with another entity. For example, if two corporations are both seeking to take advantage of the same opportunity. A director may be in possession of confidential information received in one boardroom or related to the matter that is of importance to a decision being made in the other boardroom. The director cannot discharge the duty to maintain such information in confidence while at the same time discharging the duty to make disclosure. The director cannot act to advance any interests other than those of the corporation.

Process for Resolution of Conflicts and Addressing Breaches of Duty

- **Disclosure of Conflicts**

A director, officer or committee member who is in a position of conflict or potential conflict shall immediately disclose such conflict to the board by notification to the chair or any vice chair of the board. Where the chair has a conflict, notice shall be given to the vice chair. The disclosure shall be sufficient to disclose the nature and extent of the interest. Disclosure shall be made at the earliest possible time and, where possible, prior to any discussion and vote on the matter.

Where (i) a director is not present at a meeting where a matter in which the director has a conflict is first discussed and/or voted upon, or (ii) a conflict arises for a director after a matter has been discussed but not yet voted upon by the board, or (iii) a director becomes conflicted after a matter has been approved, the director shall make the declaration of the conflict to the chair or vice chair as soon as possible and at the next meeting of the board.

If an officer becomes interested in a contract or transaction after it is made or entered into, the disclosure shall be made as soon as possible after the officer becomes so interested.

A director or officer may make a general declaration of the director's relationships and interests in entities or persons that give rise to conflicts.

- **Abstain from Discussions**

The director or officer who has declared a conflict shall not be present during the discussion or vote in respect of the matter in which he or she has a conflict and shall not attempt in any way to influence the voting.

Process for Resolution of Conflicts and Addressing Breaches of Duty

All directors shall comply with the requirements of the by-laws.

A director may be referred to the process outlined below in any of the following circumstances:

1. Circumstances for Referral

Where any director believes that that director or another director:

- a. Has breached his or her duties to the corporation;
- b. Is in a position where there is a potential breach of duty to the corporation;
- c. Is in a situation of actual or potential conflict of interest; or
- d. Has behaved or is likely to behave in a manner that is not consistent with the highest standards of trust and integrity and such behaviour may have an adverse impact on the corporation.

2. Process for Resolution

The matter shall be referred to the following process:

- a. Refer matter to chair or where the issue may involve the chair, to any vice chair, with notice to chief executive officer.
- b. Chair (or vice chair as the case may be) may either (i) attempt to resolve the matter informally, or (ii) refer the matter to either the Executive Committee (if one has been established) or to an ad hoc sub-committee of the board established by the chair (or vice chair, as the case may be) which sub-committee shall report to the board.
- c. If the chair or vice chair elects to attempt to resolve the matter informally and the matter cannot be informally resolved to the satisfaction of the chair (or vice chair as the case may be), the director referring the matter and the director involved then the chair or vice chair shall refer the matter to the process in (b) (ii) above.
- d. A decision of the board by majority resolution shall be determinative of the matter.

It is recognized that if a conflict, or other matter referred cannot be resolved to the satisfaction of the board (by simple majority resolution) or if a breach of duty has occurred, a director may be asked to resign or may be subject to removal pursuant to the by-laws and applicable legislation.

Perceived Conflicts

It is acknowledged that not all conflicts or potential conflicts may be satisfactorily resolved by strict compliance with the by-laws. There may be cases where the perception of a conflict of interest or breach of duty (even where no conflict exists or breach has occurred) may be harmful to the corporation notwithstanding that there has been compliance with the by-laws. In such circumstances, the process set out in this policy for addressing conflicts and breaches of duty shall be followed.

It is recognized that the perception of conflict or breach of duty may be harmful to the corporation even where no conflict exists or breach has occurred and it may be in the best interests of the corporation that the director be asked to resign.

Amendment

This policy may be amended by the board.

Approval Date:

Last Review Date:

Form 6.4

Sample Board Code of Conduct

Purpose

The corporation is committed to ensuring that in all aspects of its affairs it maintains the highest standards of public trust and integrity.

Application

This Code of Conduct applies to all directors, including *ex officio* directors, and non-board members of board committees. Directors are also required to comply with the corporation's policy on Ethics and Standards of Business Conduct, which applies to employees.

Director's Duties

All directors stand in a fiduciary relationship to the corporation. As fiduciaries, directors must act honestly, in good faith, and in the best interests of the corporation.

Directors will be held to strict standards of honesty, integrity and loyalty. A director shall not put personal interests ahead of the best interests of the corporation.

Directors must avoid situations where their personal interests will conflict with their duties to the corporation. Directors must also avoid situations where their duties to the corporation may conflict with duties owed elsewhere. Where conflicts of interest arise, directors will comply with the requirements of the by-laws and applicable legislation.

In addition, all directors must respect the confidentiality of information about the corporation.

Best Interests of the Corporation

Directors must act solely in the best interests of the corporation. All directors, including *ex officio* directors, are held to the same duties and standard of care. Directors who are nominees of a particular group must act in the best interests of the corporation, even if this conflicts with the interests of the nominating party.

Confidentiality

Directors and committee members owe a duty to the corporation to respect the confidentiality of information about the corporation whether that information is received in a meeting of the board or of a committee or is otherwise provided to or obtained by the director or committee member. Directors and committee members shall not disclose or use for their own purpose confidential information concerning the business and affairs of the corporation unless otherwise authorized by the board.

It is recognized that the role of director may include representing the corporation to third parties. However, such representations must be respectful of and consistent with the director's duty of confidentiality. In addition, the chair is

the only official spokesperson for the board. Every director and committee member shall ensure that no statement not authorized by the board is made by him or her to the press or public.

A director is in breach of his or her duties with respect to confidentiality when information is used or disclosed for other than the purposes of the corporation.

Board Spokesperson

The board has adopted a policy with respect to designating a spokesperson on behalf of the board. Only the chair or designate may speak on behalf of the board. The chief executive officer or his or her designate may speak on behalf of the organization.

No director shall speak or make representations on behalf of the board unless authorized by the chair or the board. When so authorized, the board member's representations must be consistent with accepted positions and policies of the board.

Media Contact and Public Discussion

News media contact and responses and public discussion of the corporation's affairs should only be made through the board's authorized spokespersons. Any director who is questioned by news reporters or other media representatives should refer such individuals to the appropriate representatives of the corporation.

Respectful Conduct

It is recognized that directors bring to the board diverse background, skills and experience. Directors will not always agree with one another on all issues. All debates shall take place in an atmosphere of mutual respect and courtesy.

The authority of the chair must be respected by all directors.

Corporate Obedience – Board Solidarity

Directors acknowledge that properly authorized board actions must be supported by all directors. The board speaks with one voice. Those directors who have abstained or voted against a motion must adhere to and support the decision of a majority of the directors.

Obtaining Advice of Counsel

Request to obtain outside opinions or advice regarding matters before the board may be made through the chair.

Amendment

This policy may be amended by the board.

Approval Date:

Last Review Date:

Form 6.5

Sample Position Description – Board of Directors

Duties and Expectations of a Director

Purpose

The corporation is committed to ensuring that it achieves standards of excellence in the quality of its governance and has adopted this policy describing the duties and expectations of directors.

Application

This policy applies to all elected and *ex officio* directors and is provided to directors before they are recruited for appointment to the board. A director who wishes to serve on the board must confirm in writing that he or she will abide by this policy.

Position Description – Board of Directors

As a member of the board, and in contributing to the collective achievement of the role of the board, the individual director is responsible for the following:

- **Fiduciary Duties**

Each director is responsible to act honestly, in good faith and in the best interests of the corporation and in so doing, to support the corporation in fulfilling its mission and discharging its accountabilities.

A director shall apply the level of skill and judgment that may reasonably be expected of a person with his or her knowledge and experience. Directors with special skill and knowledge are expected to apply that skill and knowledge to matters that come before the board.

[Note to reader: This paragraph should be replaced with the following for corporations subject to the *Canada Not-for-Profit Corporations Act* and for Ontario corporations once the new *Not-for-Profit Corporations Act* (Ontario) has been proclaimed: "Every director, in exercising his or her powers and discharging his or her duties to the corporation, shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Every director shall comply with *the Not-for-Profit Corporations Act* (Ontario) and regulations and the corporation's articles and by-laws."]

- **Accountability**

A director's fiduciary duties are owed to the corporation. The director is not solely accountable to any special group or interest and shall act and make decisions that are in the best interest of the corporation, as a whole. A director shall be knowledgeable of the stakeholders to whom the corporation is accountable and shall appropriately take into account the interests of such stakeholders when making decisions as a director, but shall not prefer the interests of any one group if to do so would not be in the best interests of the corporation.

- **Education**

A director shall be knowledgeable about:

- The operations of the corporation;
- The duties and expectations of a director;
- The board's governance role;
- Board's governance structure and processes;
- Board adopted governance policies; and
- Corporation policies applicable to board members.

A director will participate in a board orientation session, orientation to committees, board retreats and board education sessions. A director should attend additional appropriate educational conferences in accordance with board approved policies.

- **Board Policies and Corporation Policies**

A director shall be knowledgeable of and comply with the policies that are applicable to the board including:

- The Board's Code of Conduct;
- The Board's Conflict of Interest Policy;
- The Board's Confidentiality Policy; and
- The Ethics and Business Conduct Policy of the corporation.

- **Teamwork**

A director shall develop and maintain sound relations and work cooperatively and respectfully with the board chair, members of the board and senior management.

- **Community Representation**

A director shall represent the board and the corporation in the community when asked to do so by the board chair.

- **Time and Commitment**

A director is expected to commit the time required to perform board and committee duties. It is expected that a director will devote a minimum of between *[10 and 15]* hours per month.

The board meets approximately six times a year and a director is expected to adhere to the board's attendance policy that requires attending at least *[70 to 80]* percent of board meetings.

A director is expected to serve on at least one standing committee. Committees generally meet monthly.

- **Contribution to Governance**

Directors are expected to make a contribution to the governance role of the board through:

- Reading materials in advance of meetings and coming prepared to contribute to discussions;
- Offering constructive contributions to board and committee discussions;
- Contributing his or her special expertise and skill;
- Respecting the views of other members of the board;
- Voicing conflicting opinions during board and committee meetings but respecting the decision of the majority even when the director does not agree with it;
- Respecting the role of the chair;
- Respecting the role and terms of reference of board committees; and
- Participating in board evaluations and annual performance reviews.

- **Continuous Improvement**

A director shall commit to be responsible for continuous self-improvement. A director shall receive and act upon the results of board evaluations in a positive and constructive manner.

Term and Renewal

A director is elected for a term of three years and may serve for a maximum of [*six or nine*] years. A director's renewal is not automatic and shall depend on the director's performance.

Amendment

This policy may be amended by the board.

Approval Date:

Last Review Date:

Form 6.6

Tips for Directors

1. **Be a knowledgeable director.** Your responsibility for learning is ongoing.
 - Participate in the board orientation session.
 - Acquire a “resources” binder that you can add to from time to time.
 - Ensure that you understand your fiduciary duties and the standard of care that is expected of you.
 - Have a good general knowledge of the legal framework within which your corporation operates.
 - Acquire information about your corporation. This can be done by acquiring and reviewing the following documents:
 - Annual Reports
 - Internal and/or External Reviews, Reports or Newsletters
 - Organizational Charts
 - Strategic Plan
 - Mission, Vision and Values Statement
 - Accountability Statement (if one has been developed).
 - Acquire a good working knowledge of issues that have faced the board – consider reviewing last year’s board minutes.
 - Request orientation to the committee to which you are assigned. Review committee minutes for the last year if you are new to the committee.
 - Be aware of the general industry environment (note articles of relevance to your corporation).

2. **Understand the rules that govern the corporation and their order of precedence:**
 - Legislation
 - Letters patent, articles or any other special Act incorporating the corporation.
 - By-laws
 - Board structures (committee structures, officers and their role)
 - Governance policies:
 - Conflict of Interest
 - Board Code of Conduct
 - Confidentiality
 - Whistleblower
 - Open Board meeting policies
 - Meetings without management policies
 - Expense reimbursement policies
 - Rules of Order
 - Corporate Policies and Practices

3. Ensure that your behaviour contributes to effective governance:

- Understand and adhere to rules of fiduciary conduct.
- Ensure that you have reviewed all of the board's policies that support board behaviour.
- Understand how the board governance structures contribute to effective governance and respect those processes.
- Understand, respect and support the role of the board chair and chief executive officer.
- Work to develop a good understanding of the distinction between management and governance and appropriately maintain your "governance" role.

4. Maintain a commitment to continuous improvement:

- Take responsibility for on-going self-education.
- Attend appropriate educational conferences that will provide further knowledge and skills to support you in your role.
- Be self-critical and monitor your contribution to the board.
- Ask another board member to give you constructive feedback on your board participation.
- Develop a relationship with the board chair and use that as an opportunity to develop your personal skills and to find a way to effectively contribute to the board.
- Acknowledge your obligation to continue to contribute.
- Consider the roles you would like to perform that would allow you to contribute your skills and expertise and develop a list of things you should do to perform those roles.

5. Participate constructively:

- Recognize the importance of meetings. The board is a collective and only comes together when it meets.
- Properly prepare for meetings. Ensure that you are receiving relevant materials sufficiently in advance of meetings.
- Understand how you may add items to the agenda.
- Consider the board's annual work plan and ensure that you are properly prepared for each meeting.
- Participate actively in board discussions.
- Ensure that your views are clearly and fully communicated.
- Have an open mind to the views of others.
- Be prepared to change your position once you have heard the views of others expressed.
- Understand the process of consensus decision-making and your duty to accept the will of the majority.
- Where you feel strongly about an issue consider having your dissent recorded in the minutes.
- Understand how external (legal/accounting) advice is provided to the board.
- Carefully review minutes to ensure that they accurately reflect the matters that were discussed. The minutes should contain an overview of the factors that the board has considered.
- Find an informal mentor to help you understand both board processes and the corporation.
- Ask questions before board meetings and in committee meetings and not just at the board table.
- Recognize that past practices or precedents may be of assistance in ensuring constructive participation.
- For major processes (strategic planning, services review, chief executive officer recruitment, redevelopment) ask about the process to be used and opportunities for orientation and input.

- Understand the indicators the organization uses to monitor performance.
- Identify opportunities for advanced education sessions – see if others are interested in a brainstorming board session:
 - Avoid raising your concerns at the end of the process.
 - Try to anticipate your issues in advance and raise them prior to the meeting so they can be effectively managed during the discussion.
- Be clear about why items are before the board. Ask these questions:
 - What is wanted of us?
 - What is expected or should be expected of the board?
 - What information do I need to deal with items?
- Never be shy about asking how the items affect or may affect the object/mission/values or strategic directions of the organization.

Don't be afraid to ask all of your questions – chances are another board member will have the same concern. Avoid "parking lot" conversations. If you feel the need to revisit the Board meeting after you have left the boardroom then there is a good chance that the meeting was not effective. Raise your concerns before the meeting has concluded.

Form 6.7 Annual Director Declaration and Consent

[Name of Corporation]
Annual Director Declaration and Consent

To: **[Name of Corporation]** (the "Corporation")
And To: The Directors thereof

Consent

I consent to act as a director of the Corporation.

I consent to the participation by any director or member of a committee at a meeting of the board or a committee of the board by such telephone, electronic or other communication facilities as are permitted under applicable legislation.

Compliance with Policies and Codes

I confirm that I have read the following policies and codes of conduct which have been approved by the Board (collectively the "Policies and Codes").

[Insert List]

I agree to comply with the policies and codes, the by-laws of the Corporation and such other policies of the Corporation that are applicable to the board.

Conflicts

In accordance with the Conflict of Interest Policy and the by-laws of the Corporation, I make the following declaration:

I have an interest, directly or indirectly, in the following entities or persons which includes entities in which I am a director or officer:

1. [Insert name.]
2. [Insert name.]
3. [Insert name.]

This declaration is a general notice of interest pursuant to the By-laws and applicable legislation and accordingly, I should be regarded as interested in any contract made or transaction with any of the above entities or persons.

I acknowledge that this declaration is in addition to my obligations to comply with the Conflict of Interest Policy and the by-laws in respect of any specific conflict that may arise.

I declare the above information to be true and accurate as of the date hereof.

Dated this _____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED)

<i>In the presence of:</i>)	_____
_____)	_____
<i>Signature of Witness</i>)	<i>Signature</i>
_____)	_____
<i>Name of Witness</i>)	<i>Name of Director</i>

[Note to Reader: This form may also be used for non-voting directors (no changes required) or for non-director members of committees. In the case of non-director members of committees, the title should be changed to "Annual Committee Member Declaration and Consent" and the first sentence under the heading "Consent" should read: "I consent to the serve the Corporation as a member of a committee of the board."]

Chapter 7

Board Quality

The board's role is to govern the affairs of the corporation. In legal terms, the board is sometimes described as the acting "mind and will" of the corporation. The objective of the board should be to add value by ensuring it can contribute to the quality of the organization. To do this, the board must ensure that its composition and structure will contribute to effective governance. It must also ensure that, having recruited qualified directors, they receive training and orientation that enables them to maximize their contribution.

There are a number of elements of board design that contribute to board quality and, hence, governance effectiveness. This chapter will discuss Board Composition and Recruitment, Board Orientation and Education, and Board Evaluation.

BOARD COMPOSITION AND RECRUITMENT

The composition, size, turnover, nomination, and recruitment processes are perhaps some of the most important governance elements and processes that contribute to effective governance.

Board Size

Legal Requirements

For corporations governed by the *Corporations Act* (Ontario), the board size must be a fixed number of no fewer than three, and the fixed number must include the elected and *ex officio* directors. The number of directors may be increased or decreased by a "special resolution" (a resolution passed by the directors and confirmed by at least two-thirds of the members voting at a general meeting).

Under the *Not-for-Profit Corporations Act* (Ontario), the number of directors must be at least three and the number must be set out in the articles and can, therefore, only be changed by articles of amendment unless the articles provide for a range of directors as described below. If the corporation is a public benefit corporation (defined in [Chapter 2](#)) no more than one-third of the directors may be employees of the corporation or any of its affiliates.

The *Not-for-Profit Corporations Act* (Ontario) will permit the articles to set out either a fixed number of directors or a range for the size of the board. For example, the articles may authorize the corporation to have a minimum and maximum number of directors. Where a range of directors is set out in the articles, the number must be fixed within the range by the members by special resolution from time to time, or the members may, by special resolution, empower the directors to determine the number. In such a case the board would determine the number (within the minimum and maximum range) by ordinary resolution from time to time.

Under the *Canada Not-for-Profit Corporations Act*, the minimum number of directors will be either one or three, depending upon whether or not the corporation meets the definition of a soliciting corporation. A soliciting corporation (see the definition in [Chapter 2](#)) must have at least three directors, at least two of whom may not be officers or employees of the corporation or its affiliates.

The *Canada Not-for-Profit Corporations Act* permits the articles to set out either a fixed number of directors or a range for the size of the board. For example, the articles may authorize the corporation to have a minimum and

a maximum number of directors sometimes called a floating board. Where a range of directors is set out in the articles, the number must be fixed within the range by the members by ordinary resolution from time to time, or the members may delegate to the board the authority to fix the number of directors from time to time, and in such a case, the board may do so by ordinary resolution.

Governance Principles

- The board needs to be large enough to ensure there are sufficient individuals to manage the board's workload.
- A board should not be so large as to impede effective discussion. All board members should have an opportunity for meaningful input.
- Board size should be determined with reference to the context of the particular corporation.
- A board should determine its size with reference to the following factors:
 - Board workload, which can be variable depending upon issues facing the organization, such as capital projects or expansion of its mandate.

A board should not be so large as to impede effective discussion. All board members should have an opportunity for meaningful input.

- Skills required by the board, which may vary from time to time depending upon the issues and challenges facing the organization.
- Impact of board size on effective board discussions. All board members should have the opportunity for meaningful input without unduly lengthy board meetings.

Board Quality and Composition

Legal Requirements

- Directors must be individuals, at least 18 years of age, not be an undischarged bankrupt and meet the requirements of applicable legislation with respect to mental competency.
- Directors of corporations subject to the *Corporations Act* (Ontario) must be members of the corporation or become a member within 10 days of election or appointment.
- Directors of corporations subject to the *Canada Not-for-Profit Corporations Act* are not required to be members.
- The *Not-for-Profit Corporations Act* (Ontario) does not require a director to be a member, but a director must consent in writing to his or election or appointment either before or within 10 days after the election or appointment.

Governance Principles

The skills, experience and qualities of the individual directors are important elements in governance. There are three distinct attributes that should be considered in nomination and election processes. While skill, experience and knowledge can be objectively assessed or measured, the personal or behavioural qualities are more subjective and, therefore, more difficult to assess.

Skills – Individual director skills refer to the area of expertise or knowledge that an individual director possesses. There are some skills that a board will always need: financial literacy, legal and governance are typical requirements. Others may be required as a result of an issue unique to that organization and the industry in which it operates. In addition, anticipated issues or activities may require a special expertise for a limited period of time, e.g., a capital project may require construction/project management expertise.

See *Form 7.1: Sample Board of Directors Skills Matrix and Inventory*

Experience, Knowledge and Diversity – Not every quality that is required or desired will come from a specialized skill. Experience and knowledge in areas in which the board requires assistance or performs a governance role are also important. For example, experience in governance is also important. For some corporations, there may be an emphasis on ensuring the board reflects the diversity of the community served including demographic, cultural, linguistic, economic, geographic, gender, and ethnic characterization.

In addition, for some boards, it may be important that the board also be representative of its members or of specific constituencies. While the trend in governance is to have skills-based boards that are independent of any one interest group, there are some corporations where the mission is to serve the interests of a specific group. For example, in a trade, industry or professional association, the board will usually be comprised of representatives of the trade, industry or profession. Although there is a risk that such directors may act in the interests of a specific group rather than the corporation as a whole, such risk is usually outweighed by the need for the board to be credible in the eyes of those whose interests it is to serve. These types of organizations must be distinguished from organizations that are mission-driven with multiple accountabilities.

Qualities – It is important to recruit directors who possess behavioural qualities that are required for all directors. The nature of a director's fiduciary duties requires that, at a minimum, a director possess integrity, loyalty, honesty and good faith.

Other qualities desired in a board member include:

- Ability to work in a team;
- Commitment to the workload required;
- Absence of apparent conflicts;
- Leadership potential; and
- Ability to think strategically and communicate effectively.

While it may be harder to objectively identify a director with the required qualities, the recruitment and selection processes should emphasize the importance of adherence to these qualities.

The nature of a director's fiduciary duties requires that, at a minimum, a director possess integrity, loyalty, honesty and good faith.

Unlike skills and experience, where a balance is sought across the board, the required behavioural qualities should be present in all directors.

See *Form 7.2: Sample Guidelines for Director Selection*

Term

Legal Requirements

There are few legal requirements with respect to term.

For *Corporations Act* (Ontario) corporations, where directors are elected for rotating terms, no term may be longer than five years and at least three directors must retire (subject to re-elections) each year. No maximum term is set out and directors, therefore, have no limit on the number of terms they may serve unless the by-laws so provide.

The *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Act* (Ontario) are both silent with respect to a director's maximum term and both provide greater flexibility when electing directors. Under these Acts:

- Directors may be elected for terms of up to four years;
- Not every director need be elected for the same term at the same meeting;
- There is no requirement to have an election every year;
- If no term is specified when a director is elected, the director is deemed elected until the close of the next annual meeting of members.

Governance Principles

While every elected director could be indefinitely re-elected, the better governance practice is to set a maximum number of years of service usually at no more than 12 and no less than six years, with the usual maximum term being in the range of either six to nine years to allow for board renewal and rejuvenation.

In setting both the individual director term (where terms of more than one year are permitted) and the total length of service, a board needs to balance the following factors:

- **Acquiring required knowledge** – There is a learning curve for a new director who must learn not only about the organization itself and its governance structure, but also about the industry environment generally.
- **Meeting increased governance expectations** – A good director will be in a continuous learning mode and will be a more skilled governor with more experience.
- **Ensuring mentors for new board members** – Experienced board members can provide a valuable mentoring role to new board members.
- **Meeting board leadership requirements** – It may take more than one initial term as a director in order to groom directors for board leadership positions such as the chair and vice chair.
- **Balancing continuity with fresh thinking** – A board needs to ensure there is appropriate continuity in the boardroom; however, without mandated turnover, there may be insufficient opportunities to recruit new board members.
- **Availability of qualified candidates** – The availability of potential new board members can vary between communities and organizations, and may facilitate a shorter term for some boards, while requiring a longer term for others.

Recruitment, Nomination and Election

Legal Requirements

The general rule is that directors (other than *ex officio* directors, where permitted) are elected by the members. There are some exceptions that permit the board (where there is a quorum in office) to appoint directors (e.g., to fill a vacancy).

Applicable legislation may give members a right to nominate a candidate for election to the board in accordance with a specified process. The *Canada Not-for-Profit Corporations Act* allows nominations from members by way of a proposal that follows the process set out in the Act and requires signatures from five percent of the members entitled to vote (or such lower percent as may be set out in the by-law). The new *Not-for-Profit Corporations Act* (Ontario) will contain a similar proposal process for nominations from five percent (or such lower percent as is permitted by the by-laws) of the members entitled to vote provided the proposal process in that Act is followed.

- Subject to applicable legislation, a corporation's by-laws or letters patent or articles may provide for persons to become directors *ex officio* in lieu of election.
- *Ex officio* directors are not permitted under the *Canada Not-for-Profit Corporations Act*.
- *Ex officio* directors are permitted under the *Corporations Act* (Ontario) and will be permitted under the new *Not-for-Profit Corporations Act* (Ontario).
- Under the *Canada Not-for-Profit Corporations Act*, directors will be deemed not to have been elected or appointed unless:
 - The director was present at the meeting where he or she was elected or appointed and did not object;

- The director consents in writing to serve as a director; or
- The director acted as a director after such election or appointment.
- Under the *Not-for-Profit Corporations Act* (Ontario), directors will also be required to consent in writing to their election or appointment within 10 days of the election or appointment except in circumstances where there is a re-election or re-appointment with no break in continuous service. Where the consent is not obtained as required, then the director is deemed not to have been elected or appointed. A later consent in writing can cure the failure to obtain consent within the required 10 day period.

Governance Principles

- A corporation's recruitment, nomination and election process must take into account the following two fundamental governance principles:
 - Members elect directors (other than the *ex officio* directors, where permitted); and
 - The board is responsible for the quality of its own performance.
- There is a range of current practices with respect to the recruitment, nomination and election of directors. Examples of some current practices include:
 - Accepting nominations from the floor during the annual meeting;
 - Accepting nominations from members a specific number of days prior to the annual meeting;
 - A board-appointed nominating committee recommends to the board, and the board places before the annual meeting, a number of nominees greater than the number of open positions (the members pick from among the recommended candidates);

- A board-appointed or member-elected nominating committee recommends to the board, and the board places before the annual meeting, a slate of candidates equal to the number of vacancies (election by acclamation or the members accept or reject the slate).
- The practice adopted by any particular corporation will depend on the nature of the corporation and the purposes for which it exists. Corporations that exist solely to serve the interests of members, such as sporting clubs or trade associations, will be more likely to have recruitment processes that rely heavily on member involvement in the nominations process and may provide for more nominations than open positions. For other corporations where the organization has multiple accountabilities or provides services to the public with government money such as a health services provider, the board will be more involved in ensuring that an independent skills-based board is recruited and elected. In such cases, there may be provisions to ensure that only board-approved candidates are eligible for election, subject to members' rights to propose nominees if permitted under applicable legislation.
- Best practices in board recruitment for a skills-based, independent board require that the board play an appropriate role in board succession. In such cases, the nomination and election processes should include the following:
 - Ensuring that the board understands that it is responsible for the quality of board succession and establishes a committee (governance or nominating) to oversee the process on behalf of the board;
 - Establishing eligibility criteria and developing a skills/experience/diversity matrix with reference to board needs and stakeholder accountability:
 - Maintaining an up-to-date inventory of current board members' skills and experience;
 - Surveying current board members for intentions with respect to term;
 - Considering board and individual director evaluation results with respect to determining required resources (skills and experience) and available resources. Individual director renewal should not be automatic;
 - Establishing a board committee charged with recruitment and selection. The board directs the committee to recruit consistent with board-approved requirements and eligibility criteria;
 - Determining an appropriate recruitment strategy and considering a variety of means to identify board candidates including local newspaper advertisements, contacting agencies that maintain rosters of volunteer directors, effective use of the organization's website or the services of a recruitment agency;
 - Requiring all prospective candidates to complete an application form;
 - Interviewing short-listed candidates;
 - Conducting personal background and criminal reference checks;

Best practices in board recruitment for a skills-based, independent board require that the board play an appropriate role in board succession.

- Ensuring candidates are aware of what is expected of a director;
 - Ensuring, where appropriate and subject to member rights under applicable legislation, that only candidates recommended by the board (on recommendation of a board-appointed committee) are placed before the annual meeting. A board may choose to recommend only that number of candidates for whom there are vacancies or a greater number of candidates than vacancies;
 - Making descriptions of candidates available to membership in advance of the annual meeting;
 - Disclosing the recruitment, nomination and election process to members; and
 - Where a board has chosen to recommend more candidates than vacancies, ensuring that there is a process to conduct the election. The process needs to contemplate what happens in the event that no candidate receives a majority of votes on the first ballot (e.g., the candidate with the least votes is dropped).
- The process outlined above must be appropriately adapted by those organizations with requirements for specific board representation or whose mission is related to providing a service to members, such as a sporting club, or a professional or trade association. In these cases, the nomination process may need to ensure categories of members are represented on the board.

See [Form 7.1: Sample Board of Directors Skill Matrix and Inventory](#)

See [Form 7.3: Sample Application for Board Membership – Long Form](#)

See [Form 7.4: Sample Application for Board Membership – Short Form](#)

See [Form 7.5: Sample Director Recruitment and Selection Process](#)

See [Form 7.6: Sample Board of Directors Nominations and Election Policy](#)

See [Form 7.7: Overview of Director Election Processes](#)

BOARD ORIENTATION AND EDUCATION

Board quality is affected by orientation processes for new directors and ongoing education for the full board. Having recruited skilled and qualified directors, it is then the board's governance responsibility to ensure there are supports in place that allow these directors to maximize their contribution in the best interests of the corporation.

Directors have a duty to be knowledgeable about not only the affairs of the corporation they serve, but also about the board's governance processes and their rights, duties and obligations as members of the board. Directors should be made aware of what will be expected of them before they agree to become members of the board. In addition, it is important that boards conduct mandatory orientation sessions and provide directors with access to ongoing and continuous education.

Directors should be encouraged to attend educational programs that are relevant to their role as directors. It is important that education sessions relevant to issues that will be appearing before the board be brought to the attention of the board members in sufficient time for them to be able to attend. Accordingly, directors should be encouraged, if not required, to attend educational programs that focus primarily on board members or those holding board leadership positions.

Expectations with respect to attendance at mandatory orientation sessions and educational conferences should be brought to the attention of the directors during the recruitment process.

A board should take into account the director's participation in educational sessions as part of the director's evaluation and consideration with respect to renewing the director's term of office. In addition, a board should include, as part of its regular board education, sessions that address board governance.

Often, the education sessions conducted as part of board meetings focus on operations of the organization or broader industry issues generally. While that is entirely appropriate, it is also appropriate to focus on board governance and director's duties and obligations. Many boards have adopted a practice of having at least one annual education session focus on the board's governance role.

Given the importance of orientation and ongoing education, boards should allocate sufficient resources for these activities.

Governance Principles for Board Orientation

It is the responsibility of the board to ensure that new directors and new committee members receive orientation on their roles as members of the board and/or members of a committee. Orientation should be mandatory. The requirement to attend an orientation session should be included in the information provided to prospective board members.

It is the responsibility of the board to ensure that new directors and new committee members receive orientation on their roles as members of the board and/or members of a committee. Orientation should be mandatory.

Orientation should include four components:

- Industry or sector environment (e.g., for health care provider agencies, the orientation should include information of the health care delivery industry; for fundraising organizations, the orientation should include information on philanthropy in Canada and the elements of successful fundraising);
- Organization's operations;
- Stakeholders and key relationships; and
- Board governance.

The board should periodically review the quality of its orientation program. Directors should receive materials that support the orientation in a format that allows the materials to be updated from time to time.

All new directors should be required to attend and current directors should be invited to attend. Directors commencing a renewal term should strongly be encouraged to re-attend orientation sessions to refresh their knowledge and to serve as a resource to new board members.

See *Form 7.8: Sample Board Orientation Manual Index*

Governance Principles for Board Education

Directors have a responsibility to be knowledgeable about the environment in which the organization operates, its actual operations, as well as its governance responsibilities.

Director education should be facilitated through:

- Board education sessions at regular board meetings and as part of board retreats;
- Ensuring that the content of education sessions includes the external environment, the corporation's operations and the board's governance obligations;

- Regular distribution to all board members of appropriate education and information materials; and
- Establishing a policy that permits and encourages directors to attend educational programs with reimbursement of reasonable expenses.

BOARD EVALUATION

As part of the board's ongoing responsibility for its own governance, a board should consider and implement governance evaluation processes that can contribute to the continuous improvement of its governance.

Evaluations are an important component of continuous improvement. They should be undertaken at a point in the board's year when the information distilled from the evaluation may be acted upon. For example, it is usual for board committees to be reconstituted following the annual meeting. Accordingly, the evaluation of board committees should take place prior to the annual meeting so that the board or the board governance committee is able to take into account the evaluation results in considering which committees should continue and how committee terms of reference should be modified. Committee composition will also be adjusted following the annual meeting and, accordingly, an evaluation of committee members' performance should be done prior to the annual meeting so that the results of that evaluation can be considered in assigning board members to committees.

Similar decisions should be made with respect to every evaluation tool that the board chooses to use. For example, a retreat evaluation should be conducted immediately following the retreat but need not be considered until planning for next year's retreat begins. Evaluations of director performance, whether as part of a peer review or self evaluation, should be conducted sufficiently in advance of the expiry of a director's term to allow that director to act on the information and improve performance. Evaluations of the board orientation session should be conducted after the new directors

have attended two or three board meetings to assess the value of such orientation in preparing new directors for participation on the board.

Governance Principles for Evaluation Processes

The purpose of ongoing evaluation is to ensure the maintenance and improvement of governance processes. A board should first determine what it will do with the results of the evaluations. Processes should be in place to permit the results of an evaluation to be acted upon. The following areas are all potential matters that can be the subject of evaluation:

- Individual director's performance;
- Collective board performance;
- Board chair performance;
- Board meeting evaluation;
- Committee member evaluation;
- Committee chair performance;
- Committee meeting evaluation;
- Board retreat evaluation; and
- Orientation session evaluation.

In each potential area of evaluation, the following matters should be considered:

- What is the purpose of the evaluation?
- Who should complete the evaluation?
- Will the process be anonymous?
- How will the results be shared?
- What process will be established to ensure the results are acted upon?

An evaluation routinely done without a plan to act upon the results does not further the purpose of continuous board improvement.

Guidelines for Implementing Effective Evaluations

Evaluation of an Individual Director's Performance

An evaluation of a director's performance can either be a self-assessment evaluation, sometimes done by a director as part of the annual board evaluation, or it can be a peer evaluation. It is less common to find corporations conducting peer evaluations.

A peer evaluation involves every member of the board evaluating the performance of every other board member and must be carefully undertaken.

See *Form 7.9: Sample Board Peer Assessment Questionnaire*

Whether the director's evaluation is done on a self-assessment or a peer evaluation basis, feedback on director performance should be routinely provided by the chair or through third-party resources that are external to the board.

The evaluation tool should ask questions in areas that are relevant to individual director performance including:

- Preparation for board and committee meetings;
- Participation in discussions at board and committee meetings;
- Understanding of the board's governance role;
- Application and contribution of the individual director's expertise;
- Behaviour both inside and outside the boardroom;
- Adherence to board policies especially conflict of interest policies and the board Code of Conduct; and
- Respect for the principle of board solidarity.

It may be appropriate for the board to provide some resources to a director to improve upon his or her performance, such as coaching and mentoring. The results of the individual director evaluations should also be taken into account when considering renewal terms for incumbent directors. The board culture should provide that renewal of an initial board term is not automatic.

Evaluation of Collective Board Performance

There are a number of evaluations, surveys and questionnaires that are used by corporations to evaluate the performance of the board. Generally speaking, these surveys and questionnaires evaluate the board in the following areas:

- Board composition and structure;
- Board systems and processes;
- Board committees;
- Board meetings; and
- Board performance and effectiveness.

It may be appropriate to periodically undertake a more extensive evaluation or audit of the board's governance practices using an audit tool.

See *Form 9.2: Sample Governance Audit Questionnaire*

Each year, a board should carefully review the questions that are asked on its evaluation survey to ensure that they are appropriate and aligned with the board's goals and objectives over the last year. In addition, care should be taken with the way some questions are asked. For example, asking an individual director if the board shares a common vision of its role may not in fact reveal that the board misunderstands its role.

In other words, the board may share a common misunderstanding of its role. Accordingly, while it may take longer for individuals to complete such a survey, it may be important, from time to time, to design a survey that requires narrative responses so that the descriptive way in which the questions are answered can be compared to see if there is, in fact, a common vision among the board members.

If the board survey also contains a component of self-evaluation, it would be usual to provide the director with a comparison of how they have ranked themselves against the average rankings of the board as a whole.

Directors should understand how the information generated from the board effectiveness survey will be compiled and shared with the board. It will often be the role of the governance committee to ensure that the results of the evaluation are presented to the board as a whole and that results particular to any committee or board officer have been brought to the attention of that committee or board officer. The governance committee should be charged with developing a work plan based on survey results to ensure that any areas for improvement are acted upon.

Frequency and Timing of Completion

There are many evaluations that could be undertaken by a board or its committees over the course of a year.

See [Form 7.10: Board Evaluation Process Overview](#)

Care should be taken to ensure that evaluations are effectively used to improve individual performance, enhance collective board performance, improve board systems and processes, and make decisions with respect to renewal of director terms and committee chair and officer positions. Some evaluation tools may become routine if frequently completed. This can be especially true with meeting evaluations conducted at the end of every board meeting. These tools may lose their impact and might not yield the desired information. As such, it is important to conduct evaluations judiciously.

The timing for completing an evaluation is also important. For example, if the board conducts an evaluation on the effectiveness of its orientation session, it may be better to do so after new directors who receive the benefit of the orientation session have attended two or three board meetings in order to assess whether or not the orientation has effectively prepared them for their role as directors. In addition, evaluating a director who is about to retire from the board may not be a prudent use of the time and energy required with respect to the completion of the evaluation and tabulating and sharing results.

Assessing Evaluations

Periodically, the board should assess the types of evaluations it is undertaking and the appropriateness of the tools it is using. A board should also review and reassess its processes for sharing survey results and providing resources to ensure the results can be acted upon. It is particularly important that the board review those parts of its evaluation that relate to the board's performance to ensure that the questions asked are relevant to the most recent annual work plan. For example, where a corporation has undertaken a capital project, it may be important to have questions that are directed particularly to the board's performance around exercising its role with respect to a major capital expansion.

Leadership by Example

It is important that board leadership set an example with respect to the importance of self evaluation and board evaluation. The chair should be open to evaluation of his or her performance and to acting upon constructive criticism.

See [Form 7.11: Guideline on Creating a Board Self-Assessment Survey](#)

See [Form 7.12: Sample Committee Self-Assessment Survey](#)

FREQUENTLY ASKED QUESTIONS

1. What is the meaning of “*ex officio*”?

Ex officio simply refers to the means by which an individual takes an office. It usually refers to members of the board (directors), but it can also refer to members of the corporation. For example, directors may be identified as *ex officio* members of the corporation – that means a person who is elected director automatically becomes a member.

Ex officio membership (either as a director or member) includes all of the rights, duties and obligations of the office. An *ex officio* director has the same duties, rights and obligations (including the right to vote) as any other director, subject to any provisions in the by-laws.

Ex officio directors and members are permitted for corporations subject to the *Corporations Act* (Ontario) and will be permitted under the new *Not-for-Profit Corporations Act* (Ontario) but are not permitted under the *Canada Not-for-Profit Corporations Act*.

2. Can a board provide for a minimum and maximum number of directors?

A corporation subject to the *Corporations Act* (Ontario) is required to have a board that consists of a fixed number of directors of not fewer than three. Each time the board size changes, a special resolution must be passed by the directors and presented to the members for confirmation by a two-thirds vote. There is no maximum number of directors.

Corporations under the *Canada Not-for-Profit Corporations Act* may have either a fixed number of directors or a minimum and maximum (range) of directors set out in the articles. In the case of a minimum and maximum set out in the articles, the board size is to

be determined by the members or the members may delegate to the board the decision with respect to the number of directors from time to time.

The *Not-for-Profit Corporations Act* (Ontario) will also permit the articles to provide for a minimum and maximum range of directors (sometimes called a floating board). Where the articles provide a range of directors, the members may fix the number by special resolution or the members may, by special resolution, authorize the directors to “fix” the number within the range.

Where a range of directors is permitted by the articles and the members have delegated to or authorized the board to fix the number of directors, the size of the board can be easily changed within that minimum and maximum number by ordinary resolution of the board with no need for member approval. This process will give more governance flexibility to a board.

3. Is there a difference in the role of a trustee, a governor or a director?

Corporations may use the term “trustee” or “governor” to describe the individuals who serve in the capacity of directors of the corporation. If the legal entity is a corporation, then describing the members of the governing body as trustees or governors, as opposed to directors, does not change the duties, rights or obligations of the individuals who comprise the board. There may be an argument that directors of charitable corporations are held to a different standard than directors of other not-for-profit corporations on the basis that they are akin to a trustee of charitable assets.

There are a number of cases that have addressed this issue and a corporation may wish to obtain the advice of legal counsel when questions arise with respect to whether the duties of a director would be different than the duties of a trustee of a charity.

4. Can directors vote by proxy or send substitutes to board meetings if they are not able to attend?

No. The obligations of a director are individual to that director and cannot be the subject of a proxy or other delegation to another individual.

5. Can employees of the corporation be directors?

There is no prohibition in the *Corporations Act* (Ontario) or in the *Canada Not-for-Profit Corporations Act* on who may serve as a director of a corporation other than the requirement that the director be an individual, 18 years of age or more, not be an undischarged bankrupt, and meet the mental capacity requirements as described in applicable legislation.

The *Canada Not-for-Profit Corporations Act* also requires that at least two of the directors of a soliciting corporation (defined in [Chapter 2](#)) not be officers or employees of the corporation or its affiliates. Under the new *Not-for-Profit Corporations Act* (Ontario) no more than one-third of the directors of a public benefit corporation (defined in [Chapter 2](#)) may be employees of the corporation or its affiliates.

It is common practice to have certain categories of eligibility criteria that preclude employees and perhaps their family members from serving on the board of directors. These criteria are established in order to ensure independence of the board and to avoid perceived and actual conflict of interest.

The Public Guardian and Trustee in Ontario takes the view that an employee should not serve on the board of a charitable corporation on the basis that a director of a charity must serve without remuneration, including remuneration for services in another capacity. A corporation that is a charity should consult with its legal advisors on this issue.

6. What is the minimum time commitment that is expected of a director?

Directors are expected to attend all board meetings. Many corporations have either formally or informally adopted a practice of requiring directors to resign if they fail to attend a minimum number of board and committee meetings, without a leave of absence having been granted by the board or by the chair. The usual requirement is for a director to attend at least 75% to 80% of board meetings.

7. Is it inconsistent with members' rights to elect the board or to provide that only candidates recommended by the board are eligible for election?

One of the board's core governance roles is to be responsible for the board's own governance. This includes the composition of the board and succession planning. Provided that the board has adopted good governance practices with respect to identifying board needs, and objectively and openly recruited and evaluated candidates, then having only candidates approved by the board be eligible for election is consistent with good governance practices and in the best interest of the corporation. The election processes may provide that members may still reject the nominees that have been put forward and require the board to repeat its process for some or all of the nominees, but cannot substitute individuals that have not met the criteria identified by the board as required for its effective functioning.

This practice must be considered on a case-by-case basis and is more likely appropriate for corporations with multiple accountabilities. As noted above, some corporations may need to ensure their board election processes are properly reflective of interests of, and roles for, specific categories of members. In addition, "representative" boards will likely follow a different practice.

This practice of restricting eligibility to board-approved nominees will be subject to members' proposal rights with respect to director nomination under applicable legislation.

8. Where the corporation has multiple sites or covers a large geographic region, or has distinct accountabilities or stakeholders, should the directors be representative of the geographical area or interests served?

There is no legal requirement that specific geographic regions or stakeholders have a proportionate representative voice on the board. One risk of structuring a board along these lines is that directors see themselves as representing a specific site or constituency and not acting in the best interests of the corporation as a whole. It is, however also important that the issues unique to stakeholders (including where appropriate

communities served by the corporation) be reflected in board discussions. One way to do this is to have individuals who understand the unique needs of specific stakeholders represented on the board. Such directors must understand that they act in the interests of the corporation as a whole. Geographic or other representation should not substitute for skills, experience and qualities that are also required.

Alternative ways to educate directors about the broader catchment area or stakeholder interests would include an orientation program or annual education session for all directors on the unique needs of specific regions and stakeholders. Corporations may also establish advisory committees to ensure that there is input to the board in an advisory capacity from local communities and specific stakeholders.

Form 7.1

Sample Board of Directors Skills Matrix and Inventory

Synopsis of key board requirements [these should relate to the corporation's strategic directions]:

- List any key board requirements for next three to five years, for example, construction and project management skills, if the corporation will be completing a capital project.

Board Members		Knowledge, Skills, and Experience																					
		Please indicate your knowledge, skills, and experience for each category Advanced = 3 Good = 2 Fair = 1 None = 0																					
Name	Years on Board	Finance	Business Mgmt	Human Resources Mgmt	Industry Specific	Government & Gov Relations	Political Acumen	Construction & Project Mgmt	Legal	Strategic Planning	Risk Management	Information Technology	Accounting	Education	Research	Quality & Performance Mgmt	Labour Relations	Board & Governance	Public Affairs & Communications	Ethics	Advocacy	Diversity Issues	
Total Rating:																							

Date of Completion:

Form 7.2

Sample Guidelines for Director Selection

Purpose

Effective governance depends on the right mixture of skills, experience, personal qualities and diversity among the members of the board.

Policy

Through the nomination and election process, the board will select directors according to their skills, experience, and personal qualities.

The board will seek a balance within the board concerning the skills and experience of directors, while considering any unique or special requirements of the corporation at the current time.

The board will ensure all directors possess the behavioural qualities necessary to perform their role as board members.

The skills, experience and knowledge, and behavioural qualities that the board will use to select potential directors are set out below.

Skills, Experience and Knowledge

The board will reflect a complementary mixture of skills, experience and knowledge. The skills, experience and knowledge the board will consider in selecting members include the following:

- Business management
- Human resources management
- Industry specific knowledge/experience
- Government and government relations
- Political acumen
- Construction and project management
- Legal expertise
- Strategic planning
- Risk management
- Information technology
- Accounting designation
- Financial expertise
- Education
- Knowledge and experience in research
- Quality and performance management
- Labour relations

- Board and governance expertise
- Public affairs and communications
- Ethics
- Demographic characteristics

Behavioural Qualities

The board requires all board members to:

- Commit to adhere to the vision, mission, and core values of the organization;
- Act with honesty and integrity;
- Understand a director's role and fiduciary duties, and the role of the board;
- Think strategically;
- Work as part of a team;
- Communicate effectively;
- Have, or commit to acquire, financial literacy appropriate for the organization's scope of activities;
- Be willing to devote the time and effort required to be an effective board member including attendance at board orientation, board retreats, board meetings, committee meetings, and organization events;
- Be free of conflicts that would impede a director's ability to fulfill his or her fiduciary duties;
- Demonstrate ability to recognize and manage specific conflicts of interest that arise from time to time.

[Note to reader: Each corporation will need to modify the skills, experience and knowledge for its own needs. A board may wish to also add the following where appropriate: *The board will reflect the diversity of the community served including demographic, linguistic, cultural, economic, geographic, gender, ethnic and social characteristics of the communities served by the organization.*]

Amendment

This policy may be amended by the board.

Approval Date:

Last Review Date:

Form 7.3

Sample Application for Membership – Long Form

Board of Directors/Board Committees

1. Instructions

- a. To apply to be a member of the [name of corporation] Board of Directors, you must complete this form and submit it with a copy of your current resume or a brief biographical sketch.
- b. Please submit your completed form and resume or biographical sketch by mail, fax, or e-mail [if the corporation is accepting applications on-line] to the following address: *[Corporation address with fax number and e-mail address]*
- c. The deadline for applications is *[date of deadline]*
- d. For more information about the application process, please contact: *[Name and contact information]*

2. Applicant Contact Information

Surname:		First Name:	
Home Address:			
City:	Province:	Postal Code:	
Home Phone Number:		Business Phone Number:	
E-mail Address:			
Preferred Method of Contact: Home Phone <input type="checkbox"/>		Business Phone <input type="checkbox"/>	E-mail <input type="checkbox"/>

3. Eligibility Criteria and Conditions of Appointment

- a. Directors must be at least 18 years old.
- b. Undischarged bankrupts are ineligible to serve as directors.
- c. [Include any additional eligibility requirements unique to the corporation, for example, residence within a certain municipality, or ineligibility of corporation employees]
- d. A director is expected to commit the time required to perform board and committee duties. The minimum time commitment is likely 10-15 hours per month.
- e. Directors must fulfill the requirements and responsibilities of their position, for example, preparing for and attending board and committee meetings, upholding their fiduciary obligations and working cooperatively and respectfully with other board members. Directors must comply with legislation governing the corporation, the corporation's by-laws and policies, and all other applicable rules.
- f. Directors must sign a Declaration confirming their agreement to adhere to their fiduciary duties and board and corporate policies.

[Optional: Please refer to (provide name of relevant document) for further details concerning the roles and responsibilities of directors.]

4. Conflict of Interest Disclosure Statement

Directors must avoid conflicts between their self-interest and their duty to the corporation. In the space below, please identify any relationship with any organization that may create a conflict of interest, or the appearance of a conflict of interest, by virtue of being appointed to the board.

5. Knowledge, Skills, and Experience

The board seeks a complementary balance of knowledge, skills, and experience. Please indicate your areas of knowledge, skills, and experience by completing Schedule A to this application or by listing below.

Please list current or prior board experience.

Which areas of board work are of particular interest to you?

Please describe any linkages you have or may have had with other similar organizations or entities in the same sector.

6. Declaration

By submitting this application, I declare the following:

- a. I meet the eligibility criteria and accept the conditions of appointment set out above;
- b. I have read and agree to comply with the following:
 - Position Description – Board of Directors' Duties and Expectations of a Director
 - Board Code of Conduct
 - Conflict of Interest Policy
 - [Include addition policies.]
- c. I certify that the information in this application and in my resume or biographical sketch is true.

Signature: _____ Date: _____

Application for Membership: Schedule A

Knowledge, Skills, and Experience

Please indicate your areas of knowledge, skills, and experience by checking off the relevant boxes in the table below. It is not expected that you possess knowledge, skill or experience in all the areas set out in the table. Please indicate only those areas that apply to you.

Finance <input type="checkbox"/> Basic <input type="checkbox"/> Advanced	Risk Management <input type="checkbox"/> Basic <input type="checkbox"/> Advanced
Business Management <input type="checkbox"/> Basic <input type="checkbox"/> Advanced	Information Technology <input type="checkbox"/> Basic <input type="checkbox"/> Advanced
Human Resources Management <input type="checkbox"/> Basic <input type="checkbox"/> Advanced	Accounting <input type="checkbox"/> Basic <input type="checkbox"/> Advanced
Sector Specific Needs, Issues, and Trends <input type="checkbox"/> Basic <input type="checkbox"/> Advanced	Education <input type="checkbox"/> Basic <input type="checkbox"/> Advanced
Research <input type="checkbox"/> Basic <input type="checkbox"/> Advanced	Quality and Performance Management <input type="checkbox"/> Basic <input type="checkbox"/> Advanced
Government and Government Relations <input type="checkbox"/> Basic <input type="checkbox"/> Advanced	Labour Relations <input type="checkbox"/> Basic <input type="checkbox"/> Advanced
Political Acumen <input type="checkbox"/> Basic <input type="checkbox"/> Advanced	Board and Governance <input type="checkbox"/> Basic <input type="checkbox"/> Advanced
Construction and Project Management <input type="checkbox"/> Basic <input type="checkbox"/> Advanced	Public Affairs and Communications <input type="checkbox"/> Basic <input type="checkbox"/> Advanced
Legal <input type="checkbox"/> Basic <input type="checkbox"/> Advanced	Ethics <input type="checkbox"/> Basic <input type="checkbox"/> Advanced
Strategic Planning <input type="checkbox"/> Basic <input type="checkbox"/> Advanced	Diversity Issues <input type="checkbox"/> Basic <input type="checkbox"/> Advanced

Describe other skills, knowledge or experience that you feel you will bring to the board.

Form 7.4

Sample Application – Short Form

Board of Directors/Board Committees

I provide the following information with respect to my application for membership on the board.

Name		
Address	Business	
	Home	
Telephone Numbers	Business	Home
Facsimile Numbers	Business	Home
E-Mail Address(es)	Business	Home
Please list current or prior board experience.		
Which areas of board work are of particular interest to you?		
What skills/areas of expertise can you bring to the board?		
Please describe your background and experience that is related to the affairs and operations of the corporation.		
Please attach an up-to-date resumé.		
_____		_____
Date		Signature

Form 7.5

Sample Director Recruitment and Selection Process

Needs Identification		
Task (February/March)	Methods	Responsibility
1. Identification of number of new/replacement board members required	Response to resignations/review of current board profile and board evaluations; consider if incumbent should be renewed based on performance and selection criteria	Governance Committee
2. Identification of selection criteria (i.e., skill, knowledge, experience, diversity)	Review of current board profile in context of selection criteria	Governance Committee Subject to board approval
Recruitment Process		
Task (March, April)	Methods	Responsibility
3. Gathering names of potential candidates	Advertisements: <ul style="list-style-type: none"> • Print media • Community newspapers • Website 	Board/Nominating Committee
	Nominations: <ul style="list-style-type: none"> • Board Members • Board Committee Chairs/Advisory Committees 	Board Members Committee Chairs
	Recruitment: <ul style="list-style-type: none"> • Targeted recruitment – use of search firm 	Board/Nominating Committee
4. Initial contact with candidates	Provide information package to potential candidates (application form and duties and expectations of directors)	Board Secretary
Selection Process		
Task (April)	Methods	Responsibility
5. Short list	Review CV and application	Nominating Committee
6. Interview candidates	In person interview and review relevant material, by-laws, director responsibilities, etc.	Board Chair/Nominating Committee
7. Reference follow-up	Telephone calls	Board Chair/Nominating Committee
Approval Process		
Task (May/June)	Methods	Responsibility
8. Approval by Governance Committee	Review CV/application, etc. Interview results and references. Match candidates to board needs.	Nominating Committee/ Governance Committee
9. Approval Board of Directors (May Board meeting)	Report of Governance Committee request for approval by board	Board of Directors
10. Approval by the Members (June AGM)	Election by Members at Annual Meeting	Members

[Note to reader: This process assumes an annual meeting in June.]

Form 7.6

Sample Board of Directors Nomination and Election Policy

Purpose

To ensure that the board is comprised of individuals who possess the skills, qualities and experience to collectively contribute to effective board governance. To assist the board in identifying qualified individuals to become board members.

Composition of Board

The composition of the board will consist of [#] directors.

Term of Office

A director is elected to the board for a term of up to four years and may serve for a maximum of six years. [If the corporation is subject to the *Corporations Act* (Ontario) and directors are elected for terms of more than one year (i.e., a rotating board), at least three directors' terms must expire each year, subject to re-election.]

Process for Nominations

A. Nominations Committee

The board shall establish a Nominations Committee which shall be charged with the responsibility of identifying and recommending individuals to become board members.

The size and composition of the Nominations Committee shall be determined by the board from time to time and may include non-board members. The board shall appoint the chair of the Nominations Committee who shall be a member of the board.

[A board may also assign the responsibility for board recruitment to a Governance Committee.]

B. Nomination Process

The Board shall identify qualified candidates through the following process:

- The number of vacancies will be determined each year and the necessary criteria to fill those vacancies will be identified (by conducting a skill-set analysis). Directors will be evaluated based on their performance and renewal will not be automatic.
- A call for nominations will be made and interested parties will be encouraged to submit applications.
- Vacancies will be advertised in the local newspapers as well as on the corporation's website.
- Applications will be submitted to the chair of the Nominations Committee and reviewed by the Nominations Committee.

- A short-list of candidates will be developed by the Nominations Committee of those individuals who meet all of the criteria as identified by the Board. Short listed candidates must be interviewed by the Nominations Committee even if they are standing for re-election.
- Reference checks will be completed by the chair of the Nominations Committee or as delegated.

C. Election Process

The voting members of the Corporation have the ultimate responsibility of approving the recommendation of the Nominations Committee, however, subject to applicable legislation, only nominees approved by the Nominations Committee through the nomination process set out in this policy shall be eligible for election.

Election of board members is completed each year as part of the Annual General Meeting.

The Nominations Committee shall identify candidates to be brought forward to the voting membership for consideration.

Candidates recommended by the Nominations Committee will be presented to the voting members for election and approval.

[The Nominating Committee may recommend more candidates than vacancies. – *Optional*]

In the event that the number of candidates equals the number of vacancies [the slate shall be declared elected by acclamation]. [*Alternative: the voting members shall be asked to vote for or against the slate and, if such vote does not carry, the vote shall take place for or against each nominee individually.*]

In the event that one or more recommended candidates are not elected, the board shall determine an appropriate process to bring new candidates forward for election.

In the event of a tie, the deciding vote will be cast by the chair of the board.

Amendment:

This policy may be amended by the Board.

Approval Date:

Last Review Date:

Note:

1. This template also contemplates that the Nominations Committee may be comprised of non-board members and that the Nominations Committee reports directly to the members at the AGM. Alternatively, by-laws or board policy may provide that nominees be approved by board before presentation to the members at the AGM in which case the Nominations Committee would report to the board and the board would report to the members at the AGM.
2. The *Canada Not-for-Profit Corporations Act* enables nominations from members provided the requirements of the Act are complied with. The *Not-for-Profit Corporations Act* (Ontario) contains a similar provision.

Form 7.7

Overview of Director Election Processes

Where the voting membership of the corporation consists only of the directors, the election of directors at the annual meeting will be by resolution on a show of hands for the recommended candidates who have been identified through the board's nomination processes. If the number of candidates equals the number of vacancies, it may even be possible to declare the slate elected by acclamation. The rules of order should be consulted.

Where a corporation has another voting membership model and there will be voting members at the Annual General Meeting in addition to the directors, it may be prudent to adopt an election process either by way of by-law or board approved policy. Set out below are two options to consider. Reference should be made to the rules of order adopted by the corporation which may provide other options.

Option 1 – Contemplates there may be more names than vacancies and even if a slate equal to vacancies is offered, there will be a vote “for” or “against”. Directors who receive the most votes are elected.

At the time of each election of directors, the following procedures shall be followed:

- a. If the board [or Nominations Committee – where Nominations Committee reports directly to members at AGM] has recommended more candidates than there are vacancies, a ballot shall be prepared which shall contain the names of all candidates recommended by the board [or Nominations Committee].
- b. The scrutineer shall be the auditor of the corporation or such other person or persons as designated by the chair of the meeting.
- c. Upon the election being called and if a vote by ballot is required, members entitled to vote shall receive ballots from the scrutineers.
- d. Where there are more candidates than vacancies, vacancies shall be filled by the required number of candidates who received the most votes on the initial ballot. *[Note: Not a majority vote - see (d) in Option 2 below.]*
- e. If the results of an election cannot be determined because two or more candidates for one vacancy receive the same number of votes, the vote shall be determined by the chair.
- f. If the board has recommended a slate of candidates equal to the number of vacancies, the chair shall call for a vote to approve the slate and if not approved, shall call for a vote, separately for each nominee.

Option 2 – Contemplates directors are elected by a majority vote if there are more names than vacancies or an election by acclamation for the “slate”.

At the time of each election of Directors the following procedures shall be followed:

- a. A ballot shall be prepared containing the names of the candidates recommended by the Board/Nominations Committee. For greater certainty, no candidate shall be qualified to stand for re-election or election unless the candidate has been recommended by the Board/Nominations Committee.
- b. The scrutineer shall be the auditor of the corporation or such other person or persons as designated by the chair of the meeting.
- c. The scrutineer shall total the votes cast for each candidate on valid ballots and arrange the names of the candidates in descending order according to the votes cast for each.

- d. Vacancies shall be filled by the required number of candidates who receive a majority of the votes cast. *[Note: Requires majority vote.]*
- e. In the event that more than one ballot is required, the candidate receiving the lowest number of votes shall be removed from the ballot.
- f. If the results of the election cannot be determined because two or more candidates for one vacancy received the same number of votes, the vote shall be retaken with only the names of the candidates receiving the same number of votes appearing on the ballot. *[Option – a tie can also be determined by the chair.]*
- g. If no election is required to be held, the chair shall instruct the secretary to cast one vote for the election of the nominees whose names appear on the ballot.

Form 7.8

Sample Board Orientation Manual Index

Part I: The Board and Governance

1. Accountabilities Statement
2. Role of the Board
3. Duties, Obligations and Expectations of Individual Directors – Director Position Description
4. Board Policies
 - a. Board Code of Conduct
 - b. Conflict of Interest
 - c. Confidentiality
 - d. Communications with the Media
 - e. Expense Reimbursement Policy
5. Board Structures
 - a. Committees – Terms of Reference
 - b. Officers – Terms and Role
6. Board Education and Evaluation
 - a. Process for obtaining approval to attend educational conferences
 - b. Board Evaluation Practices
7. Board Resources
 - a. Letters Patent, Supplementary Letters Patent, Articles (or incorporating legislation)
 - b. By-laws
 - c. Applicable legislation (if any)

Part II: The Organization

1. Mission, Vision and Values
2. Strategic Plan/Strategic Directions
3. Operating or Business Plan/Annual Budget
4. Performance Measures – Dashboard/Balanced Scorecard
5. Operational Policies applicable to the Board (e.g., Business Ethics, Whistleblower, Respectful Workplace)
6. Staff Organizational Chart

Part III: Key Stakeholders and External Relationships

1. Key Partners and/or Stakeholders
2. Copies of Publications, Newsletters, etc.

Part IV: Sector Information

1. Current articles and materials on topics relevant to the organization's activities
2. Website or other resources to facilitate directors' self-education

Form 7.9

Sample Board Peer Assessment Questionnaire

Evaluation Criteria	Director 1	Director 2	Director 3	Etc.
Reads materials and comes prepared for meetings				
Participates actively engaged at meeting				
Supports and promotes the organization				
Consistently demonstrates integrity and high ethical standards				
Complies with the conflicts of interest policy				
Respects confidentiality as required				
Communicates ideas and concepts effectively				
Listens well and respects those with differing opinions				
Thinks independently – will express view contrary to the group				
Inquisitive – asks appropriate and incisive questions				
Thinks strategically in assessing the situation and offering alternatives				
Exhibits sound, balanced judgment for the benefit of all stakeholders				
Develops and maintains sound relationships – a team player				
Understands the role of board committees				
Understands and respects the role of the chair				
Demonstrates financial literacy though not necessarily an expert in the field				
Effectively applies and contributes his/her special skills, knowledge or talent to the issues				
Supports board decisions - acts as one on all board actions once the decision has been made				
Contributes effectively to board performance				
Self (<i>Identify yourself by a check in this column</i>)				

Scoring		
4	Outstanding/ Above Average	Consistently performs beyond expectations; does more than is expected of a director; frequently contributes more than average.
3	Fully Satisfactory	Consistently demonstrates the quality at a standard expected of a director; a solid performer.
2	Adequate	Demonstrates the expected qualities but may be inconsistent in the demonstration or has minor weaknesses that could be improved with attention.
1	Could Improve	Would benefit by modifying this aspect of his/her behaviour to conform to the expectations.
X	N/A	Cannot assess the individual on this question; lack exposure to, or knowledge of, demonstrated behaviours or traits.

Form 7.10

Board Evaluation Process Overview

Evaluation Tool	Purpose	Completed By	Frequency of Completion	Results Evaluated By	Action and Timeline
Orientation Evaluation	To assess and improve board orientation program	Attendees at orientation	After new directors have attended two or three board meetings	Board Governance Committee	Review and revise orientation program prior to next year's orientation
Board Retreat	To assess and improve board retreat	Attendees at retreat	At the end of each board retreat	Retreat Planning Committee	Provide input into the next board retreat
Board Meeting	Improve meeting performance	Directors	At the end of the meeting – periodically throughout the year	Chair/CEO/Board Secretary	Periodic review of results reported to board and taken into account in agenda development and meeting processes
Board	Improve board performance	Board	Annually	Governance Committee	Governance Committee makes report and recommendations to the board
Individual Director	Self-improvement Renewal of term	Director and peers on the board	Annually	Board Chair	Chair communicates to board member Reports results to committee responsible for board nominations if director is being considered for a renewal term
Committee Member	Self-improvement Renewal of term	Committee member and peers on the Committee	Annually	Governance Committee and reported to Board Chair	Board chair provides results to committee member Governance Committee considers results in recommending committee members
Chair	Self-improvement Renewal of term	Chair and directors	Annually	Governance Committee	Chair of governance committee meets with board chair
Committee Chair	Self-improvement Renewal of term	Committee Chair Committee Members	Annually	Chair of Governance Committee or Board Chair	Governance Committee chair or board chair meets with the committee chair Considered by Governance Committee in making recommendations for committee chairs

Evaluation Tool	Purpose	Completed By	Frequency of Completion	Results Evaluated By	Action and Timeline
Committee	<p>Improvement</p> <p>Revise or reconfirm existent committees and Terms of Reference</p> <p>To evaluate and recommend new or continuing committee member</p>	Board	Annually	Board Chair/Board Governance Committee	Considered by Governance Committee in making recommendations regarding committee's Terms of Reference

Important considerations:

1. These evaluation tools can be combined. Completion of all of the potential evaluation tools can lead to "evaluation fatigue".
2. There is a risk that evaluations that are done too frequently can lose their effectiveness. For example, it may be more appropriate to conduct periodic evaluations of board or committee meetings.
3. Results should be evaluated by the person or committee charged with making decisions that are relevant to the results of the evaluation. Where the purpose is self-improvement, the results should be confidential and communicated respectfully by the board chair.
4. In cases where there is a significant board behaviour issue, an outside evaluation could also be considered. Some hospitals have had an independent board monitor observe board proceedings and present a report to the board or give confidential feedback to individual board members.

Form 7.11

Guideline on Creating a Board Self-Assessment Survey

This guideline is intended to assist a board in developing an appropriate board self-assessment tool. A board self-assessment or evaluation is completed by all board members and provides a process to evaluate and improve board performance, board processes and individual director performance. It is important that the questions are relevant to areas of board role and performance. Questions are usually asked in the following categories:

- Board Role and Responsibility
- Board Composition and Quality
- Board Structures and Processes
- Board Efficiency and Performance
- Director Self-Assessment

The usual format asks a director to rate the board's performance, and the director's own performance, on a sliding scale. It is also common to allow an opportunity for the board member to answer open-ended questions or offer narrative comments. Set out below is a template of a Board Self-Assessment Survey with instructions on how to modify the questions appropriate for an individual organization.

Instructions for Developing an Annual Board Self-Assessment of Board Performance

[Instruction #1 - Include a statement of purpose and instructions for completion.]

Example: The board's assessment of its own performance is an important part of the board's governance processes. Please complete this survey using the following scale:

- 0 No Comment
- 1 Strongly Disagree
- 2 Disagree
- 3 Somewhat Agree
- 4 Agree
- 5 Strongly Agree

[Instruction #2 - Indicate who will receive survey and how it will be acted upon.]

Example: The survey should be returned to the board secretary by _____. Results will be shared with the board at its _____ board meeting. The chair may meet with individual board members to discuss board performance and the self-assessment portion of the survey.

Board Role and Responsibility

[Instruction #3 - Questions in this part of the survey will usually address the board's knowledge and performance of its role. The questions should also be specific to matters that are relevant to the board such as a recent governance review or a capital project. The survey should be reviewed each year to determine if additional questions should be asked. Detailed questions can be included with respect to various aspects of each major category of board role as illustrated below.]

Sample Questions on Board Role and Responsibility

Question	No Comment (0)	Strongly Disagree (1)	Disagree (2)	Somewhat Agree (3)	Agree (4)	Strongly Agree (5)
1. The board understands its role in the following areas:						
• Strategic planning						
• Financial oversight						
• CEO supervision						
• [Etc.]						
2. The board effectively performs in each of the following areas:						
• Strategic planning						
• Financial oversight						
• CEO supervision						
• [Etc.]						
3. The board develops an annual work plan with reference to the organization's strategic directions and the board's role.						
4. The board follows its annual work plan.						
5. The work plan helps the board understand and perform its role.						
6. The board understands and performs the board's governance role and does not become overly involved in management issues.						
7. The board understands and considers the organization's accountabilities.						
8. The board makes decisions that are consistent with the organization's mission, vision and values.						
9. The board ensures the strategic plan is being implemented and makes decisions that are consistent with the strategic plan.						
10. The board is well-informed and kept up-to-date about:						
• The operations of the corporation						
• Current trends and issues relevant to the sector						
• The board's governance role						
11. The board uses a performance measurement system that meets the following criteria:						
• A specific process has been adopted.						
• Indicators are linked to the strategic plan.						
• Measures and indicators focus on results.						
• Responsibility for providing information and evaluating measures in clear						
• Reporting on measures allows for comparison to planned results and benchmarks						
• There is a process to react to variances.						
12. <i>[Include other questions appropriate to board role and current issues. If a formal statement of the board's role has been adopted by the board it should be used to formulate questions on the board's role.]</i>						

[Instruction #4 - Include a “comments” section to allow for narrative responses and consider open-ended questions.]
Examples set out below:

Comments:

List three things the board could do to improve the understanding and performance of its role:

[Instruction #5 - The balance of the survey would follow the format set out above and ask questions in areas such as: Board Composition and Quality, Board Structure and Processes, Board Performance and Board Conduct. Sample questions for each of these areas are set out below.]

Sample Questions on Board Composition and Quality

1. The board is the right size for effective board discussion; all board members have an opportunity to contribute.
2. The board identifies the skills and qualities that are required to perform the board's role.
3. The board has clear, transparent and well-understood recruitment practices for new directors.
4. New board members are recruited on the basis of skills, knowledge, experience and required qualities.
5. Board terms allow for board turnover to appropriately balance board continuity and new contributions.
6. The board reflects the diversity of the community served [where appropriate].
7. Board members receive orientation that prepares them to contribute effectively to the board.
8. Board members understand their fiduciary obligations and will:
 - Act in the best interests of the organization;
 - Avoid conflicts;
 - Speak with one voice;
 - Follow board governance policies.
9. Board members work well together.
10. Board members have an opportunity to participate in ongoing education programs.

Comments:

Sample Questions on Board Structures and Processes

Committees

1. The board has the right committees.
2. Committee terms of reference are periodically reviewed.
3. Committee work plans are established annually and align with board work.
4. The board respects the work of its committees and does not redo committee work.
5. Committee members are assigned based on skill and experience.
6. Committee reports are timely.
7. Committee reports are effective in providing necessary information to the board.
8. Each committee evaluates its own performance and results are acted upon.
9. Committee chairs are evaluated and the results are taken into account in committee chair assignments.
10. New committee members receive orientation to the committee.

Meetings

1. Meeting materials are received sufficiently in advance to be thoroughly reviewed by board members.
2. Materials are appropriate and prepare directors to make decisions.
3. Meetings are structured so there is sufficient time for discussion of decision items.
4. The board deals with *in camera* business appropriately.
5. Board agendas focus on items that are within the board's role.
6. Minutes accurately reflect board discussions and processes.
7. The board meets the right number of times.
8. The board meets at the right time of day.

Board Chair

1. The board chair conducts the meeting in a way that moves the business of the board forward.
2. The chair allows adequate time for debate.
3. The chair ensures all sides of an issue are heard.
4. The chair ensures the board has the necessary information or advice to make decisions.
5. The board chair invests time in building relationships with the following:
 - a. The chief executive officer;
 - b. The directors;
 - c. The committee chairs;
6. The board chair and the board understand the chair's role as the spokesperson for the board.
7. The chair represents the board and organization to its stakeholders and helps to build strong relationships with key stakeholders.

Comments:

Sample Questions on Board Efficiency and Performance

1. Board members contribute their skill and experience.
2. Board members respect and value the views of all members of the board.
3. Board members come prepared.
4. Board members treat each other with courtesy and respect.
5. Board members respect the confidentiality of board discussions.
6. Board members declare conflicts as required.
7. Board members are aware of and adhere to the board Code of Conduct.

Comments:

Self-Assessment

[Instruction #6 - Some evaluations will also include a self-assessment portion. Directors rate their own performance and their rankings as compared with the board as a whole are provided to them to assist in self-improvement.]

Sample Self-Assessment Questions

Knowledge

1. I have a good understanding of the organization's activities and operations.
2. I understand the mission, vision and values.
3. I am familiar with the strategic plan and take it into account in board decisions.
4. I understand the difference between the governance role of the board and the role of managers.
5. I understand the board's role and annual work plan.
6. I understand and respect the roles of committees.

Comments:

Contribution

1. I apply my skill and experience.
2. I listen and consider the views of others.
3. I prepare for meetings.
4. I ask questions that will help me make a decision.
5. I express my views even when I may be in the minority.
6. I respect the decision of the majority.
7. I meet or exceed the attendance requirements.
8. I support the corporation's events and activities.
9. I contribute to the committees on which I serve.

Comments:

Other

1. I wish to continue on the board.
2. I am interested in the following committees.
3. I am willing to serve as a committee chair.
4. I am interested in becoming board chair.

Comments:

Form 7.12

Sample Committee Self-Assessment

	Strongly Agree	Somewhat Agree	Disagree	Strongly Disagree
Terms of Reference and Composition				
1. The committee has clear and appropriate Terms of Reference.				
2. The committee has the right number of members.				
3. The committee has members with the skills and expertise that are needed by the committee.				
Committee Management				
4. The committee meets at the appropriate time of day.				
5. I received orientation to the committee that was helpful to me as a member of the committee.				
6. The committee is receiving the support from management that it requires.				
7. Information is received sufficiently in advance of the meeting.				
8. The committee meets the right number of times over the year.				
Committee Effectiveness				
9. The committee is working effectively.				
10. The committee performed its annual work plan.				
11. The committee is effectively performing its role in the following areas: <i>[List specific items from committee Terms of Reference this will be unique to each committee.]</i>				
Chair Effectiveness				
12. The Chair is prepared for committee meetings.				
13. The Chair keeps the meetings on track.				
14. The Chair fairly reports the committee's work to the board.				
15. The Chair encourages participation and manages discussion.				
Overall Committee Performance				
16. Overall, I am satisfied with my contribution to the committee.				
17. Overall, I am satisfied with the committee's contribution to the board.				

Comments and suggestions for improvement to committee processes:

Date completed: _____

Note to Reader:

The purpose of a committee self-assessment survey is to assist the board in evaluating the committee's Terms of Reference, committee composition, the committee Chair's effectiveness and the support/resources provided to the committee. Accordingly, the survey or questionnaire will usually ask questions aimed at evaluating the following:

- Committee composition and Terms of Reference;
- Committee meeting management;
- Committee contribution and effectiveness; and
- The Chair's effectiveness.

The survey should be completed under the direction of the board Chair or board Governance Committee.

Chapter 8

Board Structure and Processes

The board puts in place governance structures and processes that contribute to its effectiveness. This chapter examines the following structures and processes:

- Board leadership
- Board committees
- Meeting processes

BOARD LEADERSHIP

The officers are the board leaders. In considering governance processes that contribute to effective board leadership, a board should examine its process for determining board officer recruitment and selection, terms of office and succession planning. It is also vitally important that directors understand and support the very important role played by the board chair.

Legal Requirements

- With respect to board officers, there are few legal requirements in the *Corporations Act* (Ontario):
 - A corporation is required to have a president and a secretary. The president must be a director.
 - If the corporation wishes to have a chair, then the members may, by special resolution, provide for the election of a chair of the board of directors, by the directors.
 - The chair must also be a director.
 - Except for the president and the chair, no other officer is required to be a director.
- The Public Guardian and Trustee (Ontario) takes the view that an employee may not be a director of a charitable corporation. Given that the *Corporations Act* (Ontario) requires the president to be a director, many Ontario charitable corporations use the term “executive director” for the position of the chief executive officer, and the office of president is held by a volunteer board member who fulfills the role of the board chair. In cases where the board of a charitable corporation wishes its senior employee to use the title “president”, the president may be a non-voting director, a practice that has been accepted by the Public Guardian and Trustee (Ontario).
- The *Canada Not-for-Profit Corporations Act* does not specify that a corporation subject to that Act is required to have any particular officers. The directors are given a broad power under that Act to designate the offices of the corporation, appoint officers, specify duties and delegate to them powers to manage the activities and affairs of the corporation, except for certain specified non-delegable powers as specified in the Act.
- The *Not-for-Profit Corporations Act* (Ontario) requires that a corporation, subject to that Act, have a chair who must be a director, but no other officer is required. Other than the requirement to appoint a chair, the board may designate the offices, appoint officers, specify their duties and delegate to them powers to manage the activities and affairs of the corporation except certain non-delegable duties.

Governance Principles

- There should be a separation between the role of the chief executive officer (or executive director) and the role of the chair of the board. This has been a well-accepted practice in not-for-profit corporations for many years.
- While the secretary may be a separate office, many boards generally look to the office of the chief executive officer/executive director to perform the secretarial function and, accordingly, the chief executive officer/executive director may also be designated as the secretary. Larger organizations may designate a staff member, e.g., in-house counsel, to be the secretary.
- Where a board member is identified as secretary, a recording secretary may also be designated.
- The role of a recording secretary can be formalized in the by-laws or provided by giving the secretary the right to delegate to a recording secretary. The board chair may need, from time to time, to be able to deal directly with someone other than the chief executive officer/executive director with respect to calling meetings and other board requirements.
- There is no requirement to set out all of the officers in the by-laws. This allows the board to determine appropriate officers and their duties from time to time without by-law amendment. The most common practice is to reference one or more vice chairs in the by-law, but this is not required.
- The by-laws do not need to specify in detail the duties of any of the officers, however the basic responsibilities should be set out. The basic duties of officers as set out in the by-laws can be supplemented by the board through the adoption of a position description from time to time. This allows the board to amend or modify the role of its officers without requiring a by-law amendment.

- There is no requirement to have a treasurer and there is no role that must be performed by the treasurer. The title of treasurer may be given to the person who acts as chair of the committee that has primary responsibility for financial matters.
- A board should designate who will act in the absence of the chair. This is usually done by the appointment of one or more vice chairs. Where a vice chair is appointed, the vice chair's duties should include acting in the absence of the chair and such other duties as the board may assign from time to time.

Board Chair

- The board should adopt a description of the board chair's role and the qualities required of the board chair.
See [Form 8.1: Sample Board Chair Role Description](#)
- A board should have a well-defined process for selecting the board chair.
See [Form 8.2: Sample Board Chair Selection Process Guidelines](#)
- The board should determine the term of office of the board chair and the potential for any renewal terms. The best practice is to have an initial term of one or two years, renewable for an additional term or terms. Some boards will permit a third term in exceptional circumstances, but may require a secret ballot vote requiring 75% to 80% of the directors to approve the additional term.
- Although it is difficult not to renew an incumbent chair, renewal should not be automatic.
- The board chair is the leader of the board and the presiding officer at board and member meetings. The board chair's role includes:
 - Presiding at meetings of the board and members;
 - Reporting to the members at each annual meeting on behalf of the board;

- Ensuring that meetings have been conducted in accordance with the applicable legislation, the by-laws of the corporation, and the corporation’s governance policies and rules of order;
 - Preserving order at board and member meetings;
 - Allowing all sides of a discussion to be heard;
 - Ensuring a sense of the meeting is ascertained before a matter is brought to a vote;
 - Exercising the chair’s powers for a proper purpose;
 - Fulfilling the fiduciary duties of a director;
 - Ensuring relevant information is made available to the board; and
 - Ensuring that the board operates effectively – the chair ultimately oversees the quality of the board’s governance processes.
- On a functional level, the chair:
 - Contributes to and approves the agenda;
 - Ensures appropriate time is allotted to agenda items;
 - Reviews draft minutes;
 - Signs agreements;
 - Calls meetings;
 - Rules on procedural matters during meetings; and
 - Represents the board to internal and external shareholders.

Role of the Chair

The board chair’s role can be considered under three headings: role in relation to the board; role within the corporation; and role in relation to external stakeholders.

See *Figure 8.1: Role of Chair in Relation to Others*

Figure 8.1: Role of Chair in Relation to Others

Board	Organization – Internal	Stakeholders – External
Responsible for board’s governance – oversee evaluation processes	Represent the board within the organization	Public spokesperson for the board
Call meetings	Work effectively with and provide counsel to the chief executive officer/ executive director	Communicates to external stakeholders
Set agendas and sign minutes	Sign agreements	Maintains relationships with external stakeholders (e.g., community, government or funder)
Chair meetings and ensure meetings follow proper process	Interact with other officers	

Qualities Required of the Board Chair

The chair is the board leader and, accordingly, needs to possess all of the qualities that are required in a director and, more importantly, qualities that enable him or her to perform a leadership role. The board chair needs to have the ability not only to effectively manage board meetings, but also to develop and maintain relationships with directors, committee chairs, management, and stakeholder groups.

The board chair's leadership qualities include the following:

- The ability to influence behaviour – often an individual's ability to influence is acquired by virtue of having been an outstanding member of the board.
- The ability to recognize when compromises are required and to bring parties who are in dispute to an effective resolution in a way that will further board business in the best interests of the corporation.
- The ability to inspire other board members to contribute their skills and talents to the board – once again, this leadership quality is often set by example.
- The ability to enforce board policies – the board chair must be prepared to discipline board members who do not adhere to the rules of fiduciary conduct.
- The ability to deal with directors in a dignified and respectful manner while at the same time ensuring that the bar on board behaviour is set at a high standard and that those who do not meet that standard are provided with an opportunity to improve.
- The ability to develop a respectful and collegial working relationship with the chief executive officer/ executive director, while maintaining the relationship of accountability that will allow the board to effectively supervise management.
- A visionary – looking forward to the future, on behalf of the organization, and inspiring the board toward a future vision for the organization.

See [Form 8.3: Tips for the New Chair](#)

BOARD COMMITTEES

Subject to the committees (if any) that might be specifically required under applicable legislation, the general rule is that a board establishes the committees that it requires for assistance with the work of the board. Accordingly, the number of committees, their terms of reference and composition can all be decided by the board at its discretion. Committees are an important element of a board's governance processes that aid it in the fulfillment of its governance role.

Legal Requirements

- The *Corporations Act* (Ontario) requires that if there is to be an executive committee, it be comprised entirely of directors and be established pursuant to a by-law approved by a special resolution.
- The *Canada Not-for-Profit Corporations Act* does not set out any requirements with respect to committees and enables the directors to appoint from among

Committees are an important element of a board's governance processes that aid it in the fulfillment of its governance role.

the directors a managing director or a committee of directors and to delegate to either of them all of the powers of the directors except for certain non-delegable powers including:

- Submitting to the members any question or matter requiring approval of the members;
 - Filling any vacancy among directors, the office of the public accountant or appointing additional directors;
 - Issuing debt obligations except as authorized by the directors;
 - Approving financial statements;
 - Adopting, amending or repealing by-laws; or
 - Establishing contributions to be made or dues to be paid by members under the Act.
- No audit committee is required, but if one is established it must have at least three directors, a majority of whom are not officers or employees of the corporation or an affiliate.
 - The *Not-for-Profit Corporations Act* (Ontario) will have a similar enabling provision with respect to committees and similar limitations on delegation. In addition, while not requiring that there be an audit committee, the Act provides that if an audit committee is established, the majority of the committee must not be officers or employees of the corporation or any of its affiliates.

Governance Principles

- The number of committees and their terms of reference are within the discretion of the board, subject to the corporation’s applicable legislative requirements.
- There is no requirement that board committees be set out in the by-laws, or that the members approve board committees (except for an executive committee, in the case of a corporation governed by the *Corporations Act* (Ontario)).

- While committee composition and terms of reference are sometimes set out in the by-laws, the better practice is for the by-laws to contain language empowering the board to establish, amend and disband committees, from time to time.
- Board committees should be distinguished from “operational” committees, which are established by, and report to, the chief executive officer.
- Unlike the board, which has an inherent role to govern the affairs of the corporation, committees have no inherent role. The only exceptions would be committees required by statute, if any, which might have roles that are specified.
- Committees should be established by the board to assist the board with board work.
- Committee mandates are determined by the board.
- The principle purpose for the establishment of a committee is for the committee to do the work the board does not have time to do during board meetings. Therefore, committees support and supplement the board, but do not supplant the work of the board.

Committees support and supplement the board, but do not supplant the work of the board.

- Committees also:
 - Provide a training ground for future board leaders;
 - Permit greater discussion and more in-depth analysis than would be allowed during a board meeting.
- Allow individual board members the opportunity to contribute their special expertise.
- Committee appointments should be annual.
- Committee members should receive an orientation to the committee.
- The board's role with respect to its committees is to:
 - Determine what committees are required with reference to the board's workload, the board's role generally, and the specific issues facing the board in the next year.
 - Adopt terms of reference for committees. Where committees are established as standing committees, those whose duties are continuous, there should be a periodic review of the terms of reference. Task or ad hoc committees should have a sunset provision that disbands the committee when its task is completed.
 - Rely on the work of committees and refrain from redoing the committee work at the board. It is the chair's role to discipline the board not to ask questions that are answered by the committee report.
 - Ensure a process is in place to select committee members and appoint a committee chair.
 - Approve annual work plans for those committees for which it is appropriate.

- The board chair is usually charged with selecting the committee chair and committee members, although sometimes, this is the role of the board's governance or nominating committee. Where the selection of the committee chairs and members is assigned to the governance or nominating committee, a recommendation is usually made to the board for formal approval.

See *Form 8.4: Committee Principles and Rules and Regulations*

Types of Committees

Board Standing Committees

- The number and type of committees will depend on the work of the board and the activities of the organization. For example, organizations that provide services to clients or the public might establish committees such as:
 - Executive
 - Governance
 - Quality
 - Finance and Resources
 - Audit
 - Human Resources
 - Community Liaison
- A foundation or fundraising and granting organization might have the following committees:
 - Executive
 - Governance
 - Finance
 - Audit
 - Donor Recognition
 - Grants Committee

- Organizations that include services to members as part of their mandate may have a member relations committee to oversee membership admissions and relations.

See [Form 8.5: Sample Format for Committee Terms of Reference](#)

See [Form 8.6: Sample Committee Responsibilities](#)

Meeting Processes

There are a number of elements in a board's meeting processes that contribute to the board's effective governance, including frequency of meetings, process to establish agendas, order in which matters are dealt with on agendas, availability of supporting materials, quality of minutes, conduct of the meeting by the board chair and processes for open and *in camera* meetings.

The board's meeting processes, including agenda structure, appropriateness of materials, etc., are elements that can contribute to governance effectiveness. Ensuring that the board has a clear understanding of its governance role, and that there is appropriate behaviour in the boardroom, are also critical elements for an effective meeting that will contribute to the discharge of the board's governance role.

Board Meetings

Legal Requirements

Notice

- Notice of a board meeting must be given in accordance with the by-laws or, if the by-laws are silent, the rules of order adopted by the corporation. Most rules of order will require that reasonable notice be given of a board meeting.
- There are no formalities in the *Corporations Act* (Ontario) with respect to the form, content or manner of delivery of a notice of a board meeting.
- The *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario) provide that notice of a board meeting is to be given in accordance with the by-laws and where the meeting of the board is to include certain matters that may not be delegated by directors, the notice of the board meeting must so specify (see Chapter 10, [Schedule A](#)).

See [Form 8.7: Comparison of Meeting Requirements](#)

Number of Meetings

- Legislation does not require a minimum number of board meetings.

Quorum

- The *Corporations Act* (Ontario) provides that unless the letters patent, supplementary letters patent or a special resolution otherwise provide, a majority of the board of directors constitutes a quorum, but in no case shall a quorum be less than two-fifths of the board of directors.
- The *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario) specifies that unless the articles or by-laws otherwise provide, a majority of the number or of the minimum number of directors set out in the articles constitutes a quorum at any meeting of directors.

Minutes

- The *Corporations Act* (Ontario) requires a corporation to keep minutes of all proceedings and meetings of the members, directors and of any executive committee. Minutes signed by the chair of the meeting or the chair of the next succeeding meeting are admissible in evidence as prima facie proof of the proceedings.

- Under the *Canada Not-for-Profit Corporations Act*, and the *Not-for-Profit Corporations Act (Ontario)*, minutes must be kept for all directors' and committee meetings.

Resolutions in Writing

- The *Corporations Act (Ontario)* provides that a resolution in writing signed by every director has the same effect as a resolution passed at a meeting of directors. However, the Act does not expressly permit written resolutions for committees.
- Under the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act (Ontario)*, resolutions in writing are permitted in lieu of director and committee meetings.

Telephone Meetings

- The *Corporations Act (Ontario)* provides that, unless the by-laws provide otherwise, so long as all directors present or participating in the meeting consent, a meeting of a board of directors or board committee may take place by such telephone, electronic or other communication facilities as permit every director participating in the meeting to communicate with each other simultaneously and instantaneously.
- Under the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act (Ontario)* the board or a committee may meet by electronic or telephonic means if:
 - All directors (not just those participating) consent; and
 - The means permit adequate communication.

Governance Principles

Notice

- The by-laws should specify the manner of giving directors notice of a board meeting and the required amount of notice for calling meetings of the board.
- It is a good governance practice to provide the agenda together with reports and information sufficiently in advance of the meeting to allow directors to come to the meeting prepared for the board discussion.
- The usual practice is for the by-laws to:
 - Allow for the board to set a regular date and time for board meetings for which no additional notice is required once general notice has been given. The by-laws should not specify when the regular meeting is held, but rather empower the board to adopt, from time to time, a date and time for regular board meetings, e.g., the second Thursday of the month of September, December, March and June.
 - Provide for the amount of notice required for special board meetings – usually five to seven days' notice.
 - Allow for meetings on short notice in situations of urgency. (Anywhere from 24 to 48 hours is the usual practice.)
- Notice of a meeting can be waived in accordance with the by-laws or the rules of order adopted by the corporation. Given that a board or committee meeting may be held by telephone, it is less common to require directors to waive notice of a meeting and more common to include provisions in the by-laws allowing for the holding of a meeting on short notice. Directors should provide the board secretary with up-to-date contact information so that they are able to be reached and to participate in a board meeting by telephone if they are unable to attend in person.

Number of Meetings

- The board should develop an annual board work plan, and should set the number of regular board meetings based on that annual work plan.

See [Form 8.8: Sample Board Annual Work Plan](#)

Quorum

- Ontario corporations that are subject to the *Corporations Act* (Ontario) should note that if the quorum is not set out in the letters patent or supplementary letters patent, that portion of the by-law that sets out the quorum must be approved by a special resolution of the members if the quorum is other than a majority. The quorum for an Ontario corporation subject to the *Corporations Act* (Ontario) may not be less than two-fifths.
- For corporations subject to the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario), quorum should be set out in the by-laws and, if not so set out, it will be a majority of the directors or the minimum number of directors specified in the articles.

Conduct at the Meeting

- The board chair is responsible for ensuring that the meeting is conducted in accordance with a proper process.
- The rules applicable to the conduct of a board meeting are set out in the following:
 - Applicable legislation;
 - Letters patent, supplementary letters patent or articles;
 - By-laws;
 - Board adopted governance policies;
 - Rules of order.

Attendance at Meetings and *In Camera* Meetings

- It is the duty of a director to attend all board meetings and the meetings of all committees to which the director is appointed.
- Not only is it a director's duty to attend board meetings, but it is also the right of the director to attend a board meeting. Accordingly, a director cannot be excluded from a board meeting unless required under the conflict of interest provisions of applicable legislation or the by-laws or a board-adopted policy (such as the conflict of interest policy) so provides.
- It is usual, although not required, for the conflict of interest provisions either in the by-laws or in board-approved policies to provide that the director with a conflict absent himself or herself from the meeting while the matter in issue is being discussed. The minimum requirement set out in the *Corporations Act* (Ontario) and the *Canada Not-for-Profit Corporations Act* with respect to the conflict of interest only requires that the director declare the conflict and refrain from voting. Under the *Not-for-Profit Corporations Act* (Ontario), a director must leave the room except in certain circumstances.
- Unless there is legislation applicable to the corporation that requires open board meetings, no persons other than the directors are entitled to attend a meeting of the board. Any other attendees at board meetings are considered to be the guests of the board. Guests may attend board meetings either:
 - On the invitation of the chair;
 - With the consent of the meeting; or
 - In accordance with the board adopted policy (e.g., a policy with respect to the attendance of the public at meetings of the board).
- Where the board has a practice of inviting individuals to attend board meetings, the board should have a board-adopted policy with respect to how the board will move *in camera*.

- Where board meetings are open to the public, either because legislation requires it or the board has decided to adopt the practice of open meetings, the board should adopt a policy with respect to the attendance of the public at its board meetings. The procedures with respect to the attendance of the public and the board's ability to move *in camera* should be set out by the board in a board-approved policy that can be amended and modified by the board from time to time.
- The policy with respect to the attendance of the public at board meetings should include the following (subject to compliance with any provisions of any statute that requires open board meetings):
 - *Notice of board meetings* – The policy should address how the public will be made aware of board meetings. While a board may wish to broadly advertise meetings, it is a good practice not to undertake to advertise all board meetings in local newspapers, but rather to provide that notice will be posted in the premises of the head office of the corporation and on the corporation's website.
 - *Meetings open to public* – The board may want to provide that only its regular meetings are open to the public and that any special meeting, which is more likely to have been called to deal with the type of matter that can only be dealt with *in camera*, not be required to be open to the public.
 - *Distribution of agenda* – It is advisable to provide that the agenda will be available from the board secretary, but not undertake an obligation to mail or otherwise circulate the agenda. The agenda may change prior to the meeting and providing revised copies may cause an administrative burden. Copies of the agenda can be made available at the meeting.
 - *Distribution of other materials* (minutes and board supporting material) – The board should carefully consider the amount of material that it will undertake to make available to the public. There are certain costs and logistical issues associated with distributing the materials that form the board package to members of the public who attend board meetings. Some boards have decided to post the minutes of the open portion of the board meeting on their website. The general rule is that only a director is entitled to see directors' minutes and, accordingly, careful consideration should be given as to how minutes of an open portion of a board meeting or other supporting materials will be made available.
- *Submission or presentation to the board* – Some boards provide that members of the public may attend but not speak. Others provide a process that allow members of the public to address the board, but not to ask questions of the board. In other cases, the public may question the board. Where members of the public are permitted to address the board, there is usually a requirement that they give prior notice of the subject matter. The policy may also state that the board is not obligated to hear from members of the public and permitted presentations are time-limited. There may also be limits on the number of times in a 12 month period the board may be addressed on the same issue by the same person.
- *Excluding the public/in camera portion* – The policy should provide for both the process to move *in camera* and the subject matters that must be dealt with *in camera*. The matters that typically would be dealt with *in camera* include:
 - Human resource issues and employment matters, including the chief executive officer evaluation;
 - Matters that are or may be the subject of litigation;
 - Legal advice that is subject to solicitor-client privilege;
 - Negotiation of material contracts;
 - Matters involving property; and
 - Some board governance matters such as peer review or self-evaluation results.

- In each aspect of the policy on open meetings, the board will wish to strike an appropriate balance between giving the public access to the board and ensuring the board can still conduct proper board meetings and complete its agenda.
- Open board meetings are a mechanism that allows a board to be transparent and accountable to those whose interests it serves. It is, however, not the only means by which transparency and accountability can be achieved. Many corporations will have processes that allow individuals to raise issues for resolution. As an example, provider organizations may have an “ombudsman”, patient or client relations representative, or similar office, to deal with individuals who have issues relating to the services provided by the organization. Similarly, many fundraising organizations will have well-developed donor communication programs. Transparency may also be achieved through good communication strategies, e.g., newsletters, websites and town hall-style meetings.
- The board chair should ensure that items requiring a decision of the board be dealt with during that portion of the meeting where there is maximum board attendance (i.e., when latecomers have arrived, and those who need to depart early have not yet left).
- Agendas should clearly distinguish between items requiring decisions, items that are provided for information only, and those items that are for discussion with an anticipated decision at a future meeting.
- A decision support document or board briefing note should be used to assist the board in considering relevant factors and to enable board members to properly prepare for the meeting.
- Where the board will be relying on the reports of external advisors, the board chair should ensure that those external advisors have either been invited to the meeting or will be available to participate in the meeting by telephone to answer questions and provide additional information to the board.
- The chair should apply flexibility to both the time allowed for individual meeting items and the order in which the agenda is presented. Allotted time should be treated as a guide only.
- There is no requirement for the agenda to include a declaration of conflict of interest – directors are expected to self-declare their conflict. It is, however, a good practice to include this item to provide a constant reminder to directors of this obligation.
- There is no requirement to have the board formally approve the agenda. It is, however, a good practice to ask whether there are any additional items for inclusion in the agenda at the opening of the meeting so that the chair can take those items into account in considering the order of the agenda and the time allotted for various agenda items.

See [Form 8.9: Sample Board and Committee Meeting Attendance Policy](#)

See [Form 8.10: Sample Policy for Open Board Meetings](#)

See [Form 8.11: Checklist for Developing a Policy for Open Board Meetings](#)

See [Form 8.12: Procedure for Members of the Public Addressing the Board](#)

Agendas and Minutes

- Board agendas are the responsibility of the board chair and are usually prepared by the board secretary with input from the board chair and the chief executive officer.
- The agenda should allot a time for each item which serves as a guide for the board chair.

Consent Agendas

- Many boards have adopted a consent agenda process to improve the efficiency of board meetings by expediting the approval of routine matters or motions where no debate is anticipated. There may be differing consent agenda process practices, but generally speaking the following principles apply:
 - The agenda for the open portion of the meeting will have a heading “Consent Agenda Items/Business” or “Matters to be Approved on Consent”.
 - All supporting materials distributed with the agenda package relating to the consent agenda matters will be clearly so marked.
 - Consent agenda matters are those that are of a routine or recurring nature or those where no debate is anticipated. Examples would include verification of the minutes.
 - Before the meeting, or at any point up to approval of the agenda, a director may request an item be removed from the consent agenda portion and placed on the regular agenda. No motion is required to remove an item and the meeting chair shall decide where to place the item on the agenda.
 - There may be either: (i) one motion to approve the entire agenda, which will be deemed to be approval of the consent agenda; or (ii) a motion that relates specifically to the consent agenda business. The chair may also declare the consent business to be approved by saying: “If there are no requests to remove an item we will take the consent agenda business as approved by the board.”

- Board members need to read the materials related to the consent agenda matters and assume there will be no debate or discussion on those matters.
- Any motions in the consent agenda will be set out in full in the board minutes.

See [Form 8.13: Sample Board Agenda Development Policy](#)

See [Form 8.14: Consent Agenda Policy](#)

See [Form 8.15: Sample Board Agenda](#)

See [Form 8.16: Sample Format for Board Briefing Report](#)

See [Form 8.17: Meeting Minutes, Best Practices](#)

Member Meetings

Legal Requirements

Notice

- Notice of a members’ meeting must comply with the requirements of applicable legislation.
- The *Corporations Act* (Ontario) provides that the notice may either be given on 10 days’ written notice, or for charitable corporations subject to Part III of the Act, by publication in a newspaper circulated in the municipality in which the majority of the members reside. Such publication is to take place once a week for the two weeks next preceding the date of the meeting.
- The *Canada Not-for-Profit Corporations Act* requires that corporations give members entitled to vote at a meeting of members, notice of the time and place of the meeting in accordance with the by-laws and the regulations under the Act. Notice must also be given to the public accountant and the directors. Any person entitled to notice may waive notice and attendance by a person at the meeting is a waiver of notice unless the person attends for the express purpose of objecting to the transaction of business on the grounds that the meeting was not lawfully called.

- Regulations under the *Canada Not-for-Profit Corporations Act* provide the following with respect to notice of a members meeting:
 - Notice may be given in one of more of the following means:
 - By mail, courier or personal delivery to each member entitled to vote at the meeting not less than 21 and no more than 60 days before the day on which the meeting is to be held;
 - By telephonic, electronic or other communication facility to each member entitled to vote at the meeting not less than 21 and no more than 35 days before the day on which the meeting is to be held;
 - By fixing notice no later than 30 days before the day on which the meeting is to be held to a notice board on which information respecting the corporation's activities is regularly posted and that is located in a place frequented by members; and
 - In the case of a corporation that has more than 250 members, by publication;
 - ~ At least once in each of the three weeks immediately before the day on which the meeting is to be held in one or more newspapers circulated in the municipalities in which the majority of the members of the corporation reside as shown by their addresses in the register of members, or
 - ~ At least once in a publication of the corporation that is sent to all its members during the period of 21 to 60 days before the date on which the meeting is to be held.
 - If the by-laws of a corporation under the *Canada Not-for-Profit Corporations Act* provide for notice of a members meeting to be given by electronic means, the by-laws shall also provide for one or more of the above methods (other than telephonic, electronic or other communication facility) as a non-electronic alternative method to be used if a member so requests.
- The *Not-for-Profit Corporations Act* (Ontario) requires the corporation to give notice of the time and place of a meeting of members in accordance with the by-laws but, in any event, not less than 10 days and not more than 50 days before the meeting. Notice is to be given to the members entitled to receive notice, each director and the auditor or the person appointed to conduct or review engagement of the corporation.
- Both the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario) allow the corporation to establish a record date for the purposes of determining members entitled to notice.
- For the purposes of determining members entitled to notice of a meeting of members and to vote, the record date under the *Canada Not-for-Profit Corporations Act* must be between 21 and 60 days before the meeting. If no record date is fixed by the directors, then the members entitled to receive notice of the meeting are those who are registered at the close of business on the day immediately preceding the day on which the notice is given.
- Under the *Not-for-Profit Corporations Act* (Ontario), the record date must not be more than 50 days before the event or action to which it relates. If no record date is fixed, then the record date for determining members entitled to receive notice of a members meeting or to vote at such meeting shall be the close of business on the day immediately preceding the day on which the notice is given or, if no notice is given, the day on which the meeting is held.

Number of Meetings

- A corporation must hold an annual meeting of members, which must be held within 15 months of the date of the last meeting.
- For corporations under the *Canada Not-for-Profit Corporations Act*, while the meeting must also be within 15 months of the last meeting, it must also be within six months of the financial year end.
- Ontario corporations are required to lay before the annual meeting certain financial statements for the period ended not more than six months before the meeting, and accordingly, the annual meeting must be held within six months of the end of the fiscal year.
- A special meeting may be called by the directors to deal with any matters set out in the notice of meeting.

Voting

- Members may vote by proxy.

Quorum

- The *Corporations Act* (Ontario) does not specify a minimum quorum for a members' meeting. The quorum must therefore be specified in the corporation's by-laws.
- Corporations under the *Canada Not-for-Profit Corporations Act* are required to set out the quorum in the by-laws and the quorum is to be either a fixed number or a percentage, or determined with reference to a formula. If the by-laws do not set out a quorum, then the quorum is a majority of the members entitled to vote. If a quorum is present at the opening of a meeting of members, the members present may, unless the by-laws otherwise provide, proceed with the business of the meeting even if a quorum is not present throughout the meeting.

- Under the *Not-for-Profit Corporations Act* (Ontario), a quorum is a majority of the members entitled to vote whether present in person or by proxy unless the by-laws otherwise provide. If a quorum is present at the opening of the meeting of members, the members present may proceed with the business of the meeting even if a quorum is not present throughout the meeting, unless the by-laws otherwise provide.

Governance Principles

Business at Annual Meetings

- The annual members' meeting may be used by some corporations as an opportunity for the corporation to communicate with stakeholders.
- A common practice for certain types of not-for-profit corporations is to have members' meetings open to the public or to invited stakeholders and to include in the proceedings, matters that go beyond the minimum legal requirement, such as honouring the service of retiring directors, recognizing the contribution of volunteers and the presentation of awards to staff. Many fundraising organizations may combine their annual meeting with a donor recognition event.
- The usual required business at an annual meeting includes the following:
 - Election of directors;
 - Presentation of the audited financial statements and the auditor's report;
 - Appointing the auditors for the ensuing year; and
 - Authorizing the board to fix the remuneration of the auditor.

- While there is no requirement for the board chair or the chief executive officer to deliver reports at the annual meeting, it is one way in which the corporation can further its role in communicating with the community that it serves or with its key stakeholders.
- There is no requirement for the members to approve the financial statements or to approve any of the reports that may be delivered by the board chair, the chief executive officer or other board officers.

Quorum

- It is a good practice to set the quorum at a number that will ensure a quorum is present. There may be years in which the attendance at members' meetings is low and if the quorum has been set too high, it may be difficult to meet the quorum requirement. Accordingly, many boards will use a quorum number that is less than the full number of directors. Provided that all directors are *ex officio* members and most of the directors come to the meeting, the quorum requirement should be achieved.
- In some situations, it may be appropriate that the quorum be a majority of the members.

Special Members' Meetings

- Where a meeting is called to deal with special business, the notice must specify the business in sufficient detail to allow the members to make an informed decision.
- The *Canada Not-for-Profit Corporations Act* requires that notice of a meeting at which special business is to be transacted must include:
 - The nature of the business in sufficient detail to permit a member to form a reasoned judgment on the business; and
 - The text of any special resolution to be submitted to the meeting.

- Special business is defined in the *Canada Not-for-Profit Corporations Act* as all business transacted at a special meeting or an annual meeting of members except:
 - Consideration of the financial statements;
 - Public accountant's report;
 - Election of directors;
 - Re-appointment of the incumbent public accountant.
- The *Not-for-Profit Corporations Act* (Ontario) contains a similar definition of special business. In particular, special business is defined as all business transacted at a special meeting of members and all business transacted at an annual meeting except for the following:
 - Consideration of the financial statements;
 - Consideration of the audit report or review engagement report, if any;
 - An extra ordinary resolution to have a review engagement instead of an audit or to not have an audit or review engagement;
 - Election of directors;
 - Reappointment of the incumbent auditor or person appointed to conduct a review engagement;
 - Where a meeting of members includes special business, the notice of the meeting must:
 - State the nature of that business in sufficient detail to permit a member to form a reasoned judgment on the business; and
 - State the text of any special resolution to be submitted to the meeting.

See [Form 8.18: Annual Meetings – Frequently Asked Questions](#)

FREQUENTLY ASKED QUESTIONS

1. Does the board chair have a vote?

The general rule is that the board chair, as a director, has the right to vote on any matter coming before the board, unless the by-laws or rules of order adopted by the board otherwise provide. Some by-laws may provide that the chair only votes in the event of a tie. In other cases, a chair may have the right both to vote on the original motion and to cast a second vote to break a tie. Even where the by-laws do not preclude the chair from voting, some chairs will take the view that their role as chair should preclude them from voting other than in the event of a tie. If the by-laws are silent on this issue, the chair votes in the same way as any other director, subject to the rules of order adopted by the board. The *Corporations Act* (Ontario) provides that, subject to the by-laws, the chair has a second or casting vote to break a tie at a meeting of members, and if that is not the desire of the board, the by-laws should specify that in the event of a tie there is not second vote for the chair and the motion is defeated. Under the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario) there is no provision to give an automatic second or casting vote to the chair.

2. Is the chair subject to a higher standard of care than the other members of the board?

All directors and board officers are subject to the same standard of care. The chair, however, has an expanded scope of duties and must apply the standard of care to the performance of those duties.

3. What factors should be considered in deciding who should be the board officers?

A board should have a designated chair and a secretary and will usually have one or more vice chairs. The role of the vice chair is to perform the duties of the chair in the absence of the chair. A vice chair position can also be useful for grooming a future board chair.

There is no requirement to have a treasurer or the office of past chair.

While a former board chair should be available to the current chair as a resource, there is no formal role for that office and the continuation of that individual on the board can sometimes impede a new chair from bringing his/her own style to the role.

Where the organization's resources do not include staff who are responsible for financial record keeping, the "treasurer" may be a volunteer board member who performs the financial record-keeping role. In many cases, the individual who holds the title "treasurer" is very often appointed as chair of the board committee responsible for financial matters.

Outside of the usual officers (chair, president and secretary), the most compelling reason to have additional officers is to have some succession planning for the office of board chair and to have individuals who are available to sign on behalf of the corporation those documents that require a board officer signature.

4. Is the chair required to be an *ex officio* member of all board committees?

There is no requirement for the chair to be an *ex officio* member of all board committees although it is a common practice in recognition of the role the chair plays in connection with the board. Some boards will have both the chair and vice chair (especially if the vice chair is the incoming chair) as *ex officio* members of all committees. The chair and the vice chair then share the workload by deciding which committee they will each attend. The chief executive officer or executive director is also often an *ex officio* member of all board committees other than the audit committee.

5. Should the president be the secretary?

It is a common practice in not-for-profit corporations to appoint the chief executive officer as secretary. The board looks to the office of the chief executive officer or the executive director (who is frequently also the chief executive officer), for support with the board's secretarial functions. When appointed secretary, the chief executive officer will usually designate a recording secretary who will attend meetings and take minutes.

In large organizations, the secretary may be another full-time employee, often the in-house legal counsel.

From time to time, the board, and in particular the chair, will need to be able to communicate directly with a person who performs the board's secretarial function without involving the chief executive officer. Accordingly, if the president/chief executive officer is also designated as the secretary, a recording secretary or other board support person with whom the chair and other board members can communicate directly, should be identified and this person should be instructed that they may take directions from the board chair.

6. How does the board recruit its chair and what processes are available for a board to deal with an underperforming chair?

The first step in recruiting a chair is developing a position description for the chair and also defining the qualities required in the board chair. Not every member of the board will have the leadership qualities required of the board chair. However, in recruiting to board positions, some emphasis should be placed on the ability to develop leadership potential not only for the position of chair, but also for the positions of committee chairs. Those directors who appear to have the qualities required to be an effective chair should be provided the opportunity to demonstrate their abilities by being assigned the role of committee chair and eventually, vice chair.

There should be a defined selection process for the position of chair. In many cases, this responsibility is assigned to either the executive committee (without the participation of the current chair) or the board governance committee. Commonly, board evaluations or individual director assessments contain a question that allows a director to indicate their willingness to assume a board leadership position. An additional step in the process would involve conducting an interview with every board member asking them to identify individuals who could be effective board leaders. When a consensus emerges on a short list of potential candidates, those individuals should be interviewed to determine not only their willingness to take on the role, but also their ability to commit the time that will be required. The selection of the board chair is a decision for the board as a whole and the recommendation needs to be brought to the board (with the potential candidates absent) for approval.

In the case of an underperforming chair, it is often very difficult for the board to remove the chair prior to the expiry of his or her term. The best way of addressing an underperforming chair, is by developing an appropriate and comprehensive position description and following a rigorous recruitment process, thereby minimizing the risk of an individual not living up to expectations. In the event that, despite all best efforts, the individual who takes on the office of board chair is not suitable to the task, having a board culture where renewal is not automatic can be useful. Having a one-year term, renewable for an additional year, provides the chair room to improve performance, or the opportunity for a graceful and dignified exit from the position at the expiry of the term.

7. Can non-directors serve on committees (other than a committee that has been delegated a board decision-making power)?

Yes, but should they? There are a number of factors a board should consider when determining whether or not to appoint individuals who are not directors to a board committee.

- Advantages
 - May provide an opportunity to evaluate potential new board members.
 - May allow the board to avail itself of a specialized expertise required of a committee, particularly where the board may have had challenges recruiting a required skill to the board. The time commitment for committee participation is lighter than the time commitment required of a board member and may attract a broader base of potential candidates.
- Disadvantages
 - Committee members who are not also on the board do not see the whole picture.
 - There may be some committees, such as the governance committee, where it is not appropriate to have non-directors participate because they will not be familiar with all members of the board, or see all of the board's processes.
 - The fiduciary duties to which a director is subject are clear, including the duty of confidentiality and the duty to avoid conflict. It is less clear whether individuals who are not members of the board are subject to the same fiduciary duties when serving on a committee.

Non-directors serving on committees should be asked to sign confidentiality and conflict of interest agreements with the corporation, and should be required to adhere to and respect policies applicable to members of the board. Particular attention needs to be paid to the orientation of non-board committee members as they may not receive, or be subject to, the same orientation that board members receive.

8. Should the audit committee be comprised of persons who are either external to the corporation or external to the finance/business committee?

There is no requirement for the audit committee to be comprised of persons who are external to the corporation. This would suggest that the function of the audit committee is not a board function. In fact, the audit committee performs an important role on behalf of the board in supervising the external auditors, including setting the scope of the audit, receiving the audit report, and receiving any recommendations that may be made by the auditor, with respect to management and internal control matters. Similarly, there is no reason why the individuals who comprise the audit committee cannot also be members of the board committee that is responsible for business and/or financial matters. One purpose of the audit committee is to oversee management with respect to financial matters. Provided that the board's finance/business committee is performing governance, and not a management function, there is no reason why members of that committee, or a sub-committee of that committee, cannot comprise the audit committee.

The audit committee should not be comprised of any members of management, including the chief executive officer. The audit committee should be comprised of elected directors who are not related to the corporation.

9. What is the best way for a committee to report to the board? Should committee minutes always be provided to the board?

While directors should be entitled to see committee minutes, when the minutes are routinely provided to the board as the only method of committee reporting to the board, it often invites the board to re-do the work of the committee. A better practice is to develop a process of committee reports to the board. Generally speaking, committee reporting to the board is important for two reasons:

- To bring specific recommendations to the board for the purposes of the board making a decision; and
- To ensure that the board exercises oversight of the work of the committee.

It is important to distinguish between the board's role in exercising oversight of the committee and the board relying on the committee, and not re-doing the work of the committee.

It is important to distinguish between the board's role in exercising oversight of the committee and the board relying on the committee, and not re-doing the work of the committee.

Given that boards establish committees to perform preliminary work on behalf of the board and work that the board does not have time to do, the format for committee reporting to the board should ensure that these purposes for establishing the committee are honoured by the board.

In summary, a best practice for committee reporting to the board would be:

- Adopt a form of committee report that summarizes the matters that were reviewed;
- Rely on a decision support document or board briefing report to be used not only for recommendations coming to the board from committees, but also for recommendations coming from management; and
- Make committee minutes accessible to directors but do not require directors to read the committee minutes as the only way to prepare a director to discuss committee recommendations at the board meeting.

See [Form 8.16: Sample Format for Board Briefing Report](#)

10. Can committees make decisions that bind the board?

A board may expressly authorize a committee to make a decision that is binding on the board. In providing such express authorization, the board is subject to the same standard of care that applies to any board decision. It must be reasonable and prudent and in the best interests of the corporation for the committee to have the authority to make a decision binding upon the board.

Accordingly, a committee would likely only be given such decision-making authority subject to parameters or limitations set by the board. For example, a committee might be authorized to conclude the terms of a material

contract within specified limitations with respect to price, term, scope of services, etc. As noted above, there are some actions that are specified to be non-delegable and which may only be exercised by the full board.

Under both the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act (Ontario)*, there are certain decisions that cannot be delegated to a committee or managing director and must remain with the full board.

11. Can staff members vote as members of a committee?

The committee terms of reference should specify which committee members may vote. While there is no rule that says that staff members may not vote on committees, the decision as to whether staff members should vote should be carefully considered. Firstly, allowing members of management to vote may tend to blur the distinction between “management work” and “board work”. Secondly, there may be a risk that, depending upon the quorum requirements and committee attendance numbers, the staff could outvote board members. The better practice is to allow only members of the board or community members of committees to vote on committee decisions.

12. Does the principle of board solidarity apply to a committee?

The general practice is that committees are advisory. The board receives recommendations from the committee, and then, if a decision is required by the board, a vote is taken at the board level. A committee member is not bound to vote with the majority of the committee when the matter comes to the board. A committee member should, however, not blindsides his or her committee chair in the boardroom. If a committee member who disagrees

with a recommendation of a committee wishes to make a “minority report” to the board, the committee member should advise the committee chair and the board chair in advance. Any such report should be done in a way that is respectful of the work of the committee.

13. Can committees meet by telephone?

Yes. The ability for a committee to meet by telephone is expressly authorized in the *Corporations Act (Ontario)*, the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act (Ontario)* and there is no requirement to have provisions in the by-laws to this effect. The provisions of the relevant legislation with respect to the manner of holding such a meeting must be followed.

14. Can any board member attend any committee meeting?

Subject to any provisions in the corporation’s by-laws or governance policies, there is no prohibition on a director who is not a member of a committee to attend that committee’s meetings. Such practice should, however, be discouraged. Attendance of a board member at a committee meeting to which that member has not been appointed can be potentially disruptive to that committee, as the non-committee member will not have the continuity of participation in the committee’s meetings. Directors should respect the committee assignments that are made either by the board chair or by the governance committee.

Generally speaking, committee meetings are not open to the public even for those corporations that have adopted a practice of open board meetings.

15. Can a non-voting member of a committee move a motion?

Subject to the rules of order that have been adopted by the corporation, the general rule is that only a voting member of a body may move a motion or second a motion before that body.

16. Should a board have an executive committee? What is the common practice?

An executive committee can add value to a board's governance processes if it has clear terms of reference and does not usurp the role of the board.

If the executive committee begins to present recommendations for rubber-stamping by the board it will impede the board's contribution to governance. An executive committee adds value when it provides a forum for advice and counsel to the chair and chief executive officer, aids in planning the board's annual work plan, and ensures the board maintains a focus on strategic directions. The executive committee may also add value when it undertakes work on behalf of the board, such as the evaluation of the chief executive officer, provided it does so subject to the direction and final approval of the board.

Corporations have mixed practices with respect to the establishment and role of an executive committee. A corporation that has experienced an executive committee that became a "board within a board" will often have strong views against the establishment of an executive committee, or may establish one only for the purpose of making decisions in an emergency where a meeting of the board cannot be held.

17. Recommendations for governance practices in the for-profit sector often include a recommendation that the board, or the independent directors on the board, meet without management. When should this practice apply to a not-for-profit?

It is a good practice for the independent directors to occasionally meet without members of management present for the purposes of overseeing the board's relationship with management and, in particular, assessing the quality of the information that the board is receiving from management.

Where the chief executive officer is an *ex officio* member of the board, the chief executive officer should be excluded from these meetings. Such meetings, if they exclude members of the board, cannot be considered to be board meetings and no formal board action can be taken at such meetings. Such meetings should, however, be considered as one of the processes that the board uses to oversee management. Some boards have adopted a process of beginning or ending every board meeting with a short session at which only independent directors are present (no management, related directors or members or the public are present).

Because the purpose of these meetings is to ensure independent oversight of management, the board will need to determine which directors may be considered as "related" to management. Who should be excluded will be a decision to be made in the context of the composition of each board. The board chair should immediately meet with the chief executive officer or executive director to convey any concerns, advice or positive feedback coming from the session.

These sessions are not part of the board meeting and, therefore, while the chair may keep notes to facilitate communication with the chief executive officer or executive director, no formal minutes will usually be kept.

See [Form 8.19: Sample Policy for Meeting without Management](#)

18. How does a board ensure that it fosters a culture of respectful behaviour in its boardroom?

Fostering a board culture of respectful behaviour begins with the qualities identified by the board as those it seeks of directors. The desired qualities for a board director must include more than skills and experience and should also address intangible qualities such as integrity, loyalty, ability to work as part of a team and the ability to express ideas and disagreements constructively. Accordingly, the recruitment process must not only identify those qualities, but must also include some measure of evaluating a candidate against those qualities.

The second step for ensuring respectful boardroom behaviour involves training. Board orientation must include training with respect to the affairs of the corporation, the role of the board, and the duties and behavioural expectations of a director. Adopting a Director Position Description that addresses required behaviour is an important step for a board to take.

Ultimately, it falls to the chair to maintain a culture of respectful behaviour in the boardroom. The chair does this both through the management of the meeting (declaring certain behaviour out of order), and by ensuring that director evaluations are performed and that results are constructively conveyed to directors. Some boards also assign a more senior board member as a mentor to new members to ensure that the board's culture of respectful behaviour is modeled for new directors.

The last resort for a board is to request that a director resign before the expiry of his or her term or, failing that action, to ensure that the board understands that re-election is not automatic and board behaviour is one factor that will be taken into account in determining whether or not a director will be asked to reapply for a position on the board.

It is also important to minimize the number of *ex officio* positions. Where the board cannot control the skills, qualities or behaviour of the individual that holds an *ex officio* office, the board is at greater risk of having that individual's behaviour be potentially disruptive to the board.

The board's Code of Conduct should make it clear that where a director fails to adhere to his or her fiduciary duties, and is an *ex officio* director, the board chair may approach the organization that the director represents and request that the director be removed.

19. Is a corporation required to have board meetings that are open to the public and, if so, what matters should be dealt with *in camera*?

In addressing this question, it is helpful to start with some general principles:

- Corporations are not required to have meetings that are open to the public unless subject to a specific requirement under applicable legislation.
- Unless there is a requirement under applicable legislation to have meetings that are open to the public, the only persons entitled to attend a board meeting are the directors. All others are guests and are there at the pleasure of the board, usually on invitation by the chair or the chief executive officer, or in accordance with the board-approved policy.
- Boards that have elected to have open board meetings usually pass a policy, but such policy does not create an irrevocable right for the public to attend board meetings, subject to applicable legislation. The policy can be repealed or amended by the board, subject to any provisions that may have been included in its by-laws.

Based on the above principles, the concept of *in camera* is used to describe that portion of the meeting during which some or all of the “guests” are excluded.

Boards that permit the public to attend board meetings will often have a two-stage *in camera* meeting where the public leaves the room for certain sensitive issues but management remains, followed by a second *in camera* meeting where only the directors remain including *ex officio* directors and directors who are members of management.

It is a good governance practice to have well-understood rules for when the board will move *in camera*. Some matters, such as the board receiving privileged legal advice or dealing with human resource issues, must clearly be dealt with *in camera*. In other areas, the board may need to make its own decision.

A good test for whether a matter should be dealt with *in camera* is this: Will the benefits that come from open discussion (transparency, accountability and enhanced public confidence in the board) be outweighed by the harm of public disclosure of the matter at hand? Many times, the real issue is one of timing. In other words, the question for the board may not be whether or not the matter should be dealt with in the public portion, but when it should be disclosed to the public.

An *in camera* board session should not be confused with the process of independent directors meeting without management or related directors present as described in response to [question # 17](#) above.

See [Form 8.10: Sample Policy for Open Board Meetings](#)
See [Form 8.11: Checklist for Developing a Policy for Open Board Meetings](#)

20. Who is responsible for ensuring that board meetings are effective?

Every board member has a duty to contribute to the effectiveness of board meetings. It ultimately falls to the board chair to ensure that meetings follow a proper process, and to facilitate the business of the board. The board chair can only do so, however, if the appropriate ingredients have been put in place. Those ingredients require proper identification of the skills and expertise required on the board, sound recruiting processes to ensure that there is a qualified board, initial board orientation and ongoing education with respect to operations, the board’s role, the director’s fiduciary duties and obligations, and resources to improve board performance. Those ingredients may or may not be in place when a board chair assumes office.

The board chair does, however, have an over-arching responsibility for the quality of the board’s governance and can institute practices in each of these areas to improve board performance. The board chair is also

Every board member has a duty to contribute to the effectiveness of board meetings.

responsible for maintaining the discipline of the board during the meeting to ensure that the board focuses on governance issues and does not unduly delve into areas that more properly belong to management. The board chair also disciplines board members whose behaviour does not adhere to the fiduciary standards expected of a director. Finally, the board chair, with input from the chief executive officer and the assistance of the board secretary, structures the agenda in order to ensure that the board focuses on areas that are consistent with the board's annual work plan, are in furtherance of the strategic directions of the organization, and deal appropriately with board and not management matters.

See [Form 8.20: Sample Meeting Effectiveness Survey](#)
See [Form 8.21: Sample Meeting Evaluation](#)

21. What is a consent agenda and how is it used?

A consent agenda is a process used during a board meeting to accept items that are of a routine or recurring nature and not expected to be contentious or require discussion. The items are identified on the agenda and a single motion is moved to accept these items. Any member may request either before or at the meeting, that an individual item be moved out of the "consent" portion to be discussed during the meeting. The consent agenda process is used to expedite the board's business.

See [Form 8.14: Consent Agenda Policy](#)

Form 8.1

Sample Board Chair Role Description

Role of the Chair

The board chair is the leader of the board. The board chair is responsible for:

- Ensuring the integrity and effectiveness of the board's governance role and processes;
- Presiding at meetings of the board and members;
- Representing the board within the organization and the organization to its stakeholders; and
- Maintaining effective relationships with board members, management and stakeholders.

Responsibilities

Board Governance

The board chair ensures the board meets its obligations and fulfills its governance responsibilities. The board chair oversees the quality of the board's governance processes including:

- Ensuring that the board performs a governance role that respects and understands the role of management;
- Ensuring that the board adopts an annual work plan that is consistent with the organization's strategic directions, mission and vision;
- Ensuring that the work of the board committees is aligned with the board's role and annual work plan and that the board respects and understands the role of board committees and does not redo committee work at the board level;
- Ensuring board succession by ensuring there are processes in place to recruit, select and train directors with the skills, experience, background and personal qualities required for effective board governance;
- Ensuring that the board and individual directors have access to appropriate education;
- Overseeing the board's evaluation processes and providing constructive feedback to individual committee chairs and board members as required; and
- Ensuring that the board's governance structures and processes are reviewed, evaluated, and revised from time to time.

Presiding Officer

The chair is the presiding officer at board and members' meetings. As the presiding officer at board and members' meetings, the chair is responsible for:

- Setting agendas for board meetings and ensuring matters dealt with at board meetings appropriately reflect the board's role and annual work plan;
- Ensuring that meetings are conducted according to applicable legislation, by-laws and the board's governance policies and rules of order;
- Facilitating and forwarding the business of the board, including preserving order at board meetings;
- Encouraging input and ensuring that the board hears all sides of a debate or discussion;

- Encouraging all directors to participate and controlling dominant members;
- Facilitating the board in reaching consensus;
- Ensuring relevant information is made available to the board in a timely manner and that external advisors are available to assist the board as required; and
- Ruling on procedural matters during meetings.

Representation

- The chair is the official spokesperson for the board.
- The chair represents the organization in the community and to its various stakeholders.
- The chair reports on behalf of the board to members at each Annual General Meeting.
- The chair represents the board within the organization, attending and participating in events as required.
- The chair represents the board in dealings with key stakeholders, as required.

Relationships

- The board chair facilitates relationships with, and communication among, board members and between board members and senior management.
- The chair establishes a relationship with individual directors, meeting with each director at least once a year to ensure that each director contributes his/her special skills and expertise effectively.
- The chair provides assistance and advice to committee chairs to ensure committee chairs understand board expectations and have the resources that are required for performance of their terms of reference.
- The chair maintains a constructive working relationship with the chief executive officer providing advice and counsel as required. In particular:
 - The chair works with the chief executive officer to ensure he or she understands board expectations;
 - The chair ensures that chief executive officer annual performance objectives are established, and that an annual evaluation of the chief executive officer is performed.

Other Duties

The chair performs such other duties as the board determines from time to time.

Skills and Qualifications

The board chair will possess the following qualities, skills, and experience:

- Proven leadership skills;
- Good strategic and facilitation skills, ability to influence and achieve consensus;
- Ability to act impartially and without bias and display tact and diplomacy;
- Effective communicator;
- Political acuity;
- Must have the time to continue the legacy of building strong relationships between the organization and stakeholders;

- Ability to establish trusted advisor relationships with chief executive officer and other board members;
- Governance and board level experience in the sector; and
- Outstanding record of achievement in one or several areas of skills and experience used to select board members.

Term

The board chair will serve an initial term of one [two] year(s), renewable for an additional term of one [two] year(s) at the discretion of the board.

Amendment

This Board Chair Role Description may be amended by the board.

Approval Date:

Last Review Date:

Form 8.2

Sample Board Chair Selection Process Guidelines

Purpose

It is in the interests of the corporation that there be succession planning and a smooth transition in the office of the chair.

Policy

The incoming chair shall:

- Be a current member of the board;
- Be approved by the board one year prior to the conclusion of the current board chair's term; and
- Serve as a vice chair until the commencement of his or her own term.

Process

The Governance Committee is mandated to conduct the board chair selection process and to recommend to the board, for its approval, a nominee for incoming chair.

Selection Criteria – Desirable Attributes

- Proven leadership skills;
- Good strategic and facilitation skills; ability to influence and achieve consensus;
- Ability to act impartially and without bias and display tact and diplomacy;
- Effective communicator;
- Political acuity;
- Must have the time to continue the legacy of building strong relationships between the corporation and stakeholders;
- Ability to establish trusted advisor relationships with the chief executive officer and other board members;
- Governance and board-level experience in the sector;
- Outstanding record of achievement in one or several areas of skills and experience used to select board members.

Selection Process

- Governance Committee will canvas each board member to obtain views on the selection criteria and on the perceived strengths and weaknesses of possible candidates.
- The results of director evaluations and peer reviews shall be considered.
- The chair of the Governance Committee will meet with each nominated candidate to ascertain interest. If the chair of the Governance Committee is a potential nominee, he or she shall not participate in the selection process, and the process shall be conducted by the vice chair or another member of the committee.
- Governance Committee will canvass senior leadership at the corporation and key partner organizations to obtain input.
- Governance Committee will discuss findings and ultimately agree on a nominee to recommend.

Amendment

This Board Chair Selection Process Guideline may be amended by the board.

Approval Date:

Last Review Date:

Form 8.3

Tips for the Chair

1. Spend some time thinking about the organization's mission, vision, values and accountabilities, and how they relate to the board's role and the chair's role.
2. Recognize your obligation to develop a relationship with each director. Find time to speak with each board member.
3. Set objectives for yourself and the board. A good process for this is to have a conversation with each board member and ask questions such as:
 - “How do you feel the board is performing?”
 - “What would you like to contribute?”
 - “Where can we improve?”
 - “What should I do to improve board performance?”
4. Your role is to be the meeting manager – consider how you will balance your obligation to ensure the meeting follows a proper process and provides an opportunity for directors to contribute while reaching decisions where required.
5. Become familiar with the rules of order adopted by the corporation – if none have been adopted, pick rules of order you will be comfortable using.
6. Think of ways in which you can ensure each board member contributes to board discussions.
7. Recognize that the board may not always agree and respect the views of those in the minority.
8. Do not engage in argumentative debates with board members. Accept the expression of a range of views as evidence the board is considering all factors.
9. Recognize when it is important to defer a decision to a future meeting or to a committee. When the board is divided, ask yourself if it is because they need more information, more debate or external advice. If none of these are factors then it may be time to call for a decision.
10. Recognize that you are the board leader and your tone and demeanour will impact the board's culture. Be respectful and courteous. Do not tolerate disrespectful behaviour from board members or allow members to dominate debate or to intimidate other board members.
11. Be thoughtful about the importance of your relationship with the chief executive officer. While working to develop a trusted advisor relationship, remember that the role of the board is to oversee management and the relationship between the chair and management is an important link in the board's relationship with, and exercise of independent oversight of, management.
12. Ask yourself if the external and internal stakeholders are well understood by the board. Consider how you will perform your role as the representative of the board to external and internal stakeholders.

Form 8.4

Committee Principles and Rules and Regulations

Purpose

- To set out the guiding principles that the board will apply when establishing committees.
- To establish rules and regulations applicable to the operation and function of all board committees.

Application

- These rules and regulations apply to all board committees unless the board otherwise determines by board resolution or in the terms of reference adopted by the board for a committee.
- These rules and regulations are in addition to the provisions of the by-laws.
- In the event of a conflict between the by-laws, a resolution of the board, the terms of reference of a committee and these rules and regulations, the order of precedence shall be:
 1. The by-laws;
 2. A resolution of the board;
 3. The terms of reference; and
 4. These rules and regulations.

Guiding Principles for Establishing Committees

- Committees will consist of standing committees as determined annually by the board and *ad hoc* special committees established from time to time by the board.
- The board will annually establish standing committees which will be aligned with the board's role and function and annual work plan, and reflect the priorities of the board for the year.
- Special committees will have specific tasks and timelines. They will be established, where required, to do the work of the board in circumstances where a standing committee is not required.
- Committees will have terms of reference approved by the board. The committee terms of reference will establish clear areas of responsibility between the various standing committees and special committees.
- Committees will develop annual work plans.
- Committees will be empowered to consider and debate issues within their terms of reference or as requested by the board and to make recommendations to the board.
- Committees will have an established mechanism for reporting to the board their progress on their terms of reference and work plans. Recommendations from a committee that require a board decision will be presented to the board in the approved board briefing note format.
- The board meetings will be efficient. Board agendas will not repeat the work of the committees. This requires the board to trust that committees have followed a proper process. Board members will read the committee reports ahead of time and the committee report at the board meeting will respond to questions and discuss recommendations requiring board approval.

Committee Rules and Regulations

Composition

The composition of each committee will be determined by the board and included in the terms of reference.

Membership

- Members will be appointed by the board on recommendation of either the board chair or a committee established by the board for that purpose (such as the Governance Committee).
- The board will appoint any non-director members ("community members") where the community members are specified in the committee composition. The terms of reference for a committee may give that committee the authority to appoint the community members.
- Community members will be voting and included in the quorum unless the terms of reference otherwise provide.
- The board chair, or a nominee designated by the chair, will be an *ex officio* member of all board standing committees. Where the board chair appoints a nominee as a member of a committee in place of the board chair, such nominee must be an elected member of the board and shall preferably be a vice chair.
- The chief executive officer shall be an *ex officio* member of all board standing committees other than the committee responsible for oversight of the corporation's audit.
- Staff will be assigned to the committee by the board or the chief executive officer and will be resources to the committee as appropriate.

Term

Committee members are appointed for a term of one year and are eligible to be reappointed.

Chair

- All board standing committees must be chaired by a board member.
- Committee chairs will be appointed by the board on the recommendation of either the board chair or a committee established by the board for this purpose.
- The chair of the committee shall:
 - Call all meetings of the committee;
 - Chair all meetings of the committee;
 - Designate another director who is a member of the committee to chair the committee in the chair's absence; and
 - Report to the board on the work of the committee.

Calling Meetings and Notice

- Committee meetings may be called by the chair of the committee.
- Notice for a meeting of a committee shall be given in the same manner and with the same amount of notice as applies to a meeting of the board.

Participation in Meetings

- Teleconference participation is permitted.
- Committee members may not send a delegate.

Quorum

- Fifty percent of the voting members, provided a majority of the voting members present are voting directors.

Voting

- Voting board members on a committee shall be voting members of the committee. Unless the committee terms of reference otherwise provide, non-voting board members and community (non-board) members shall be voting members of a committee in respect of all motions other than a motion that is binding on the board.
- Only a member of a committee entitled to vote on the motion may move or second a motion at a committee meeting.
- There shall be no proxy voting.
- A member of a committee participating in a meeting of the committee by teleconference may vote by teleconference.
- Staff (employees) assigned to the committee will not be voting members of the committee or be included in the quorum unless the terms of reference of the committee otherwise provide.

Guests

Committee chairs may invite guests to attend meetings as resources, as required.

Advisors

Any request for expert advice (such as legal or financial advice) to be made available to the committee must be approved by the board chair or the chief executive officer.

Amendment

This policy may be amended by the board.

Approval Date:

Last Review Date:

Form 8.5

Sample Format for Committee Terms of Reference

Format for Committee Terms of Reference	
Role	A general statement of the committee's purpose or role should be set out. The role should be relevant to the work of the board.
<i>Example</i>	The role of the Governance Committee might be expressed as: "To advise the board on matters relating to the board's governance structure and processes, evaluation of the board effectiveness, recruitment, education and evaluation of board members."
Responsibilities	A specific list of activities the committee is to undertake, usually without setting out in detail the process the committee is to follow.
<i>Example</i>	Governance Committee responsibilities might include: <ul style="list-style-type: none"> • Review by-laws and recommend revisions as required; • Conduct process for board and officer succession, and recommend candidates for election to the board and for appointments as officers of the board; and • Evaluate effectiveness of board governance structures, processes and policies and recommend changes as required. [See Form 8.6: Sample Committee Responsibilities for further examples.]
Membership and Voting	Set out the number of appointed and <i>ex officio</i> committee members and whether they are voting or non-voting.
<i>Example</i>	Voting members: <ul style="list-style-type: none"> • Chair of the board; • At least four directors appointed by the board; • Chief executive officer as an <i>ex officio</i> member. Non-voting member: <ul style="list-style-type: none"> • Vice President of Planning
Chair	Describe who the chair will be.
<i>Example</i>	A voting member of the committee appointed by the board.
Frequency of Meetings and Manner of Call	Specify if a minimum number of meetings must be held.
<i>Example</i>	At least quarterly, at the call of the committee chair.
Quorum	If there are non-board members on the committee, the quorum should reference the board members.
<i>Example</i>	51% of the committee members, provided a majority of those present are board members ~ OR ~ 51% of the members entitled to vote.
Resources	Specify if a member of management is to be assigned to the committee as a resource and committee support.
Reporting	Specify how the committee reports. It will usually be to the board, but a sub-committee may report to a committee.
<i>Example</i>	To the board.
Date of Last Review	

Form 8.6

Sample Committee Responsibilities

Note to Reader: The examples of responsibilities of various committees set out below are intended to be just that, examples. They include statements of responsibility to illustrate how a board might use its committees in furthering board work. The responsibilities could be part of the committee's Terms of Reference, which would also include the purpose, membership and quorum requirements for the committee.

See *Form 8.5: Sample Format for Committee Terms of Reference*

The committees, whose responsibilities have been illustrated, include the Finance Committee, Audit Committee, Governance and Nominating Committee, and Executive Committee. Other committees might include: Communication and Government Relations, Community Liaison, Human Resources and Compensation. In addition, when special issues arise, such as a major construction project, a board may establish a special purpose committee such as a Capital Project Committee. It is important that committees established by the board are aligned with the board's role and annual work plan. Accordingly, the number of committees and their roles and responsibilities will be unique to each corporation.

The Finance Committee Responsibilities

Budget Planning and Oversight

- Ensure that there are processes in place for the development of an annual operating budget and capital budget;
- Review and recommend to the board financial assumptions used to develop the operating budget, capital budget and strategic plan;
- Review and recommend to the board the annual operating plan and budget, and the capital plan and budget;
- Review monthly financial performance and compare actual performance against budget;
- Review and recommend to the board plans developed by management to address variances between budget and actual performance; and
- Monitor implementation of plans to address variances and report to the board.

Long-Term Planning

- Review and recommend to the board long-term financial goals and long-term revenue and expense projections; and
- Review, with management, industry developments and legislative changes that may have an impact on financial resources or performance and report to the board.

Asset Management

- Ensure there are processes in place to manage the assets of the organization; and
- Review and make recommendations concerning material asset acquisitions not contemplated in the annual operating plan.

Financial Transactions

- Review and make recommendations to the board concerning banking arrangements; and
- Review and make recommendations to the board regarding lines of credit and long-term debt.

Donations and Bequests

- Advise the board with respect to donations including the terms of any donor recognition agreements.

Investments

- Review and recommend to the board the organization's investment policy; and
- Monitor investment performance for compliance with the investment policy.

Internal Controls and Risk Management

- Oversee, review and make recommendations to the board concerning management's risk management processes;
- Review and make recommendations concerning the adequacy of financial resources;
- Review and make recommendations concerning insurance coverage;
- Identify unusual risks and oversee management's plan to address unusual or unanticipated risks and make recommendations to the board; and
- Review and make recommendations concerning the quality and integrity of management's internal controls.

Other

- Such other matters as may be referred by the board, from time to time.

Audit Committee Responsibilities

- Recommend to the board the auditors for appointment or re-appointment by the members at the annual meeting;
- Review and make recommendations to the board concerning the auditor's remuneration;
- Meet with the auditors to review proposed scope of audit;
- Approve the auditor's engagement letter;
- Oversee performance of audit as required, including ensuring auditors are receiving the assistance of management;
- Review audited financial statements and the auditor's report and make recommendations to the board;
- Meet with the auditors and receive and review recommendations with respect to management, accounting systems and internal control issues;
- Review policies regarding financial operations, including internal controls;
- Review non-audit services provided by the auditor and other factors that might compromise the auditor's independence and make recommendations to ensure auditor independence;

- Review management response to recommendations of the auditor and report to the board;
- Oversee implementation of the auditor's recommendations; and
- Such other responsibilities as are assigned by the board.

Note to Reader: The Audit Committee may be a separate committee or a sub-committee of the Finance Committee. The Audit Committee should be comprised of individuals who are financially literate and should consist of directors who are independent of management. Only directors should be members of the Audit Committee.

Board Governance and Nominating Committee Responsibilities

Board Recruitment

- Develop for approval by the board a description of the skills, experience and qualities including diversity of the directors;
- Consider skills, experience, qualities and diversity of current directors to determine board needs; and
- Oversee board recruitment and nomination process and recommend to the board candidates for election at the annual meeting.

Board Education

- Ensure a comprehensive orientation session is provided to all new board members;
- Oversee board education sessions to ensure board receives periodic education on governance, industry issues and the organization's operations; and
- Organize, with the input of the chief executive officer and board chair, the board's annual retreat.

Board Chair

- Ensure succession planning for the office of board chair;
- Oversee and implement the board's process for selecting a board chair and recommend an individual for election by the board as chair; and
- Make recommendations to the board for vice chairs and other board officers.

Board Committees

- Ensure periodic review and evaluation of committee performance and terms of reference, and make recommendations to the board as required; and
- Recommend to the board, with the input of the chair, nominees for all board committees and committee chairs.

Evaluations

- Establish and implement a program to evaluate board performance including individual director performance, performance of the chair, board committees and committee chairs;
- Consider the results of board evaluations in connection with renewal of the terms of existing directors;

- Review and make recommendations to the board concerning:
 - Board composition;
 - Board size;
 - Board structures;
 - Board policies and procedures;
 - By-law amendments;
 - Board attendance;
 - Other; and
- Such other matters as may be required by the board, from time to time.

Executive Committee Responsibilities

- Ensure that a strategic planning process is undertaken with board involvement and eventual approval of the board.
- Develop a process to oversee the performance and compensation of the chief executive officer by:
 - Developing a position description for the chief executive officer for approval by the board;
 - Overseeing chief executive officer recruitment, selection and succession planning;
 - Reviewing and recommending to the board the chief executive officer's annual objectives;
 - Developing and conducting a process to review the performance by the chief executive officer and report the results to the board; and
 - Recommending chief executive officer compensation for approval by the board.
- Oversee the chief executive officer's supervision of management and management succession plans.
- Develop and recommend the board's annual work plan to the board.
- Provide advice and support to the chair, chief executive officer and committee chairs.
- *[For those Executive Committees that are given decision-making authority.]* Make decisions binding on the board in situations where it is not possible or practical to call a meeting of the board, or where the board has authorized the committee to act and report the decision at the next board meeting.
- Undertake such other activities as may be authorized by the board, from time to time.

Note to Reader: The above is an example of the responsibilities that might be included in an Executive Committee terms of reference. Not all organizations choose to have an Executive Committee. In cases where there is no Executive Committee, the responsibilities would then either reside with the full board, or may be assigned to another committee.

Form 8.7

Comparison of Meeting Requirements

	Member Meetings	Board Meetings	Committee Meetings
Manner of Giving Notice	Subject to the by-laws, individually by mail provided that corporations with charitable objects may give notice by publication in newspaper circulated in municipality where majority of members reside	In accordance with by-laws or rules of order	In accordance with by-laws or general committee regulations adopted by board
Length of Notice	10 days if given individually or, if by publication, once a week for two consecutive weeks next preceding meetings (by-laws may require more notice)	No minimum requirement In accordance with by-laws or rules of order	No minimum requirement
Quorum	No minimum requirement Must be specified in by-laws	Majority of the board or as provided by special resolution, but not less than two-fifths	No minimum requirement (except for Executive Committee which must be not less than a majority)
Telephone Meetings	Not permitted	Permitted	Permitted
Resolutions in Writing in Lieu of Meeting	Permitted if <u>all</u> members sign	Permitted if <u>all</u> directors sign	Could be permitted by board policy or by-laws
Open to the Public	Not required – subject to specific legislation	Not required – subject to specific legislation	Not required – subject to specific legislation
Frequency	Annually within 15 months of last meeting and within six months of the fiscal year end	No minimum requirement	No minimum requirement
Minutes	Required	Required	Required for Executive Committee
Proxy Voting	Yes	No	No

Note to reader:




Form 8.7 is based on the requirements of the *Corporations Act* (Ontario). Corporations under the *Canada Not-for-Profit Corporations Act* should make references to that Act. The *Not for Profit Corporations Act* (Ontario) will make changes to many of the requirements on this Form 8.7. Reference should be made to Chapter 10 and the new Act.

Form 8.8

Sample Board Annual Work Plan

Item	Committee Responsible	September	October	November	December	January	February	March	April	May	June	July	August	As Required
1.0 Finance and Audit														
1.1 Annual budget assumptions	Fin					x								
1.2 Review annual Audit Plan and Internal Audit Plan	Fin					x			x					
1.3 Determine compensation for the auditor	Fin								x					
1.4 Operating Plan	Fin					x								
1.5 Year end audit – approve audited financial statements	Fin									x				
1.6 Evaluate auditors and recommend to members on appointment of auditors	Fin									x				
1.7 Review quarterly financial reports and investment statements	Fin	x		x		x			x		x			
1.8 Review investment policy	Fin									x				
2.0 Governance														
2.1 Approve committee Terms of Reference and committee work plans	B	x												
2.2 Appoint committee and community members to community advisory and/or board committees; appoint committee chairs	Gov										x			
2.3 Review and approve governance policies	Gov													x
2.4 Approve by-law changes	B													x
2.5 Director recruitment and nomination	Gov									x				
2.6 Appoint board officers (at board meeting immediately following AGM)	Gov										x			
2.7 Set date for AGM	B								x					
2.8 Review board evaluation survey results	B	x												
2.9 Approve annual board work plan	B	x												
2.10 Board education sessions (schedule and topics should be in annual work plan)	B	x		x		x			x		x			
2.11 Meetings with management (schedule would show meetings where such sessions are to be held)	B	x		x		x			x		x			
3.0 CEO														
3.1 Approve assessment process for CEO	B								x					
3.2 Establish performance goals for CEO	B									x				
3.3 Receive report on completion of performance reviews	B									x				
3.4 Review succession planning	B									x				
4.0 Strategic Plan and Strategic Directions														
4.1 Review strategic plan and refresh	B	x												
4.2 Review progress on specific strategic directions	B	x		x		x			x		x			
4.3 Review performance metrics	B	x		x		x			x		x			
5.0 Stakeholder Relations and Engagement														
5.1 Review relationship with key stakeholders	B		x						x					

Committee Legend	
Board	B
Finance Committee	Fin
Governance Committee	Gov

Colour Legend	
Completed by target	
In progress, but not completed by target	
Not in progress, and not completed by target	

Form 8.9

Sample Board and Committee Meeting Attendance Policy

Purpose

To ensure that board and committee members contribute their expertise and judgment to the business and affairs of the corporation by attending and participating in board and committee meetings.

Application

All board members and non-board members of committees.

Policy

Board members and committee members are expected to attend all board meetings and all meetings of the committees to which they are assigned.

It is recognized that directors and committee members may be unable to attend some meetings due to conflicts with other commitments or other unforeseen circumstances. An attendance rate of at least 75% is acceptable.

Process

Where a director or committee member fails to attend 75% of the meetings of the board or of a committee in a 12-month period, or is absent for three consecutive meetings, the chair shall discuss the reasons for the absences with the member and may ask the individual to resign.

A member's record of attendance shall be considered with respect to renewal of a board term or future assignment to a committee.

Where the board or committee member is an *ex officio* member of the board, the chair may discuss the member's attendance with the organization the member is affiliated with, and such organization may be requested to remove the member and appoint a new *ex officio* member to the board.

The chair shall, in the chair's sole discretion, determine if a board or committee member's absences are excusable and may grant a board or committee member a limited period of time to rearrange their schedule so that there are no conflicts with regularly scheduled board or committee meetings.

Amendment

This policy may be amended by the board.

Approval Date:

Last Review Date:

Form 8.10

Sample Policy for Open Board Meetings

Purpose

The public and staff are welcome to observe the open portion of the board meeting to:

- Facilitate the conduct of the board's business in an open and transparent manner;
- Ensure the corporation maintains a close relationship with:
 - The public;
 - Media;
 - Stakeholder groups; and
- Generate trust, openness and accountability.

Policy

Members of the public are invited to attend the meetings of the board in accordance with the following policy.

Notice of Meeting

A schedule of the date, location and time of the board's regular meetings will be available from the board office and will be posted on the corporation's website. Changes in the schedule will be posted on the website.

Attendance

To ensure adequate space is available, individuals wishing to attend must give at least 24 hours' notice to the board secretary. The board may limit the number of attendees if space is insufficient.

Conduct During the Meeting

Members of the public may be asked to identify themselves. Recording devices, videotaping and photography are prohibited.

The chair may require anyone who displays disruptive conduct to leave.

Agendas and Board Materials

Agendas for the open portion of the meeting will be distributed at the meeting and may be obtained from the board secretary prior to the meeting. Supporting materials will be distributed only to the board.

In Camera Session

The board may move *in camera* or hold board meetings that are not open to the public where it determines it is in the best interest of the corporation to do so. The chair may order that the meeting move *in camera*. Any director may

request a matter be dealt with *in camera* in which case a vote will be taken and if a majority of the board so decides, the matter shall be dealt with *in camera*.

The following matters will be dealt with *in camera*:

- Client-specific issues;
- Matters relating to an individual board member or a prospective board member;
- Individual employee matters;
- Donor-specific issues;
- Any other matters where personal information about an individual will or may be revealed;
- Human resource and labour relations matters including those pertaining to collective bargaining or terms of employment, including negotiations or potential negotiations;
- Litigation or potential litigation including administrative tribunal matters;
- Receipt of advice that is subject to solicitor-client privilege including communications necessary for that purpose;
- The security of property of the corporation;
- Contract matters including negotiations or disputes;
- The acquisition, disposition, lease, exchange or expropriation of, or improvements to real or personal property, if the board considers that disclosure might reasonably be expected to harm the interest of the corporation;
- Board and committee self evaluation;
- Other matters that, in the opinion of the majority of directors, the disclosure of which might be prejudicial to an individual or to the best interests of the corporation; and
- Consideration of whether an item is to be discussed *in camera*.

Guests or counsel may remain during an *in camera* session with the permission of the chair or the consent of the meeting.

Delegations and Presentations

Members of the public may not address the board or ask questions of the board without the permission of the chair. Individuals who wish to raise questions with the board must contact the board secretary in advance of the meeting.

Committee Meetings

Meetings of committees are not open to the public.

Contact Information

Board Secretary.
[Address, telephone and e-mail]

Approval Date:

Last Review Date:

Form 8.11

Checklist for Developing a Policy for Open Board Meetings

The following matters should be addressed in developing an open meeting policy:

1. Must the public give notice and register prior to attending, and/or should public attendees register at the meeting?
2. Will the media be allowed to attend?
3. Will agendas be available in advance? How far? In what manner?
4. Will agendas be distributed at the meeting?
5. What other materials will be available (minutes of the previous open meeting, supporting materials)?
6. Will members of the public be allowed to speak? What process must be followed if permission is granted to speak?
7. When will the public be excluded?
8. What is the process to move *in camera*?
9. Who can stay during an *in camera* session?
10. Will the *in camera* meeting be held first or at the end of the board meeting?
11. How will *in camera* minutes be distinguished from minutes for the open portion?
12. What will be the process to deal with media attendance and inquiries?

Note to Reader: If the corporation is subject to specific legislation that requires open board meetings, then the legislation should be carefully reviewed to see if it provides answers in respect of the questions set out above or if it imposes additional requirements.

Form 8.12

Procedure for Members of the Public Addressing the Board

Note to Reader: For those boards who wish to adopt a process for members of the public to address the board, the following process could be included in the Policy for Open Board Meetings.

Persons wishing to address the board concerning matters relevant to the corporation must do so following the procedures listed below.

1. Written notice of the request to address the board meeting must be provided to the secretary no later than 10 working days prior to the meeting date. A brief description of the specific matter to be addressed should be included in the request.
2. Requests to address the board on a specific item will be granted (generally in order of the receipt of the requests) if approved by the chair of the board. Persons not permitted to address the board shall be so notified.
3. The board may limit the number of presentations at any one meeting.
4. Persons addressing the board will be required to limit their remarks to five minutes. If a group wishes to make a submission, a spokesperson for the group should be identified.
5. The chair is not obligated to grant a request to address the board and the board is not obligated to take any action on the presentation it receives.

Form 8.13

Sample Board Agenda Development Policy

Purpose

To ensure the board members understand the process for the development of, and have an opportunity to have input into, the board's agenda.

Policy

It is the responsibility of the chair, in consultation with the chief executive officer, to develop the agenda for board meetings.

Board agendas for regular meetings of the board are usually determined 10 days before a meeting.

A board member who wishes to add an item to the board's agenda or to be provided with additional information with respect to a board matter (such as a legal opinion addressed to the board) should speak with the board chair.

If the board member and the chair are not in agreement, then the board member may, on notice to the chair, raise the request during the call for other business or approval of the agenda at the opening of the board meeting, and the matter shall be determined by the board.

Amendment

This policy may be amended by the board.

Approval Date:

Last Review Date:

Form 8.14

Consent Agenda Policy

Purpose

To ensure efficiency and effectiveness of board meetings.

To provide an efficient process for approval of regular or routine issues that come before the board or matters where no debate is anticipated.

Policy

Content of Agenda

The Agenda for board meetings will distinguish between the following types of matters:

- Decision;
- Discussion; and
- Information.

Only decision items will require a motion, seconder and a vote.

Items requiring a decision that are expected to require no discussion or debate may, at the chair's option, be placed on the Agenda under the heading "Consent Agenda".

Materials and motions proposed to be dealt with under the Consent Agenda portion of the Agenda shall be clearly identified as falling under the Consent Agenda in the meeting packages. Board members should review the Consent.

Agenda items prior to the meeting on the expectation that no discussion will take place during the board meeting.

Approval of Agenda

The Agenda will be approved by the board at the beginning of each meeting.

Members of the board may request that matters be added, deleted or that the order of items be moved and the chair shall make a decision on each such request. Any such decision may be subject to challenge and reversed by the board.

Items may be moved out of the Consent Agenda section at the request of any member of the board prior to approval of the Agenda. No motion or vote of the board is required with respect to a request to move an item out of the Consent Agenda.

Where a member of the board requests that an item be moved out of the Consent Agenda section, the chair shall decide where to place that item on the Agenda.

Where only one item in a committee report does not qualify as a Consent Agenda item or is requested to be moved, that item shall be moved out of the Consent Agenda and the rest of the items in the report shall remain in the Consent Agenda.

Approval of the Agenda by the board constitutes approval of each of the items listed under the Consent Agenda portion of the meeting. No separate vote to approve the Consent Agenda portion is required.

Minutes

Minutes of the meeting will include the full text of resolutions adopted under the Consent Agenda portion of the meeting.

Amendment

This policy may be amended by the board.

Approval Date:

Last Review Date:

Form 8.15

Sample Board Agenda

Board Meeting with Consent Agenda and *In Camera* Session

[Name of Corporation]

Board of Director's Meeting

Date: [Day, Month, Year]

Location: [Room]

Address: [Address]

Education Session [topic] at 00:00 p.m./a.m.

Agenda Item	Time	Action Required			Responsibility
		Information	Discussion	Decision	
1. Call to order					
1.1 Quorum					
1.2 Declarations of conflicts					
1.3 Approval of agenda					
2. Consent agenda matters*					
2.1 Approval of previous meeting minutes					
2.2 [Other consent matters to be listed]					
3. Business arising from minutes (not otherwise covered on agenda)					
4. Matters requiring decision					
4.1 First item					
4.2 Second item					
4.3 [Etc.]					
5. Matters for discussion					
5.1 First item					
5.2 Second item					
5.3 [Etc.]					
6. Information only items					
6.1 First item					
6.2 Second item					
6.3 [Etc.]					
7. Other business					
8. <i>In camera</i> session – separate agenda					
9. Date of next meeting					
10. Termination**					

- * There will be no discussions or separate vote on any of these items. Any board member may request any item be removed from the Consent Agenda section either before the meeting, by advising the Chair, or before approval of the Agenda at the meeting. Items not moved will be considered adopted by consent without debate. Items removed will be placed on the Agenda at an appropriate place as determined by the Chair.
- ** A session of independent directors (without management or related directors present) will be held upon termination of the meeting.

Notes to the Reader:

1. Some boards will also distinguish between strategic items and business items. Strategic items include policy decisions. Some boards may also distinguish items between policy/strategic items and oversight matters.
2. The template agenda above has three main categories of business:
 - a. Decision items – the board is required to reach a decision in the meeting.
 - b. Discussion items – these are items where a future decision will likely be required and they are placed on the agenda so either board committees or management can receive the advice and input of the board before a final recommendation is brought forward.
 - c. Information items – matters where there is no decision required at the current meeting and where discussion is not anticipated. The board may have questions or comments on these matters.
3. The agenda for the *in camera* portion will usually follow a similar format. However, as it is a continuation of the meeting, there is no call to order or declaration of quorum. There may be another call for conflicts related to the *in camera* portion of the meeting. There may also be a Consent Agenda section on an *in camera* agenda. Some boards may hold the *in camera* portion first, however, if there are decision items in that portion, the late arrivals may not be present. Also, where there are several members of the public wishing to attend, there may be logistical issues if they are kept waiting for the open portion.

Form 8.16

Sample Format for Board Briefing Report

Note to Reader: A Board Briefing Report (sometimes called a Decision Support Briefing Note to the Board) is used by the board to ensure recommendations that come before the board address and present relevant information for the board's consideration. It is a useful tool for recommendations from board committees even in circumstances where a committee report is being provided to the board. It is also appropriate where recommendations from management are being presented to the board. The typical headings might be as shown on the following page.

Board Briefing Report

Title:

Presented by:

Date of Board Meeting:

Chronology of Previous Board/Committee Consideration:

Staff Resources:

By-law or Board Policy Reference:

Legislation

Issue

[Short description of issue or objective.]

Recommendation

[Usually stated in the form of the motion that will appear in the minutes – there may be circumstances where the board is asked to consider more than one option and neither management nor the relevant committee is recommending a preferred option.]

Background/Introduction

[Overview of chronology, process or circumstances leading to recommendation.]

Analysis

[Scope of analysis will depend on the nature of the issue, but may include sub headings such as those set out below.]

- Legislative Framework
- Legal Analysis
- Financial Analysis
- Risks
- Options Considered and Evaluation (Pros and Cons) of each option
- Stakeholder Implications

Questions for Board to Consider

[There may be specific questions the board needs to consider and answer to evaluate and/or formulate its recommendation. It may be helpful to set these out to guide directors in their pre-meeting consideration of the issue.]

Implementation Strategy

[Any matters to be addressed or steps to be taken to implement the recommendation.]

Summary and Recommendation

Form 8.17

Meeting Minutes, Best Practices

Minutes are required to be made for all meetings of the board, the members and the board committee. Such minutes form part of the permanent records of the corporation and should be kept indefinitely.

Minutes should be signed by the chair.

There is no requirement to have minutes formally approved by the board or members at a subsequent meeting, but it is a good practice to do so. Once signed by the chair, the minutes are considered to be evidence of the proceedings taken unless the contrary is proved. Approval of the minutes reduces the risk of subsequent challenge to the minutes.

Form and Content of Minutes

- Date, time, place.
- Name of chair and secretary.
- Names of the directors present.
- Names of absent directors.
- Name of invited guests in attendance. Where the public attends, the names of the members of the public present would not usually be listed.
- If conflicts were declared they should be noted.
- Summary of the discussions including:
 - Rulings by the chair;
 - Motions;
 - Matters discussed [not a recitation of all comments, but an overview of the scope of discussions and the relevant questions and issues identified during discussion];
 - Results of the votes taken;
 - Record “no” votes and “abstentions” when requested to do so;
 - Note when directors arrive or leave during the meeting;
 - List of the important documents presented or relied upon during the meeting, copies of which should be attached to, and become part of, the minutes.

Form 8.18

Annual Meetings – Frequently Asked Questions

1. **When should we begin thinking about the annual meeting?**

The corporation should begin thinking about the annual meeting six months before the proposed date of the annual meeting. A timeline should be developed to ensure that any business to be conducted at the annual meeting will be properly organized. For example: Will by-law amendments be required? Do we have vacancies on the board that we need to fill? Will it be clear who the voting members will be at the annual meeting? Are we making a change in the office of auditor?

Where any action or material presented at the annual meeting requires prior board approval (for example: financial statements or a by-law amendment or a matter requiring approval by special resolution), the timeline must contemplate prior approval by the board.

2. **When is the annual meeting required to be held?**

The annual meeting is required to be held within 15 months of the last preceding annual meeting and within six months of the financial year end.

3. **Who calls the meeting?**

The by-laws should be checked to determine who may call a meeting. Under the *Corporations Act* (Ontario) and the *Not-for-Profit Corporations Act* (Ontario), the directors may at any time call a special meeting of the members.

4. **Who is invited?**

Notice should be given to the members, the auditors and the directors. Notice may also be given to any special guests and to the public, if the meeting is to be open to the public.

5. **What are the requirements for timing of the notice?**

Reference must be made to the by-laws and applicable legislation. The *Corporations Act* (Ontario) requires notice be given not less than 10 days before the meeting. Under the *Not-for-Profit Corporations Act* (Ontario) notice must be given not less than 10, nor no more than 50, days before the meeting.

6. **What business is conducted at the annual meeting?**

The typical items on the agenda of an annual meeting are:

- a. Approval of the minutes of the previous members' meeting;
- b. Presentation of the financial statements;
- c. Reading of the auditor's report;
- d. Reappointment of the auditor and authorizing the directors to fix the auditor's compensation;
- e. Election of directors.

7. **What other matters may be dealt with at an annual meeting?**

Other business that may be on the agenda for an annual meeting could include reports of the board chair and the chief executive officer, board approved by-law amendments, and any board-approved matters requiring member approval such as a special resolution. Some annual meetings will include a special presentation or a key-note address.

8. Who chairs a members meeting?

The by-laws should be reviewed, but generally speaking, the board chair will chair the meeting.

9. Who votes?

The by-laws should be reviewed, but generally speaking, only voting members in good standing may vote at the annual meeting. Proxy voting is permitted. Many by-laws will require that a membership fee be paid a specified number of days in advance of the meeting in order to entitle the member to vote. Under the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario), the Board may establish a record date as a specified number of days before the meeting for the purposes of determining who may receive notice and vote.

10. What are the quorum requirements?

There is no minimum quorum specified in the *Corporations Act* (Ontario) for a members' meeting and, accordingly, the quorum would be that number set out in the by-laws.

11. How do votes take place?

The by-laws and rules of order should be consulted, but generally speaking, votes take place on a show of hands. A written ballot (secret ballot) may be requested by any member either before or after the vote. This provision is usually in the by-laws or in the rules of order that have been adopted to govern their meeting proceedings.

12. Who are the scrutineers and what is their role?

Scrutineers are individuals who are appointed to oversee the registration of members, confirm quorum and count ballots for any vote that is conducted by way of ballot. Subject to the by-laws or rules of order, scrutineers are usually appointed by the chair of the meeting. Scrutineers may be employees unless the by-laws or rules of order provide otherwise. It is preferable that the scrutineers be independent if there is expected to be a contentious issue.

13. Can members participate by telephone or electronic means?

Reference must be made to applicable legislation. There is no provision in the *Corporations Act* (Ontario) that allows the meeting of members to take place by telephone or electronic means. This may be allowed under the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act* (Ontario), subject to the by-laws.

14. Can new business be added at the meeting?

No. New business cannot be added at the meeting. Members are entitled to notice that sets out the matters to be dealt with at the meeting and no business that is not on the notice may be conducted. The reason for this rule is that members make a decision as to whether or not to attend a meeting based on the business that is intended to be conducted. The duty of the chair of the meeting is to be fair to both those members in attendance and those who have elected not to come. It is not fair to the absent members to add business to a meeting of which they have not had notice.

15. Do conflicts have to be declared at or before the meeting?

No. Members do not have to declare a conflict at the meeting. Members do not have fiduciary duties. They may vote for self-interest and, accordingly, the concept of conflict of interest does not apply to motions and decisions at a meeting of members.

16. What motions might be moved by members during the meeting?

Members might move motions with respect to procedure. Motions may also be moved to amend or vary any matter that is before the meeting. Such motions must be within the scope of the original motion. Legal advice should be obtained with respect to material matters that come before the meeting and there should be some anticipation of the types of motions that might be made. The chair of the meeting should receive advice on how to respond to anticipated motions.

17. What if we don't have quorum?

The by-laws and rules of order should be consulted. The general rule is that the meeting is required to be reconvened and additional notice may be required to be given. Under the *Not-for-Profit Corporations Act* (Ontario), the meeting may continue if quorum is lost unless the by-laws otherwise provide.

18. Can notice be waived?

Yes, but it must be waived by all of those who were entitled to receive notice.

19. Can resolutions in writing be used in place of a members meeting?

Yes, this is permitted provided that *all* members entitled to vote sign the written resolution. Accordingly, this may not be practical for corporations with large membership.

Note: The *Canada Not-for-Profit Corporations Act* should be specifically referenced for meeting requirements. The *Not-for-Profit Corporations Act* (Ontario), will make changes to many of the requirements set out above. Reference should be made to Chapter 10 and the new Act.

Form 8.19

Sample Policy for Meeting without Management

Purpose

The purpose of this policy is to:

- Ensure the board exercises independent oversight of management;
- Provide an opportunity to assess board processes and, particularly, the quality of material and information provided by management;
- Provide an opportunity for the board chair to discuss areas where the performance of directors could be strengthened; and
- Build relationships of confidence and cohesion among board members.

Policy

The Independent Directors shall meet without management at every regularly scheduled board meeting.

Process

- Timing of the session without management should be set out in the notice of the meeting.
- Such a meeting shall not be considered to be a meeting of the board, but rather will be for information purposes only.
- Minutes will not be kept – the chair may keep notes of the discussion.
- The chief executive officer may be invited by the chair to participate in a part of the meeting without management before being excused.
- The chair shall immediately communicate with the chief executive officer any relevant matters raised in the meeting.

Membership/Participation

A director that remains in the meeting without management is identified as an “Independent Director” who is described as being free of any special relationship with the corporation.

Approval Date:

Last Review Date:

Form 8.20

Sample Meeting Effectiveness Survey

Note to Reader: The purpose of a meeting effectiveness survey is to improve meeting quality and process. The survey or questionnaire usually asks questions aimed at evaluating the following:

- Quality and timeliness of materials;
- Effectiveness of the meeting;
- Agenda management;
- Effectiveness of the debate;
- Conduct of meeting participants;
- Effectiveness of chair;
- Overall satisfaction.

The survey should be short enough to be completed before participants leave the room. The results should be shared with chair as soon as possible and should be periodically presented to the board.

See sample on the following page.

Sample Meeting Effectiveness Evaluation – Board or Committee Meetings

Materials		Yes	No	
1. Did you receive the materials in sufficient time for you to prepare for the meeting?				
2. Were relevant materials provided?				
3. Were the materials sufficient to assist you in forming an opinion on decisions made by the board?				
<i>Comments</i>				
Meeting Management	Satisfied	Somewhat Satisfied	Somewhat Dissatisfied	Dissatisfied
4. Were you satisfied with your opportunity to participate in the debate?				
5. Were you satisfied with the manner in which other board members contributed to the debate?				
6. Was the chair effective in allowing all sides to be heard while bringing the matter to a decision?				
<i>Comments</i>				
Overall Satisfaction with Meeting	Satisfied	Somewhat Satisfied	Somewhat Dissatisfied	Dissatisfied
7. Were you satisfied with what the board accomplished?				
8. Were you satisfied with the board's overall performance?				
<i>Comments</i>				
Meeting Date:				
Meeting Type:				
Name of Committee:				

Form 8.21

Sample Meeting Evaluation

Meeting Evaluation		
Question	Agree	Disagree
Date of meeting:		
1. Today's meeting started on time.		
2. The agenda was clear and realistic for the allotted meeting time.		
3. I had a clear understanding of the objectives for today's meeting.		
4. Agenda topics were appropriate (i.e., reflected Terms of Reference or board role and annual work plan).		
5. Adequate background information was provided for each agenda item.		
6. The time spent on each item was appropriate.		
7. I felt supported and valued as a member of this committee/board.		
8. I was encouraged to discuss and share my opinions openly.		
9. Disagreements were handled openly, honestly and directly.		
10. The chair kept discussions on track.		
11. The chair was prepared for the meeting.		
12. Meeting participants were prepared for the meeting.		
13. Follow up action item responsibilities were clear to all meeting participants.		
14. Today's meeting finished on time.		
15. Overall, we accomplished a lot at this meeting.		

Chapter 9

Developing Good Governance

This chapter provides advice for boards seeking to develop and improve the quality of their governance.

The ultimate governance goal for a board is to create a culture of good governance: one that develops, follows and self-reinforces the practices and behaviours that yield good governance in the best interests of the corporation's objects. To achieve that goal and stay there, boards need to follow best practices for governance and continually review and assess the state of their governance.

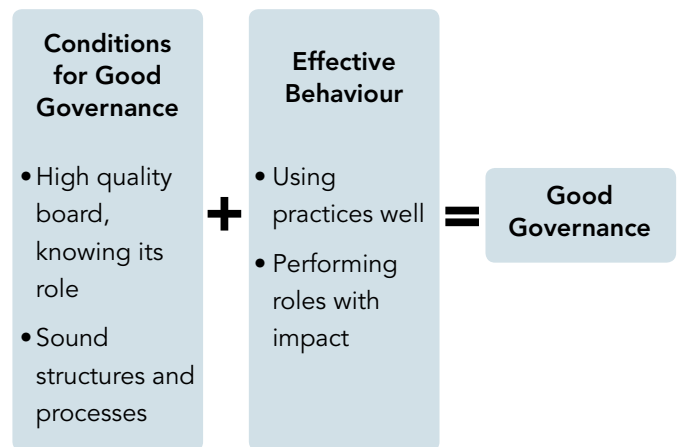
Some boards have challenges which impair the quality of their governance. This chapter also identifies some of the key signs of "trouble" together with recommendations on how to turn these situations around.

CREATING A CULTURE FOR GOOD GOVERNANCE

Earlier chapters in this Guide have addressed the policies and practices that should be adopted by a board to further good governance. Having policies, practices and structures that support the conditions for good governance are necessary, but are not in and of themselves sufficient for creating good governance. The board and the individual directors also need to exhibit effective behaviour to achieve good governance.

To ensure a board sustains effective behaviour, it must create a culture of good governance. A culture of good governance exhibits continuous constructive behaviour based on a shared set of values, beliefs and norms that support good governance.

Figure 9.1: Components of Good Governance



In developing this culture, boards should consider the following:

- Governance is a team activity among individuals with diverse experiences, skills and styles. The board's culture needs to support open, constructive dialogue, the airing of differences while respecting the opinions of others, a search for consensus, and a focus on what is best for the corporation; and
- All board members should have shared expectations about acceptable and unacceptable behaviour and be responsible for promoting positive, and addressing negative, behaviour within and among the board team.

A culture of good governance also goes beyond creating a constructive culture among the board members. How the board interacts and engages others inside and outside the boardroom is also important. The board must create a constructive, open and engaging relationship not only among its members, but also with the chief executive officer and senior management, and other professionals within the organization. This helps shape the internal culture of the corporation.

The board also engages with external stakeholders, including other boards, funders, municipalities, community representatives and members of the public. It is important that board members, individually and collectively, exhibit behaviour that is consistent with good governance in these settings.

ADOPTING THE TWELVE BEST PRACTICES FOR GOVERNANCE

Good governance is not absolute; it needs to be assessed in context. Nonetheless, there are some generic governance best practices that warrant consideration by most boards when evaluating their own governance.

1. **Understand mission, vision, values and accountabilities** – The objective of corporate governance is to ensure the organization fulfills its mission, operates in a manner consistent with its values, moves towards its vision and discharges its accountabilities. In addition to the organization's statement of mission, vision and values, the board should expressly adopt a statement of accountabilities that identifies the accountability relationships of the corporation.
2. **Understand the board's role** – The board should adopt a formal statement that expressly describes the areas in which it exercises a governance role. This can help the board perform its governance role and exercise oversight of management's performance.

Certain board processes are dependent upon, and flow from, the board's comprehension of its own role. For example, the board's annual work plan, committee structures, evaluations and board recruitment process all depend on the board's articulation and understanding of its own role.

3. **Understand directors' expectations** – The board should adopt a statement of the roles and responsibilities, duties and expectations of individual directors. Understanding the fiduciary duties and performance expectations of directors will help the board identify the qualities it requires of its directors.
4. **Enhance director performance** – The board should adopt board policies that support and emphasize directors' duties and behaviours. The fiduciary duties that a director owes to the corporation should be reflected in, and reinforced by, formally adopted board policies such as a conflict of interest policy, code of conduct, attendance policy, education policy and confidentiality policies.

A culture of good governance exhibits continuous constructive behaviour based on a shared set of values, beliefs and norms that support good governance.

5. **Determine board size for effective governance** – The board should periodically assess its size. It should ensure that the number of directors (elected and *ex officio*) will allow the board to have the skills, experience and qualities, including diversity, required to manage the workload, but not be so large as to prevent individual directors from contributing effectively.
6. **Create a skilled and qualified board** – The board should take express responsibility for its recruitment and succession planning processes. These processes should ensure the necessary skills, experience and qualities are recruited to the board and eliminate or minimize risk of single issue candidates being elected to the board.
7. **Educate new directors** – The board should ensure that it takes responsibility for the orientation of new directors and should conduct high quality, mandatory orientation. Orientation should cover four areas: board governance, corporate operations and activities, the industry environment, and key stakeholder relationships.
8. **Appoint qualified board leaders** – The board should ensure that all board leaders, and particularly the board chair, are selected pursuant to a process that ensures those best suited will assume leadership positions. The board should develop a position description for the role of board chair, set criteria, and develop a selection process. The board should ensure that it understands and supports the role of the chair.
9. **Ensure board independence** – The board should ensure that it understands and discharges its role of independent supervision of management. There are a number of processes that will ensure that the board operates independently of management, such as: ensuring that the chair and chief executive officer are separate offices; that the board meets without management from time to time; and that committees understand their role and their relationship to management.
10. **Establish and use board committees appropriately** – The board should ensure that it establishes its committees with reference to sound governance principles. There is no inherent role for committees, because they exist to support the board. Committees do work on behalf of the board and therefore do “pre-board work”: work the board would not have time to do in a board meeting. Committees also provide opportunities for supervision of management, allow members to contribute special expertise, in addition to helping the board perform a more detailed review of board matters than time would allow during board meetings.
11. **Ensure meetings enhance board performance** – The board should ensure that its meeting processes contribute to board effectiveness. The board must take responsibility for all aspects of board meetings, including: agenda setting, distribution of materials, the provision of expert advice, attendance policies, and quality of board minutes.
12. **Expressly commit to continuous improvement** – The board should expressly state its commitment to continuous self-improvement through ongoing education and evaluation, and should adopt processes to improve board performance. The board needs to commit to education concerning the organization, the industry environment and board governance. The board needs to conduct and use self-evaluations as a basis for continuous board improvement.

ASSESSING GOVERNANCE REGULARLY TO PROMOTE DEVELOPMENT

Boards are responsible for their own governance. As part of that responsibility, a board needs to periodically review, audit or evaluate its performance and practices. Clearly assessing the quality of governance provides a basis for taking steps to develop and improve governance.

There are many ways for a board to approach the task of governance assessment.

- Establish and use appropriate board evaluation and feedback tools on an ongoing basis. [Chapter 7](#) provides examples of these tools. The results may help the chair or governance committee assess current practices and identify improvements in practices.
- Assign the governance committee the task of undertaking an annual review and assessment of governance. Typically, the committee will select prescribed parts of governance (or establish a cycle) to review each year.
- Hold an annual board retreat to discuss board governance performance and to identify improvement objectives.
- Conduct a special comprehensive governance review from time to time based on identified governance challenges.

GOVERNANCE REVIEW PROCESS

The following outlines a systematic approach for reviewing governance. The underlying approach can be applied to both a streamlined governance review or to a more formal governance audit process.

- **Purpose and scope** – A governance review enables a board to assess the degree to which its governance structure and processes are effective in supporting board performance, and the degree to which they reflect best governance practices. There are varying levels of governance review. Evaluating meeting effectiveness at the end of a board meeting is an example of a limited process. A full review would involve looking at every aspect of governance including board composition; nomination and recruitment practices; committee composition; committee terms of reference and reporting; board meeting agendas and processes; and the qualifications, selection and evaluation of officers.
- **Source of governance documentation** – A board's governance processes are documented through a variety of instruments. The principal sources that define a board's governance processes are its letters patent, by-laws, board policies and rules of order. Note that some governance processes are not formally documented and may simply be reflected in the board's common practices.

See [Form 9.1: Sources Documenting a Board's Governance](#)

- **Determine the assessment process** – The process for conducting a governance review should include the following steps:
 - Conduct an inventory of relevant governance processes and practices – this is an information gathering phase and would include an examination of governance documents and policies which may also include a survey or questionnaire of board members;

- Evaluate current governance practices against both legal requirements and best practices applicable to similar corporations;
- Consider whether the documentation on governance processes reflects actual practices;
- Assess areas where change may be appropriate; and
- Consider whether there are any gaps in the board's governance processes.

See [Form 9.2: Sample Governance Audit Questionnaire](#)

- **Consider implementation requirements** – Based on the completed assessment process, the board can develop a work plan to address areas for improvement or identified gaps. Consideration should be given to matters that may require stakeholder support and/or member approval, and a process for engaging and ensuring support should form part of the implementation plan. If the governance changes will require by-law amendments, the process for notice and member approval should be part of the timeline for implementing the governance improvements.

Generally speaking, if a by-law amendment is required, it will need approval by the board and confirmation by the members by ordinary (majority) resolution. However, some changes may require approval by special resolution (majority of the board plus two-thirds of the members). A timeline for implementation should be developed as some changes may require a phased implementation (e.g., a reduction in board size may be implemented as directors' terms expire).

See [Form 9.3: List of Matters that Require a Special Resolution under the Corporations Act \(Ontario\)](#)

TURNING TROUBLED BOARDS AROUND

Although boards seek to implement and maintain good governance practices and a culture of good governance, from time to time, issues and challenges will arise. Boards may identify areas where governance practices can be improved and must work positively as a team to implement such improvements. When governance challenges are not addressed early on, a board may become dysfunctional. The underlying issues and causes of such dysfunction are often intertwined and complex; if not addressed, these issues may become chronic and impact the board's ability to perform its role.

Signs of Governance Problems

Signs of trouble often disguise the underlying causes. The following is a list of symptoms that may suggest an underlying or deeper governance concern.

When governance challenges are not addressed early on, a board may become dysfunctional. The underlying issues and causes of such dysfunction are often intertwined and complex; if not addressed, these issues may become chronic and impact the board's ability to perform its role.

- **Unplanned director turnover, difficulty recruiting and low attendance** – These are all potential signs that directors are no longer interested in being on the board. Possibly, some directors find the board to be a negative place and want to withdraw.
- **Passive meetings** – At meetings, participants “go through the motions”, but there is little energy, passion or substance to the conversations. The focus of board discussion becomes limited to detailed operational questions without any “meaty” issues or policy implications. If this continues during a period of time where it is clear the corporation is facing challenges, it could be a sign that the board is out of touch and that the discussions are happening elsewhere or that management is trying to limit the board’s involvement in substantive issues. It could also indicate an executive committee that is exercising too much power and leaving little opportunity for full board input.
- **“Parking lot meetings” after the board meeting or side conversations** – Parking lot discussions and follow-up calls to the chair about issues not addressed during the meetings, suggest the meetings are not allowing for effective discussion or that the dynamic among the board or between the board and management are limiting candor.
- **Dysfunctional board dynamics** – There may be interpersonal conflict, factions among parts of the board membership creating disrespectful conversations, personal barbs or bullying comments. Instead of passive meetings, the meetings are conflictive, awkward or the conversation goes underground. Poor team relationships can undermine the process of decision-making at the board.
- **Meetings not productive** – Beyond interpersonal conflicts that destroy the effectiveness of meetings, there may also be other reasons which make the meetings unsatisfactory for the participants. The meetings may chronically run overtime yet still not deal fully with matters on the agenda. Complaints emerge about information presented at the meetings and too little time is allowed for discussion. There may be too much rehashing of committee minutes and too little warning of or preparation for agenda items. The way in which meetings are chaired may be weak and ineffective and the need for tighter control and time management is voiced.
- **Individual rogue director** – In some cases, one director engages in disruptive behaviour such as challenging the agenda, finding picky points in the minutes, challenging staff reports, demanding special reports. This behaviour can extend to actions outside of meetings – such as directly debating with staff members, holding meetings with external stakeholders and lobbying with selected directors.
- **Board/staff relations are cool** – At meetings, the board frequently challenges members of senior management, is critical and looking to find fault. Senior management does not provide proactive briefings at committee meetings. The chief executive officer begins to intervene by delivering the presentations and responding to specific questions instead of relying on members of senior management. Complaints from board members about late and inadequate information reports begin to increase.

Keys to Turnarounds

Turning such situations around is not easy. Yet there are some general factors conducive to making marked improvements.

- **Leadership** – One necessary ingredient is leadership which normally comes from the board chair and/or the chair of the governance committee. The most significantly troubled boards lack this leadership from the chair and may possibly face a chair resistant to acknowledging the existence of problems. It is the chair’s role to maintain order, manage the meeting and discipline board members. The chair is ultimately accountable for the quality of the board’s governance processes. All board members must understand and respect the role of the chair.

- **Recognition of problems** – The board at some point needs to take responsibility for the problems. There needs to be a clear recognition by a majority of the board that there are deficits in governance that need to be addressed.
- **Assessment of causes** – Governance problems such as the ones cited above can be complex and multi-faceted. There needs to be an assessment of the root causes followed by a shared understanding of how to take action to turn the issues around. The framework of conditions for good governance (shown earlier in [Figure 9.1](#)) can help. Is there a problem primarily related to one of the conditions of good governance: knowing and performing the role, a quality board, or structure/processes? Is there a problem with the documented policy or process? Or is it primarily a behaviour and practice problem – we know what is right to do but we are just not doing it?
- **Focus on the feasible** – In deciding on strategies to address problems, there needs to be a focus on what is feasible in the time frame. Changing the members and profile of the board takes time and although such longer term fixes can be initiated, other changes may be needed to make improvements in the short term.

Remedies for Typical Troubles

Remedies to typical problems are discussed below as illustrations for boards.

Figure 9.2: Remedies

Nature of Governance Problem	Remedies
Individual Director	<ul style="list-style-type: none"> • Where there are problems with individual directors, it invariably falls to the chair to intervene. In doing so, it needs to be recognized that it is easier not to re-appoint a director than to remove him/her. In the meantime, the chair can discuss the problem behaviour with the director privately, offer educational sessions if appropriate or mentorship. • It is helpful if the board uses self-evaluation tools or perhaps peer evaluation tools to allow issues involving individual director performance to be identified and managed.
Group Dynamics	<ul style="list-style-type: none"> • The chair needs to lead this process. Conducting a survey or third-party assessment may be needed to identify and get group acknowledgement that the problem exists. • Once it is accepted that there is a problem to be addressed, a special meeting/retreat may be held. A number of approaches are possible. The meeting could simply be to have an open discussion about the interpersonal issues causing problems or to undertake a team building exercise. For some groups, creating a stronger common goal – a strategic plan or priorities – can bring about stronger focus on the substance and less on the interpersonal aspects.

Nature of Governance Problem	Remedies
Board Composition Needs New Blood	<ul style="list-style-type: none"> • Many problems cited above can be improved by creating a more appropriate skills-based board. While that may take time, much can be accomplished by introducing the right “new blood” at the earliest opportunity. This requires close attention to the director recruitment process to ensure such talent is attracted. Introducing key new people can alter the nature of board conversations, the dynamics among the team, members’ expectations for board meetings and individual behaviour.
Enhancing Substance of Board Meetings	<ul style="list-style-type: none"> • While having the “right” people around the table is key, other steps can enrich the agenda and the expectations of the conversations. • The governance committee can be asked to review past agenda items compared to a sound role/function description (including ones discussed in this Guide), identify issues that ought to be on the board agenda and propose an annual board work plan for review and modification by the board. • The board could also consider a group discussion on the board role and nature of the governance role perhaps with the assistance of a governance speaker.
Getting Meeting Processes Right	<ul style="list-style-type: none"> • If meetings are poorly organized and run, the governance committee with the chief executive officer’s support can redesign them: make information formats clearer, establish agenda order to ensure time for key items, enforce content and delivery expectations for board packages, and so on. • A practice of holding meetings without management at the end of each board meeting provides an opportunity for governance issues to be raised.

The search for good governance is a continuous learning process. Boards are responsible for assessing where the board is on this journey and for taking steps to maintain good practices and to develop and improve governance.

Form 9.1

Sources Documenting a Board's Governance

Letters Patent or Articles

The letters patent are the constating documents of the corporation that, upon issuance by the government under the *Corporations Act* (Ontario), give the corporation its life. The content of a corporation's letters patent is prescribed by the statute under which it is incorporated. In addition, for a corporation to qualify as a charity it may also be required to include in its letters patent certain provisions that will ensure it will qualify to be registered as a charity under the *Income Tax Act* (Canada) or required by the Office of the Public Guardian and Trustee (Ontario) or other equivalent provincial body. Letters patent will include a statement of the corporation's objects, and may include any matter that could be included in the by-laws. Letters patent are amended through the issuance of supplementary letters patent and both the letters patent and all supplementary letters patent are considered to be part of the corporation's constating documents. The letters patent or supplementary letters patent should always be checked before implementing any changes to the board's governance structure.

While the majority of corporations that operate in Ontario will have been incorporated by letters patent under the *Corporations Act* (Ontario), there are some corporations that are incorporated under a specific general Act, or by a special Act of the legislature.

Under the *Canada Not-for-Profit Corporations Act*, and the *Not-for-Profit Corporations Act* (Ontario), articles of incorporation and articles of amendment will replace letters patent and supplementary letters patent.

By-laws

By-laws serve a number of purposes.

- They set out the corporation's corporate governance structure that is not prescribed by the governing legislation.
- They provide for the processes that apply to board and member proceedings.
- They bring forward and restate provisions in the governing legislation to provide, in one place, a useful reference for the rules to which the corporation is subject.
- They provide empowering language to allow the board to implement practices by way of board resolution.

A well written by-law strikes the right balance between providing certainty with respect to the corporate governance structure and how proceedings are to be conducted, while providing enough flexibility for the board to adopt and amend corporate governance processes from time to time.

Often, by-laws will contain more detail than is required and, in such a case, the by-laws may become unduly restrictive. Where the by-laws contain an excessive level of detail, fairly minor governance changes will require by-law amendments.

The *Corporations Act* (Ontario) empowers the board to pass by-laws. Generally speaking, by-laws are effective once they are passed by the board subject to confirmation by the members. There are some exceptions, and legal advice should be obtained on the requirements for member approval.

The *Not-for-Profit Corporations Act* (Ontario) will change these requirements (see Chapter 10).

Board Adopted Governance Policies

A board's governance process may also be set out in policies that are adopted by the board from time to time. For example, the board may adopt one or more of the following:

- Accountabilities Statement
See *Form 2.2: Sample Accountability Statement*
- Statement of the Role of the Board
See *Form 5.1: Sample Statement of the Roles and Responsibilities of the Board*
- Duties, Obligations and Expectations of Directors
See *Form 6.5: Sample Position Description – Board of Directors*
- Board Code of Conduct
See *Form 6.4: Sample Board Code of Conduct*
- Policy on Conflict of Interest
See *Form 6.3: Sample Board Policy on Conflict of Interest*
- Open Board Meeting Policy
See *Form 8.10: Sample Policy for Open Board Meetings*
- Position Description for the Board Chair
See *Form 8.1: Sample Board Chair Role Description*
- Committee Terms of Reference
See *Form 8.6: Sample Format for Committee Terms of Reference*

Provided the board's governance policies do not deal with matters that are required to be included in the by-laws or approved by the members, the governance policies can be very broad in scope and will require the approval of only the board.

Governance policies should be:

- Approved by the board;
- Periodically reviewed as part of ongoing governance reviews; and
- Made available to new board members.

Although governance policies are not considered to be part of a corporation's official board records, such as board meeting minutes, such policies should be carefully kept and accessible to the board.

Rules of Order

Rules of order will be set out in the procedural text that has been adopted by the organization to provide rules for the conduct of the proceedings of the organization. There are a number of frequently used rules of order. If the by laws do not identify the rules of order that have been adopted by the corporation, then it is within the authority of the chair to adopt a preferred procedural text.

The most commonly used procedural texts for corporations are set out in *Appendix II – Resources and References*.

Form 9.2

Sample Governance Audit Questionnaire

Checklist of Governance Practices	Status of Governance Practices & Recommendations
ARTICLE I – LEGAL STRUCTURE BACKGROUND INFORMATION	
a. Constatng documents: letters patent and supplementary letters patent/articles and articles of amendment or special Act. Review for special provisions.	
b. Date of most recent by-law review: Provide by-laws.	
c. Identify any special issues or challenges facing the organization (i.e., member communication, resources, board stability).	
d. Date of most recent governance review. Provide report.	
ARTICLE II – ROLE OF THE CORPORATION AND ACCOUNTABILITIES	
a. Role of the corporation (provide copies of: objects/purpose, mission, vision and values, strategic directions).	
b. Date of last strategic plan. Date of next review.	
c. Identify a corporation's accountabilities and key stakeholder relationships. Is there a formal statement of corporate accountability? Date of last review.	
ARTICLE III – THE BOARD'S GOVERNANCE ROLE	
3.1 Define the role of the board	
a. Board exercises a governance role in the following areas: strategic planning, financial oversight, risk/quality, chief executive officer supervision and succession planning, stakeholder relations, communication, governance. Has the board expressly adopted a statement of the board's role? Provide copies. Date of last review.	
b. Is there an annual board work plan? Provide copies.	
3.2 Provide an outline of how the board performs its responsibilities for the following areas of board performance	
a. Strategic planning – ensuring a strategic plan is developed with board participation and ultimate board approval, ensure annual review takes place and participate in annual review of strategic plan.	
b. Oversight of management (chief executive officer) – develop and approve chief executive officer job description; select the chief executive officer, review and approve chief executive officer's annual performance goals; review chief executive officer performance; ensure succession plans are in place for chief executive officer and senior management; and exercise oversight of chief executive officer's supervision of senior management as part of chief executive officer's annual review.	
c. Quality and risk identification and management – ensure performance standards and indicators are established and approved by the board; ensure board monitors performance against indicators; ensure board understands its role in relation to quality and risk; ensure processes are in place for identifying risks; and that plans are developed and implemented to monitor and manage risks.	
d. Financial oversight – stewardship of financial resources including setting policies for financial planning; approving annual budget; monitoring performance; approving investment policies; monitoring investment performance and approving audited financial statements.	

Checklist of Governance Practices	Status of Governance Practices & Recommendations
e. Governance – the board is responsible for the quality of its own governance; the board establishes and periodically accesses policies regarding board conduct and processes; the board reviews its governance structures (board size and composition, committee mandates and composition, officers, meeting effectiveness, etc.) at periodic intervals; the board is appropriately responsible for board succession and on-going quality (education) and to monitor board and individual directors effectiveness through annual evaluations.	
f. Stakeholder relations, communication and accountability – ensure organization appropriately communicates with its stakeholder in a manner consistent with accountability to stakeholders.	
ARTICLE IV – DUTIES, OBLIGATIONS AND EXPECTATIONS OF INDIVIDUAL DIRECTORS	
a. Fiduciary obligations to adhere to and observe the standard of care expected of a director and to obey the “Rules of Fiduciary Conduct”. The standard of care is to act honestly and in good faith and in the best interests of the corporation and to meet the applicable standard of care. Is there a formal policy with respect to directors' duties? How are directors made aware of their duties and obligations?	
b. Rules of fiduciary conduct: <ul style="list-style-type: none"> • Avoid conflict of interest; • Corporate obedience – solidarity, board speaks with one voice; • Confidentiality; • Loyalty – act in interest of corporation as a whole and not any one group or representative body. Is there a board Code of Conduct that describes the rules of fiduciary conduct?	
c. Describe expectations regarding the level of attendance and participation at board and committee meetings. How are these expectations communicated?	
d. Describe participation in board and individual director evaluation (self-evaluation and/or peer review).	
e. Is there a process to deal with underperforming directors? Is the role of the chair clearly understood with respect to director performance and discipline?	
ARTICLE V– BOARD GOVERNANCE POLICIES	
a. Has a formal board Governance Policy Manual been prepared? Provide copies.	
b. Date of last review.	
c. Process for updating.	
ARTICLE VI – BOARD COMPOSITION & RECRUITMENT	
6.1 Board size and composition	
a. Identify number of elected/appointed/ <i>ex officio</i> directors. List <i>ex officio</i> directors by office.	
6.2 Board quality	
a. Is there a process to identify skills required of board members?	
b. Is a board profile or skills matrix of the current board maintained?	
c. How are prospective board nominees identified? Is a roster of eligible candidates maintained?	
d. How are prospective candidates advised with respect to role and expectations of directors?	
e. How are prospective candidates evaluated?	
f. Who makes the recommendation of approved candidates?	
g. How is election conducted at annual meeting?	
6.3 Term of office	
a. Board term (initial, renewal and maximum terms).	

Checklist of Governance Practices	Status of Governance Practices & Recommendations
b. Committee chair terms (initial, renewal and maximum terms).	
c. Officer terms (initial, renewal and maximum terms). Identify officers.	
ARTICLE VII – OFFICERS	
a. There is a clear process for selecting officers and committee chairs. Describe the process.	
b. Are position descriptions prepared and periodically reviewed?	
ARTICLE VIII – BOARD COMMITTEES	
a. Do committees have written mandates? Provide committees' Terms of Reference.	
b. Are committee mandates reviewed periodically?	
c. How are committees established? Committees are established pursuant to governance principles (committees do board work not management work).	
d. Describe how committees report to the board.	
e. Is the Audit Committee comprised of independent directors or a majority of independent directors?	
f. Are there any committees required under applicable legislation and have such committees been established?	
g. Is there an Executive Committee and how does it report to the board? Describe the decision-making role of Executive Committee.	
ARTICLE IX – BOARD ORIENTATION, EDUCATION AND EVALUATION	
a. Is board orientation mandatory? How is orientation conducted? Provide index of orientation manual.	
b. Is there a written manual for new board members? Provide index.	
c. Is there a clear process for directors to participate in external education programs? Describe process.	
d. How is board education conducted?	
e. What is the frequency of continuing education for directors?	
f. Is an annual board retreat held? Date of last retreat, attendance and sample agenda.	
g. Is there an annual evaluation of the performance of individual directors and the board as a whole? Provide a copy of the evaluation tool and describe the process for providing feedback and acting on results.	
ARTICLE X – BOARD MEETING PRACTICES	
a. Provide sample board agendas. Is board work aligned with the annual board goals and work plan and strategic directions?	
b. Are decision items separated from information items?	
c. Is specific time allocated for agenda items and is time adhered to?	
d. What is the process for bringing forward board committees' recommendations and reports? Is a board briefing report or decision support document used? Provide examples.	
e. Are meetings regularly evaluated? Provide copy of evaluation tool.	
f. Are meetings open and is there a proper use of <i>in camera</i> sessions? (Relevant where open board meetings are required by law or are in furtherance of transparency). Is there a formal policy for <i>in camera</i> meetings? Is there a policy for the attendance of the public at board meetings?	
g. Does the board (independent directors) meet without management from time to time? Is there a written policy?	
h. Is there a clear policy that allows the board to obtain independent advice (legal or financial or other)?	
i. Is a consent agenda used and is there a policy?	

Checklist of Governance Practices	Status of Governance Practices & Recommendations
ARTICLE XI – MEMBERS – describe the following	
a. Composition (categories or classes, qualifications and process for admission as a member)	
b. Term	
c. Termination	
d. Role	
e. Voting Rights	

Note to Reader: This checklist of governance practices is intended to be used to assist a corporation in conducting a comprehensive governance review. Corporations should be committed to ongoing governance improvement and should schedule periodic reviews or updates. For example:

- The corporation's by-laws should be periodically reviewed (once every three to five years would be a recommended practice) and should also be reviewed in response to any significant events impacting the organization such as a board restructuring or a strategic planning exercise.
- Governance policies should be scheduled for review on a rotating basis. Each year, the governance committee should examine a percentage of the governance policies to ensure that all policies are reviewed over a two to three year timeframe. The date of last review should be noted on each policy.
- Committee terms of reference should be reviewed and confirmed on an annual basis.
- Certain governance elements, such as the size and composition of the board and membership structure should also be periodically reviewed (every three to five years is a recommended practice) and should also be reviewed in response to changes in mission, major strategic planning processes and other significant events such as significant industry restructuring or change.

Form 9.3

List of Matters that Require a Special Resolution under the *Corporations Act* (Ontario)

The following is a list of the matters that require two-thirds member approval under the *Corporations Act* (Ontario):

- Authorizing the sale, lease, exchange or disposition of the undertaking of the corporation or any part thereof as an entirety or substantially as an entirety;
- Approving a by-law, authorizing the borrowing of money on the credit of the corporation or mortgaging or pledging the corporation's assets;
- Removing a director from office prior to the expiration of the director's term (if authorized by by-law);
- Authorizing the appointment of an executive committee;
- Authorizing the removal of the corporation's auditor prior to the expiration of the auditor's term;
- Authorizing an amalgamation;
- Authorizing a by-law providing for the division of members into groups and the election of directors by such groups;
- Authorizing an application to the Lieutenant Governor for the issuance of supplementary letters patent for any purpose such as a change of name, objects or powers;
- Changing the head office of the corporation;
- Allowing a quorum for board meetings to be less than a majority of board members (but never less than two-fifths of board members);
- Providing for the election of a chair by the directors and the duties of such a chair;
- Authorizing a by-law providing for the disposition of the corporation's property on dissolution to charitable organizations or organizations whose objects are beneficial to the community; and
- Approving a resolution increasing or decreasing the number of directors.

For information on matters that will require member approval under the new *Not-for-Profit Corporations Act* (Ontario), see Chapter 10.

Chapter 10

The Not-for-Profit Corporations Act (Ontario)

The Government of Ontario's *Not-for-Profit Corporations Act* is scheduled to come into effect no earlier than six months after Bill 85 (*Companies Statute Law Amendment Act, 2013*) is passed. Bill 85 would make a number of amendments to the new Act and is expected to be debated and passed in the fall of 2013.

The *Not-for-Profit Corporations Act* (Ontario) will replace the *Corporations Act* (Ontario) as it applies to non-share capital corporations and, if they so elect, share capital corporations with objects of a social nature. The *Not-for-Profit Corporations Act* (Ontario) represents the first major revision in corporate law as it applies to Ontario non-share capital corporations in over 50 years.

The *Not-for-Profit Corporations Act* (Ontario) makes notable changes in a number of areas. In particular, the Act:

- Significantly expands members' rights;
- Simplifies some of the processes and procedures applicable to boards and fills in some of the governance process gaps in the *Corporations Act* (Ontario);
- Creates greater flexibility in some areas of corporate governance; and
- Brings the law with respect to not-for-profit corporations closer in line with the *Business Corporations Act* (Ontario) in many areas – in particular, director indemnification, conflict of interest, member-initiated proposals and derivative actions.

APPLICATION OF THE NOT-FOR-PROFIT CORPORATIONS ACT (ONTARIO)

The *Not-for-Profit Corporations Act* (Ontario) will apply to non-share capital corporations incorporated under the *Corporations Act* or under a special Act of the legislature of Ontario.

Some provisions of the *Not-for-Profit Corporations Act* (Ontario) apply differently to (or exempt) non-share capital corporations that are "public benefit corporations", which include:

- Charitable corporations (corporations incorporated for the relief of poverty, the advancement of education, advancement of religion, or other charitable purpose); and
- Non-charitable corporations that receive more than \$10,000 in a financial year in the form of donations or gifts from persons who are not members, directors, officers or employees of the corporation, or in the form of grants from the federal, provincial or municipal government or an agency of any such government.

Share capital corporations incorporated under the *Corporations Act* (Ontario) with objects that are in whole or in part of a social nature have five years to apply to be continued as a corporation without share capital under the *Not-for-Profit Corporations Act* (Ontario) or as a cooperative corporation under the *Corporations Act* (Ontario), or a business corporation under the *Business Corporations Act* (Ontario).

Conflicts with Other Legislation

If there is a conflict between the *Not-for-Profit Corporations Act* (Ontario) and its regulations and any other Act and that Act's regulations (including a special Act and Acts applicable to charitable corporations), the provisions of that other Act and its regulations will prevail.

KEY TERMS AND GENERAL PROVISIONS OF THE NOT-FOR-PROFIT CORPORATIONS ACT (ONTARIO)

Articles of Incorporation and Articles of Amendment

New corporations will be incorporated under the *Not-for-Profit Corporations Act* (Ontario) by articles of incorporation and not by letters patent. The term "articles" is defined in the *Not-for-Profit Corporations Act* (Ontario) to include not only articles of incorporation and articles of amendment, but also letters patent, supplementary letters patent or a special Act. References throughout this chapter to articles should be read to include letters patent or supplementary letters patent or a special Act.

Special Resolution and Ordinary Resolution

The definition of special resolution is similar to that under the *Corporations Act* (Ontario), except that under the *Corporations Act* (Ontario) a special resolution is required to first be approved by the directors before it is submitted to and approved at a meeting of members. Under the *Not for-Profit Corporations Act* (Ontario), only a two-thirds vote of members entitled to vote at a members meeting is required (or unanimous written consent).

An ordinary resolution of members is defined as a resolution submitted to the members of the corporation and passed at a meeting of members with or without amendment, by at least a majority of the votes cast (or

unanimous written consent). As in the case of a special resolution, no prior board resolution is required.

Method of Holding Meetings and Voting

Written unanimous resolutions will be allowed to substitute not only for board and member meetings, but also for board committee meetings.

Board, committee and members meetings will be permitted to be held by telephonic or electronic means. Voting by members may be done by mail or by telephonic or electronic means if the by-laws so provide, and if the votes may be verified as having been made by members entitled to vote. The corporation may not identify how each member voted.

"Telephonic or electronic" is defined to include telephone, fax, e-mail, automated touch tone telephone system and computer.

Waiver of Rights

No waiver of member rights is valid unless expressly provided in the *Not-for-Profit Corporations Act* (Ontario).

Officers

The only required officer under the *Not-for-Profit Corporations Act* (Ontario) is a chair (who must be a director); however, the term "officer" is used throughout the *Not-for-Profit Corporations Act* (Ontario) and is defined as follows:

- Chair and vice-chair(s) of the board of directors;
- President, vice president(s), the secretary and assistant secretary, the treasurer and assistant treasurer and the general manager; and
- Any other individual who performs functions similar to the foregoing.

Unless the articles or by-laws otherwise provide, the board may designate officers and their duties.

The term “officer” is defined in the *Corporations Act* (Ontario) to include chair, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer and any officer designated by law. Under the *Corporations Act* (Ontario), a corporation is required to have a president (who must be a director) and a secretary (not required to be a director) and there are enabling provisions in the *Corporations Act* (Ontario) to allow for the creation of the office of chair (not a mandatory position but, if created, then also required to be a director).

Activities and Affairs

“Affairs” means the relationship among a corporation, its affiliates, and the members, directors and officers, but does not mean the activities carried on by the corporation.

Corporate Capacity

There are a number of provisions in the *Not-for-Profit Corporations Act* (Ontario) that will provide greater certainty with respect to the activities and transactions a corporation may undertake:

- A corporation will still be required to set out its purposes in its articles of incorporation and, subject to any restrictions in the regulations, the purposes may be any purposes within the legislative authority of the Province of Ontario. If any of the purposes are of a commercial nature, the articles must provide that the commercial purpose is intended only to advance or support one or more of the non-profit purposes of the corporation.
- Although the corporation must set out its purposes, the *Not-for-Profit Corporations Act* (Ontario) provides that the corporation has the capacity and, subject to the Act, has the rights, powers and privileges of a natural person.

- While a corporation may not carry on activities or exercise powers in a manner contrary to its articles, no act of the corporation, including a transfer of property, is invalid by reason only that the act or transfer is contrary to its articles, by-laws or the *Not-for-Profit Corporations Act* (Ontario). These provisions, in effect, make it clear that the legal doctrine of ultra vires will no longer apply to a corporation that is subject to the *Not-for-Profit Corporations Act* (Ontario). The ultra vires doctrine provides that acts of corporation not within or authorized by its objects or purposes are not valid and, therefore, not binding on the corporation.
- Directors are given a broad by-law-making authority and it is not necessary to pass a by-law to confer any particular power on the corporation or the directors.
- The “indoor management rule” is codified. The indoor management rule is a legal doctrine which holds that a third party who transacts with a corporation is entitled to assume that actions taken by a director, officer or agent of the corporation comply with its own internal rules (as stated in the corporation’s articles or by-laws) even if this is not the case, on the grounds that these individuals are reasonably expected to act within the authority of their role.
- Accordingly, the corporation may not assert against a third party that the articles or by-laws were not complied with or that a person such as a director, officer or agent who appears to have authority to bind the corporation did not, in fact, have the authority for a particular action.
- Funds may be invested as the directors see fit.

General Authority of the Board and Board Delegation

While directors are given the authority to manage or supervise the management of the activities and affairs of the corporation, certain matters may only be undertaken if they have been approved by the members. These

matters are referred to as “fundamental changes” and are discussed under “Members Rights” later in this chapter. Some specific board powers include:

- Subject to the articles or the by-laws, the board may designate the officers and their duties and may delegate any powers to manage the affairs and activities except non-delegable powers, which must be exercised by the full board.
- The board is given broad powers of delegation.
- Under the *Corporations Act* (Ontario), member approval was required for the board to establish and delegate to an executive committee.
- Under the *Not-for-Profit Corporations Act* (Ontario), the board may appoint a managing director or establish a committee of directors and may delegate to the managing director or committee of directors any powers of the directors other than specific non-delegable powers. The non-delegable board powers that the full board must exercise include:
 - Submitting to members questions or matters requiring member approval;
 - Filling board vacancies;
 - Filling vacancies in the office of the auditor or person appointed to conduct a review engagement;
 - Appointing additional directors;
 - Issuing debt obligations, except as authorized by the directors:
 - Approving annual financial statements;
 - Adopting, appealing or amending by-laws; or
 - Establishing members’ dues or contributions.
- Directors have the authority to borrow without the need for a borrowing by-law or member approval.

By-Laws

Directors are given a broad authority to make, amend, or appeal by-laws that regulate the “activities or affairs” of the corporation, unless the articles or by-laws otherwise provide. The *Not-for-Profit Corporations Act* (Ontario) specifically provides that it is not necessary to pass a by-law to confer any particular power on the corporation or its directors.

Members’ approval of by-laws is required by ordinary resolution. Under the *Corporation Act* (Ontario), some by-laws (e.g., a borrowing by-law to an executive committee) must be approved by the members by special resolution.

A member who is entitled to vote may make a proposal to make, amend or appeal any by-law in accordance with the power of the members to initiate proposals (discussed later in this chapter).

IMPACT OF THE NOT-FOR-PROFIT CORPORATIONS ACT (ONTARIO) ON BOARDS AND INDIVIDUAL DIRECTORS

Board Size

As in the case of the *Corporations Act* (Ontario), the *Not-for-Profit Corporations Act* (Ontario) requires a corporation to have at least three directors. The *Not-for-Profit Corporations Act* (Ontario) provides that the articles must set out either a fixed number of directors or a range for the board size (minimum and maximum number of directors).

Changing Board Size

Articles of amendment will be required to increase or decrease a fixed number of directors in the articles, or to change the minimum and maximum number in the articles.

When a minimum and maximum number of directors are set out in the articles, the number may be fixed either by special resolution (two-thirds of the members) or by resolution of the directors (if a special resolution of the members authorizes the directors to fix the number).

When the articles set out a fixed number of directors, that number may only be changed by an amendment to the articles, which requires a two-thirds vote of the members.

Under the *Corporations Act* (Ontario), the number of directors is required to be a fixed number (no less than three). No range of directors is permitted. The number of directors may be increased or decreased by special resolution (two-thirds vote of the members). There is no requirement to file a copy of that special resolution with the government.

Qualifications of Directors

An individual must consent to be a director and may not be a director if he or she:

- Is not an individual;
- Is under 18 years of age;
- Has been found under the *Substitute Decisions Act* or under the *Mental Health Act* to be incapable of managing property;
- Has been found to be incapable by any court in Canada or elsewhere; or
- Has the status of a bankrupt.

Directors need not be members of the corporation unless the by-laws otherwise provide. However, not more than one-third of the directors of a public benefit corporation may be employees of the corporation or any of its affiliates.

The by-laws may require that all directors must be members.

The *Corporations Act* (Ontario) requires all directors to be members or become members within 10 days of election.

Election/Appointment of Directors

Directors are elected and may be removed by ordinary resolution of the members.

The by-laws may provide for directors by virtue of office (*ex officio* directors).

Members have a right to nominate a director if the nomination is signed by five percent of the members of a group or class entitled to vote. This section of the *Not-for-Profit Corporations Act* (Ontario) states that it “does not preclude nominations being made at a meeting of members”.

The articles may allow the directors to appoint one or more additional directors to hold office for a term expiring not later than the close of the next annual meeting of members. The total number of such appointed directors may not exceed one-third of the directors elected at the previous annual meeting of members.

There is no requirement to have an election of directors every year (see the discussion under “Term of Directors’ Election”).

Provided there is a quorum in office, the remaining directors may fill a vacancy among the directors unless:

- The by-laws provide the vacancy may only be filled by the members;
- There has been a failure to elect the number or minimum number of directors provided in the articles, in which case the directors shall call a special meeting of the members to fill the vacancy; or

- A class or group of members has an exclusive right to elect one or more directors, in which case only the remaining directors elected by that class may fill the vacancy. The by-laws may provide that such vacancy may only be filled by the members of the class or group entitled to elect the director.

Term of Directors' Election

Directors are elected for terms of up to four years and not all directors who are being elected at a members' meeting must be elected for the same term.

There is no requirement for an election to be held every year.

If no term is specified, the directors hold office until the end of the next annual meeting.

Mid-term vacancies are filled for the unexpired term of the director's predecessor. (This is permissible under the *Corporations Act* (Ontario) and will be mandatory under the *Not-for-Profit Corporations Act* (Ontario)).

Consent

Directors must consent in writing to their election or appointment before or within 10 days of election or appointment. Failing to do so, results in the director being deemed not to have been elected.

No consent is required where there is no break in service. A late consent in writing can cure a failure to obtain the consent within 10 days.

Director Voting

No person may act for an absent director (i.e., no proxy voting for directors).

Removal of Directors

Members may remove directors from office by ordinary resolution at a special meeting. There is no requirement that this be set out in the by-laws. A director elected by a class or group of members that has an exclusive right to elect the director may only be removed by an ordinary resolution of the members of that class or group.

The *Corporations Act* (Ontario) provides that the by-laws may provide that a director may be removed by a two-thirds vote of the members. The *Not-for-Profit Corporations Act* (Ontario) allows the articles to provide for a greater number of votes of directors or members for any action required under the Act except when voting to remove a director. In that case, the articles may not require any more than a majority vote.

A director who resigns or is subject to removal may make a statement in that regard, which must be circulated to the members.

New Provisions for Directors' Meetings

Notice

There is no minimum required notice for a directors' meeting. Therefore, the amount of notice must be set out in the by-laws or the articles. The method of giving notice is not specified; it may be set out in the by-laws.

Notice of a directors' meeting need not state the purpose of the meeting unless the meeting is in respect of certain non-delegable powers of directors (i.e., putting questions to members, filling the vacancy of the auditors, appointing additional directors, issuing debt, approving financial statements, by-laws, members' dues: see [Schedule A](#)).

Electronic Meetings and Written Resolutions

As in the case of the *Corporations Act* (Ontario), the *Not-for-Profit Corporations Act* (Ontario) permits meetings of directors and committees to be held electronically or telephonically (by teleconference).

Resolutions in writing may be substituted for a directors' meeting if signed unanimously.

Meetings of board committees may be conducted by a unanimous written resolution.

Quorum

Quorum is a majority of the number of directors or the minimum number of directors required by the articles, unless the articles or by-laws otherwise establish a quorum.

There is no requirement for a minimum quorum. The *Corporations Act* (Ontario) requires that the minimum quorum be not less than two-fifths of the number of directors.

Directors' Duties and Liabilities

A director is entitled to attend and be heard at every meeting of the board.

This codifies the common law position that a director has a right to attend board meetings subject to compliance with conflict of interest provisions.

The standard of care applicable to a director and officer has been set out as follows (i.e., prudent person standard):

- To act honestly and in good faith with a view to the best interests of the corporation and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

There is no requirement that a director who has special skills or knowledge be held to a higher standard (subjective standard). The new standard of care is the same as that under the *Business Corporations Act* (Ontario). Under the *Corporations Act* (Ontario) there is no statutory standard of care; therefore, the common law subjective standard of care applies.

Directors and officers are required to comply with the *Not-for-Profit Corporations Act* (Ontario) and its regulations, and the corporation's articles and by-laws. No contract, articles or by-laws may relieve a director of this obligation. Directors are given a reasonable due diligence defence (i.e., if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances). Directors are entitled to rely in good faith on:

- Financial statements of the corporation represented by an officer of the corporation or by the auditor to present fairly the financial position of the corporation;

Directors and officers are required to comply with the *Not-for-Profit Corporations Act* (Ontario) and its regulations, and the corporation's articles and by-laws. No contract, articles or by-laws may relieve a director of this obligation.

- Interim or other financial reports represented by an officer of the corporation to present fairly the financial picture of the corporation;
- Reports or advice of an officer or employee of the corporation if it is reasonable in the circumstances to rely on a report or advice; and
- Reports of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by them.

There are provisions setting out how directors are to have their dissent recorded. If the dissent is not so recorded, the director is deemed to have consented to any resolution passed at a meeting whether or not the director was present.

Directors who vote for or consent to a resolution authorizing the payment or distribution to a member, director or officer contrary to the *Not-for-Profit Corporations Act* (Ontario) or payment of an indemnity contrary to the *Not-for-Profit Corporations Act* (Ontario), are jointly and severally liable to restore such amount to the corporation.

Directors are jointly and severally liable to employees for six months wages and 12 months accrued vacation pay.

Conflict of Interest

Disclosure of a conflict is to be made by a director or officer where he or she is a director or officer of, or has a material interest in, a person who is a party to, a material contract or transaction or proposed material contract or transaction with the corporation.

Process for when disclosure is to be made is set out in the *Not-for-Profit Corporations Act* (Ontario), including a separate process for an officer who is not a director. General notice may be given. A director with a conflict is not to vote or attend any part of a meeting where the contract or transaction is discussed.

If no quorum exists by reason of directors being excluded as a result of conflicts, the remaining directors are deemed to constitute a quorum. If all directors are excluded, the contract may be approved by members.

Insurance and Indemnification

The corporation may purchase insurance for directors and officers. Charitable corporations must comply with the *Charities Accounting Act*.

Indemnification provisions are more in line with provisions in the *Business Corporations Act* (Ontario) and make it clear that a director may be indemnified in respect of a civil, criminal, administrative, investigative or other action or proceeding, providing the director acted honestly and in good faith with a view to the best interests of the corporation and, in the matter of a criminal or administrative proceeding that is enforceable by monetary penalty, the individual had reasonable grounds for believing his or her conduct was lawful. Approval by the members is not required.

Under the *Corporations Act* (Ontario), the members must approve the indemnification.

IMPACT OF THE NOT-FOR-PROFIT CORPORATIONS ACT (ONTARIO) ON MEMBERS

Membership and Voting Conditions

Articles must set out the classes of members if there are different voting rights.

By-laws must set out the conditions required for being a member of the corporation, including whether a corporation or other entity may be a member. *Ex officio* members are permitted.

Provisions for more than one class of members **must be set out in the articles** and the by-laws must provide the conditions for membership of each class, along with the manner of withdrawing from a class or transferring membership to another class or group. Conditions of transfer and the conditions on which membership in the class ends must also be set out.

If there is only one class or group of members, that class has the right to vote at any meeting of members. **If there is more than one class or group of members, the articles must give the members of at least one class the right to vote and, unless the articles provide otherwise, each member will be entitled to one vote at a meeting of members.**

Unless the articles or by-laws provide otherwise, a membership may be transferred only to the corporation. Directors may issue memberships in accordance with the articles and any conditions set out in the by-laws.

Members' Meetings

A member may participate in a members' meeting by telephonic or electronic means unless the by-laws provide otherwise.

Members' meetings may be held entirely by telephonic and electronic means if the by-laws so provide.

A record date may be fixed by the directors as the date for determining the members who are entitled to:

- Notice;
- Vote;
- Participate in a liquidation or distribution; or
- Determine members for any other purpose.

The concept of a record date fixed by the board is new. The record date must not be more than 50 days before the date or event to which it relates. If no record date is fixed, the record date will be the close of business on the day immediately preceding the day on which notice is given or, if no notice is given, the day on which the meeting is held, for the purposes of determining those entitled to notice or to vote.

Voting may be done by mail, telephonically or electronically, but only if the by-laws so provide, subject to certain conditions.

Notice

Notice is to be given not less than 10 days or more than 50 days before the meeting of members. The method of giving notice is to be set out in by-laws. Regulations (none have been issued) under the *Not-for-Profit Corporations Act* (Ontario) may regulate the manner of notice to members.

The concept of a record date fixed by the board is new. The record date must not be more than 50 days before the date or event to which it relates.

The *Corporations Act* (Ontario) requires 10 days by mail or permits publication in the case of charitable corporations.

Quorum

Unless the by-laws provide otherwise, the quorum is a majority of the members entitled to vote. No minimum quorum is required. If a quorum is present at the opening of the meeting, the meeting may continue even though a quorum is not present throughout the meeting unless the by-laws otherwise provide.

Members' Rights

Discipline of Members

The articles or by-laws may provide the directors, members or a committee of directors or members with the right to discipline a member or terminate membership. In such a case, the circumstances and the manner in which the right may be exercised must be set out in the articles or by-laws, and any action must be undertaken in good faith and in a fair and reasonable manner (15 days notice and an opportunity to be heard).

Nominating Directors

Five percent of the members or of a group or class of members entitled to vote may nominate directors for election.

Proposals

Any member entitled to vote at an annual meeting of members may make a proposal to:

- Make, amend or repeal a by-law;
- Add a matter to the agenda for a member's meeting; and
- Initiate a fundamental change.

A proposal may also nominate one or more directors for election if supported by members representing five percent of the members of a class or group entitled to vote.

There is a specified procedure for a proposal, which includes the following:

- The proposal must be submitted at least 60 days before the meeting;
- The primary purpose of the proposal is not to enforce a personal claim or redress a personal grievance;
- The proposal must significantly relate to the activities or affairs of the corporation;
- Substantially, the same proposal must not have been submitted within the two years and either not presented or defeated; and
- The purpose of the proposal is not to secure publicity.

The corporation must advise the member who submits the proposal within 10 days if it intends to refuse to include the proposal in a notice of meeting.

Although not often used, the *Corporations Act* (Ontario) permits one-twentieth of the members entitled to vote, to requisition that notice be given to all members of a "resolution that may properly be moved" at a meeting of members, or to require that a "statement" in relation to any proposed resolution or business at the meeting be circulated to members.

Requisition Meetings

Members have the right to requisition a meeting if it is supported by 10% of the votes that may be cast at the meeting, or such lower percentage as may be set out in the by-laws.

Approve Fundamental Changes: Special Resolution of Members

A specified list of fundamental changes to amend the articles may only be approved by special resolution of the members. In certain cases, a class or group may be entitled to vote separately on the matter even if the class or group are not otherwise entitled to vote. The list of special resolution matters includes:

- Change of name;
- Adding, changing or removing any restrictions on activities that the corporation may carry on;
- Creating a new class or group of members;
- Changing the conditions required for being a member;
- Changing the designation of a class or group of members, or adding, changing or moving rights or conditions of a class or group;
- Dividing a class or group into two or more classes or groups;
- Changing or removing a provision respecting transfer of membership;
- Increasing or decreasing the number of or minimum or maximum number of directors fixed by the articles;
- Changing the purposes of the corporation;
- Changing to whom the property remaining on liquidation or discharge is to be distributed;
- Changing the manner of giving notice to members entitled to vote at a meeting of members;
- Changing the method of voting by members not in attendance at a meeting of the members; or
- Adding or changing or removing any other provision that is permitted by the *Not-for-Profit Corporations Act* (Ontario) to be set out in the articles.

Approve Sale or Lease

A sale, lease or exchange of all or substantially all of the property of the corporation must be approved by special resolution. Every member has a right to vote (including non-voting members) and, subject to the terms of the sale, lease or exchange, members may be entitled to vote separately as a class.

Dissenting Member Rights

In the case of the corporation that is not a public benefit corporation, the members who are entitled to vote on the specified resolutions may dissent and, if the resolution is passed, demand payment of the “fair value” of the member’s membership interest. An application may be made to the Court to determine fair value. The actions in respect of which this right arises include:

- Amending articles to add, remove or change any restriction on the activity or activities that the corporation may carry on or the powers that the corporation may exercise;
- Amalgamations;
- Continuations under the laws of another jurisdiction; or
- Sale, lease or exchange of all or substantially all of its property.

Other Provisions

Proxies

Part VI of the *Not-for-Profit Corporations Act* (Ontario) sets out provisions for designation of proxies for members’ meetings. Mandatory solicitation of proxies is required.

Derivative Actions

Actions may be brought in the name of the corporation by a member, director, officer or person who was, within the last two years a member, director or officer of the corporation or an affiliate or by other persons authorized by the Court, if the Court so approves.

Audit Exemptions

Members may either decide to not have an audit or to have a review engagement instead of an audit if certain financial thresholds are met. An extraordinary resolution is required (80% approval) or unanimous consent.

For a public benefit corporation, the review engagement may substitute for an audit if the annual revenue is more than \$100,000 but less than \$500,000. To be exempt from an audit and a review engagement, annual revenue must be less than \$100,000.

Audit Committees

Audit committees are not required, but if a corporation does have an audit committee, a majority of its members must not be officers or employees of the corporation or its affiliates and the audit committee must review the financial statements before they are presented to the board.

Errors in Financial Statements

Directors, officers and auditors have a duty to give notice if they become aware of errors or misstatements in financial statements, and the directors are to prepare and issue revised statements or otherwise inform members.

Members' Access to Financial Statements

Members (and their attorney or legal representative) may examine the financial statements of the corporation and any subsidiary whose statements are consolidated with the corporation's. This right may be barred by the Court.

Publication of Financial Statements

Members have a right to request from the board, approved financial statements and the audit report or the review engagement report 21 days before the annual meeting.

Investigations

A member or debt-holder may apply to the Court for the appointment of an inspector to conduct an investigation into the corporation and any of its affiliates. An inspector, if appointed by the Court, reports to the Ministry of Consumer Services appointed official who is the "Director" under the *Not-for-Profit Corporations Act* (Ontario).

Figure 10.1: Comparison of the Key Provisions of the *Corporations Act (Ontario)* and the *Not-for-Profit Corporations Act (Ontario)*

	<i>Corporations Act (Ontario)</i>	<i>Not-for-Profit Corporations Act (Ontario)</i>	Comments
Directors – number and qualifications	There must be at least three directors, 18 years of age or over. Directors must not be bankrupt. Directors are required to become members within 10 days of their election.	There must be at least three directors, 18 years of age or older. In addition to age and bankruptcy qualifications, directors' qualifications include mental competency. Directors are not required to be members unless by-laws so require.	See membership requirements for directors as discussed below.
Consent	Not required if the director is a member.	A director must consent to be a director before or within 10 days of election.	See membership requirements for directors discussed below.
Directors – fixed or flexible board	A fixed number of directors is required.	The articles may provide for either a fixed number of directors or a “floating” board of directors (i.e., minimum and maximum number of directors, is allowed).	Fixed number of directors or range (example: not less than three or more than 16) is to be set out in articles.
Changes in board size	Number of directors may be changed by special resolution (two-thirds vote of members). No need to file copy of special resolution with the Ministry of Consumer Services.	Articles of amendment are required to increase or decrease the number of directors or to change the minimum and maximum number. If a minimum and maximum number of directors are set out in the articles, the numbers must be fixed either by special resolution (two-thirds vote of the members) or by resolution of the directors if a special resolution of the members authorize directors to fix the number.	Articles will need to set out board size or permitted range. Preferred practice would be to set a flexible number in the articles and have members pass a special resolution to authorize directors to fix the number from time to time.

	Corporations Act (Ontario)	Not-for-Profit Corporations Act (Ontario)	Comments
Election of directors	<p>Elected by members at a general meeting. <i>Ex officio</i> directors are permitted.</p> <p>Annual election is required and may be for terms of one to five years. For terms of more than one year, at least three directors' terms must expire each year (subject to re-election).</p>	<p>Elected by members at annual meeting. <i>Ex officio</i> directors are permitted (by-laws). There need not be an election each year. Terms can be up to four years.</p> <p>Five percent of the members of a class or group entitled to vote may nominate.</p> <p>Directors may appoint one or more directors (to a maximum of not more than one-third of those elected at previous annual members' meeting) until next annual meeting of members.</p>	Rights of members (five percent) to nominate directors is new.
Directors – requirement to be a member	A director (but not an officer) must be a member or become one within 10 days of election or appointment as a director and if he/she ceases to be a member, then he/she ceases to be a director.	Directors are not required to be members unless by-laws provide otherwise, but directors must consent to their election before or within 10 days of election; no more than one-third of directors of a public benefit corporation may be employees of the corporation or its affiliates.	
Directors – residency	No requirement that directors be resident Canadians.	No requirement that directors be resident Canadians.	
Directors – term	Directors serve for a one-year term unless the by-laws otherwise provide, but if the by-laws provide for election and retirement of directors in rotation, the term cannot exceed five years and three directors must retire each year (subject to re-election).	<p>A director's term cannot exceed four years. A director not elected for an expressly stated term holds office only until the close of the next annual meeting of members following election.</p> <p>Not all directors need to be elected for the same term. No maximum number of terms is specified.</p> <p>An election does not have to take place at each annual meeting.</p>	

	<i>Corporations Act (Ontario)</i>	<i>Not-for-Profit Corporations Act (Ontario)</i>	Comments
Director – removal	By-laws may give members the right to remove directors by a two-thirds vote.	Members' right to remove directors by ordinary (majority) resolution need not be in the by-laws. Members may, by ordinary resolution (majority) remove elected (not <i>ex officio</i>) directors. A director elected by a class or group of members (that has exclusive right to elect that director) may only be removed by that class or group.	
Director – vacancy (mid term)	May be filled by board, if there is a quorum in office for balance of term or until next members meeting.	May be filled by board, if there is a quorum in office. By-laws may provide that the vacancy may only be filled by the members or a certain class of members. By-laws may require that class (or other directors elected by class) may fill the vacancy of the director elected by that class. Directors appointed to fill a vacancy <u>must</u> be appointed for the balance of the term vacated.	
Directors – indemnities	Directors and officers may be indemnified by the corporation, upon ratification by the members, in respect of all liability in connection with the exercise of duties, except costs, charges and expenses occasioned by their own wilful neglect.	Directors and officers (and former directors and officers) may be indemnified if the individual acted honestly and in good faith with a view to the best interests of the corporation. Indemnification provisions specifically include criminal and administrative monetary penalties if a director/officer had a reasonable belief conduct was lawful. Advances to cover costs of legal defence are permitted. Member ratification of indemnification is not required.	Indemnification does not need to be in the by-laws as member ratification is not required. Note: <i>Charities Accounting Act Regulation 4/01</i> applies to charitable corporations.

	<i>Corporations Act (Ontario)</i>	<i>Not-for-Profit Corporations Act (Ontario)</i>	Comments
Directors – standard of care	No express standard of care, common law standard applies: (a) Act honestly, in good faith with a view to the best interests of the corporation; and (b) Exercise the care, diligence and skill that might reasonably be expected of a person with that skill and experience (subjective standard objectively applied).	Express standard of care for directors and officers is set out similar to the <i>Business Corporations Act (Ontario)</i> : (a) Act honestly, in good faith with a view to the best interests of the corporation; and (b) Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Duty to comply with the Act, regulations, articles and by-laws. Statutory reasonable due diligence defence. Director deemed to consent to board resolutions unless steps are taken to record dissent.	Moves from a subjective standard, objectively applied, to an objective standard.
Directors – insurance	A corporation may purchase director and officer liability insurance, but for a charitable corporation, certain requirements must be met.	Same.	Note: The <i>Charities Accounting Act Regulation 4/01</i> applies to charitable corporations.
Directors – place of meetings	Directors’ meetings are to be held at the head office of the corporation, unless the by-laws provide they can be held at any place in or outside of Ontario.	Unless articles or by-laws provide otherwise, directors may meet at any place and on any notice that by-laws require.	

	<i>Corporations Act (Ontario)</i>	<i>Not-for-Profit Corporations Act (Ontario)</i>	Comments
Directors – notice of meetings	There is no specific provision setting out notice requirements. No requirements for content of notice.	Subject to articles, notice to be in accordance with by-laws. No minimum notice required. Notice need not specify purpose of the meeting unless purpose is to deal with any of non-delegable board power's (see Schedule A). Notice can be waived by directors.	The by-laws must provide for the notice for directors' meetings, but no minimum notice is prescribed. In some cases the notice must specify the business proposed to be dealt with at the board meeting.
Directors – board committees telephone meeting	Unless the by-laws otherwise provide, if all directors present or participating in a meeting consent, a meeting may be held by telephone, electronic or other communication facilities that permit directors to communicate with each other simultaneously and instantaneously .	Unless by-laws otherwise provide, if all directors of the corporation consent, a board or committee meeting may take place by telephonic or electronic means that permits all participants to communicate adequately with each other.	Wording change. This may give greater flexibility for the forms of electronic meetings, but note that all directors must consent, not just those participating in the meeting. "Telephonic and electronic" are defined to include telephone, fax, email, automated touch-tone telephone system and computer.
Directors – meetings – quorum	Unless provided for in the letters patent or by special resolution, a quorum of directors is not less than a majority but in any case, is not to be set at less than two-fifths of the board of directors.	Unless provided for in the articles or by-laws, a majority of the number of directors or minimum number of directors is a quorum.	Special resolution is not required to reduce quorum below a majority. No minimum quorum is required.

	<i>Corporations Act (Ontario)</i>	<i>Not-for-Profit Corporations Act (Ontario)</i>	Comments
Directors – quorum where directors have conflict	No provisions. Common law says directors with conflict are excluded from quorum.	If there is no quorum because directors have declared a conflict, the quorum is the unconflicted directors.	This provides greater flexibility to hold a board meeting where a number of directors are conflicted.
Directors – executive committee	When there are more than six directors, an executive committee of not less than three may be established by by-laws, to whom the powers of the directors can be delegated. Such by-laws are not effective until passed by a two-thirds vote of members at a general meeting called for that purpose. A quorum of the executive committee cannot be less than a majority of its members.	The directors may appoint from their number a managing director or a committee of directors and can delegate to such managing director or committee of directors any of the powers of the directors, except certain non-delegable powers (see Schedule A). Member approval is <u>not</u> required to establish an executive committee or to delegate to a managing director.	Executive committee not required to be created by by-laws. Specifically provides for delegation of board powers to managing director or committee of directors. Non-board membership on committees with delegated board powers arguably not permitted.
Directors – audit committee	No audit committee or other required committees.	Audit committee not required, but if established, a majority of its members, must not be officers or employees of the corporation or its affiliates.	
Limits on board delegation	No limits – any power of the board may be delegated to the executive committee.	Certain non-delegable powers must be exercised in full by the board (see Schedule A).	New requirement that some powers must be exercised by full board. Notice of the board meeting must indicate that such matters will be dealt with at that board meeting.

	<i>Corporations Act (Ontario)</i>	<i>Not-for-Profit Corporations Act (Ontario)</i>	Comments
Directors – passage of by-laws	<p>Directors may pass by-laws that are not contrary to the letters patent to govern the: (1) admission of persons as members, the qualifications of membership including establishment of membership fees, termination of membership and transfer of membership; (2) qualification of directors and the manner of their election; (3) appointment and removal of officers; (4) time, place, notice required, procedures and quorum requirements for meetings of directors and members; and (5) conduct and all other procedures of the corporation.</p> <p>Such by-laws passed, repealed or amended by the directors are valid, unless confirmed at a general meeting called for that purpose, only until the next annual meeting and unless confirmed thereat, such by-laws cease to be valid.</p>	<p>Unless the articles or the by-laws otherwise provide, the directors may, by resolution, make, amend or repeal any by-laws that regulate the activities or affairs of the corporation.</p> <p>New by-laws or amendments and repeals of the by-laws must be ratified at the next members' meeting.</p> <p>No by-laws are required to be passed to authorize any action of the corporation or directors.</p> <p>By-laws passed, repealed or amended by the directors are valid, unless confirmed at a general meeting called for that purpose, only until the next annual meeting and unless confirmed thereat, such by-laws cease to be valid.</p>	
Directors – by-laws dealing with membership	<p>Directors may pass by-laws dealing with the divisions of members into groups, either territorial or on the basis of common interest, the election of directors by such groups, the election of delegates to reflect such groups and other matters relating to same group.</p> <p>Such by-laws are not effective until confirmed by two-thirds of the votes cast at a general meeting of members called for that purpose.</p>	<p>Conditions of membership to be in by-laws.</p> <p>Articles to set out groups or classes of members.</p> <p>All members vote unless articles specify otherwise.</p> <p>At least one class of members must vote.</p>	Articles will need to provide for classes of members (where the corporation has more than one class) and specify voting and non-voting classes.

	Corporations Act (Ontario)	Not-for-Profit Corporations Act (Ontario)	Comments
Directors – passage of resolutions and by-laws	Any by-laws or resolution signed by all of the directors is valid and effective as if it had been passed at a meeting.	Any resolution signed by all of the directors is valid and effective as if it had been passed at a meeting. This includes a resolution to approve a by-law. Committee resolutions may be signed in lieu of a meeting.	
Officers – requirements	The directors shall elect a president and appoint a secretary. The board may have a chair if authorized by special resolution. President and chair (if any) must be directors.	There must be a chair who is a director. No requirement for any other officer to be a director.	
Members – qualification	Members of the corporation may be persons, unincorporated associations and corporations.	Members may include a “corporation or other entity” if by-laws so provide.	
Members – number	Unless otherwise provided in the letters patent or by by-laws, there is no limit on the number of members, but there must be at least three.	No limit on the number subject to conditions set out in by-laws.	
Members – admission	Each applicant for incorporation becomes a member on incorporation. Members may be admitted by resolution of the board of directors or if provided for in the by-laws or letters patent. Such admission is not effective until confirmed by members at a meeting.	Members may be admitted by resolution of the board.	
Members – automatic	Letters patent or by-laws may provide for admission of a member by virtue of office (<i>ex officio</i>).	<i>Ex officio</i> (by virtue of office) members permitted.	
Members – liability for debts	Members are not liable for debts or obligations of the corporation, but they may be liable for debts of the corporation if there are fewer than three members.	Members are not liable for any liability of the corporation or any act or default (except as provided in the <i>Not-for-Profit Corporations Act (Ontario)</i>).	

	<i>Corporations Act (Ontario)</i>	<i>Not-for-Profit Corporations Act (Ontario)</i>	Comments
Membership – not transferable	<p>Unless otherwise provided for in the letters patent, an interest in a membership is not transferable and ceases to exist on death, or when a person ceases to be a member voluntarily or otherwise in accordance with the by-laws.</p> <p>The directors may pass by-laws to regulate the transfer of membership not contrary to the Act or the by-laws.</p> <p>If the letters patent provide that membership is transferable, the by-laws must not restrict their transferability.</p>	Membership transferable only to the corporation unless by-laws or articles otherwise provide.	
Members – class of membership	The letters patent or by-laws may provide for more than one class of membership and shall set forth the terms and conditions attached to membership.	<p>There is no limit on the number of classes provided that at least one class must vote.</p> <p>Conditions for members of each class to be provided in by-laws.</p> <p>Classes of members to be set in articles.</p>	The requirement for classes of members and their respective voting rights to be set out in the articles is new.
Members – passage of resolutions and by-laws by signature	Any resolution or by-laws may be unanimously confirmed by members in writing by all members entitled to vote.	A written resolution signed by all members entitled to vote may be used in place of meetings. The exception is meetings where a director or auditor statement is given in connection with director or auditor removal or resignation.	
Members – place of meetings	<p>Meetings of the members shall be held at the head office but if the by-laws provide, they may be held in any place in Ontario.</p> <p>If the letters patent provide, such a meeting of the members may be held outside of Ontario.</p>	The annual meeting shall be held at such a place within Ontario as stated in the by-laws or, if the by-laws are silent, where directors determine.	

	<i>Corporations Act (Ontario)</i>	<i>Not-for-Profit Corporations Act (Ontario)</i>	Comments
Members – telephone meetings	No provision for holding of telephone meeting of members.	<p>Unless the by-laws provide otherwise, any person entitled to attend a members’ meeting may participate by telephonic or other electronic means that permit members to adequately communicate with each other if the corporation makes such means available.</p> <p>If directors or members call a members’ meeting and if by-laws permit, directors or members, as the case may be, may determine whether the meeting is to be entirely by telephonic or electronic means.</p>	
Members – voting and quorum	<p>Members have one vote unless the letters patent or by-laws provide that each such member has more than one vote or has no vote.</p> <p>There are no provisions with respect to quorum.</p>	<p>Unless the articles provide otherwise, each member is entitled to one vote.</p> <p>Voting rights may be different for different classes of membership, as specified in the articles, with some members having no votes. At least one class of members must be voting.</p> <p>Quorum is a majority of members entitled to vote, present in person or by proxy unless by-laws provide otherwise.</p>	
Members’ right to requisition meeting	10% of members entitled to vote may requisition a members’ meeting for any purpose connected with the affairs of the corporation that is not inconsistent with the Act.	10% of voting members (or lower number set out in by-laws) may requisition a meeting for purposes set out in a requisition.	

	<i>Corporations Act (Ontario)</i>	<i>Not-for-Profit Corporations Act (Ontario)</i>	Comments
Members' proposal rights	five percent of members entitled to vote may request that notice be given of a resolution "that may properly be moved" at next members' meeting.	<p>Any member entitled to vote at an annual meeting may give notice of a proposal intended to be raised at a meeting. The proposal must relate in a significant way to activities and affairs of the corporation.</p> <p>The proposal may be made to amend by-laws.</p> <p>This is in addition to the right of five percent of members entitled to vote (or lower, as specified in the by-laws) to nominate a director.</p>	
Matters requiring member approval	<p>Election of directors.</p> <p>Appointment of auditors.</p> <p>Approval of by-laws.</p> <p>Matters that require a special resolution (see Schedule B).</p>	<p>Election of directors.</p> <p>Appointment of auditors.</p> <p>Approval of by-laws.</p> <p>Matters identified as "fundamental changes" or requiring a special resolution. (see Schedule C).</p>	
Members – proxies	<p>Members may vote at a members' meeting by proxy.</p> <p>Mandatory proxy solicitation is not required.</p>	<p>Members may vote at members' meetings by proxy.</p> <p>Mandatory proxy solicitation is required. Rules for proxy voting set out in Act.</p>	
Members – mail or electronic voting	Not permitted.	By-laws may provide that members may vote by mail or telephone or electronic means in addition to or instead of proxy voting.	

	<i>Corporations Act (Ontario)</i>	<i>Not-for-Profit Corporations Act (Ontario)</i>	Comments
Members – notice of meetings	<p>The by-laws shall specify the notice required for meetings of members but shall not provide for less than 10 days notice of meetings and notice of same must be given individually.</p> <p>For corporations having exclusively charitable objects, sufficient notice of a meeting of members is given if given by publication at least once a week for two consecutive weeks preceding the meeting in a newspaper circulated in the municipality in which a majority of the members reside, as shown by their addresses on the books of the corporation.</p>	<p>Not less than 10 days notice but not more than 50 days notice must be provided for members' meetings.</p> <p>Method of notice to be set out in by-laws.</p> <p>No provisions expressly permitting publication.</p> <p>The record date may be set by directors to determine members for: voting; notice; participation in liquidation distribution; or any other purpose. Record date not to be more than 50 days before the event.</p> <p>If no record date is set, the date for determining members entitled to receive notice or vote shall be the date immediately before the date notice is given.</p>	
Meetings – determination of matters	<p>At all meetings of members, all questions are determined by a majority of the votes cast.</p> <p>Some actions require special resolution (majority of directors and two-thirds of members entitled to vote) (see Schedule B).</p>	<p>Unless otherwise provided in the Act, by-laws or articles, at members' meetings, all questions are determined by the majority of the votes cast.</p> <p>The requirement that a majority vote of members is needed to remove directors may not be increased by by-laws or articles.</p> <p>See Schedule C for matters that require a special resolution/two-thirds vote.</p>	

	<i>Corporations Act (Ontario)</i>	<i>Not-for-Profit Corporations Act (Ontario)</i>	Comments
Members – annual meetings	Annual meetings of the members must be held within 18 months of the date of incorporation and subsequently not more than 15 months from the last annual meeting.	An annual meeting must be held within 18 months of incorporation and thereafter within 15 months of the last meeting. Board-approved annual financial statements and the audit report or the review engagement report may be requested by a member 21 days before the annual meeting. Record date to determine members entitled to notice and to vote may be set by the board. This date should not be more than 50 days before the meeting.	
Auditors	Members must appoint an auditor to hold office until the first annual meeting and, thereafter, at each annual meeting.	At each annual meeting, members must appoint an auditor or person to conduct review engagement.	
Waiver of audit	A corporation is exempt from audit if it is not a public corporation, has annual income of less than \$10,000 or all the members' consent. However, this exemption is not applicable to certain charitable corporations.	Exemption from an audit is possible if certain financial thresholds apply. A review engagement in lieu of an audit is available if certain thresholds apply. Members must approve an exception from the audit and/or review engagement by extraordinary resolution (80%).	
By-laws – approval	By-laws do not require approval by the Ministry of Consumer and Commercial Relations.	Same.	
Seal	A corporation may, but need not, have a seal.	Same.	
Borrowing authority	Requires by-laws to be approved by special resolution.	Directors have authority to borrow subject to by-laws or articles. No need for member approval.	

SCHEDULE A: NOT-FOR-PROFIT CORPORATIONS ACT (ONTARIO) NON-DELEGABLE BOARD POWERS

The following powers may not be delegated by the board to a board committee or a managing director. If any of the following powers are to be dealt with at a meeting of directors, the notice of the meeting must so specify:

1. To submit to members any question or matter requiring member approval;
 2. To fill a vacancy among the directors or in the office of auditor or person appointed to conduct a review engagement;
 3. To appoint additional directors;
 4. To issue debt obligations, except as authorized by directors;
 5. To approve annual financial statements;
 6. To adopt, amend or repeal by-laws; and
 7. To establish contributions to be made, or dues to be paid, by members.
4. Authorizing the appointment of an executive committee;
 5. Authorizing the removal of the corporation's auditor prior to the expiration of the auditor's term;
 6. Authorizing an amalgamation;
 7. Authorizing a by-law providing for the division of members into groups and the election of directors by such groups;
 8. Authorizing an application to the Lieutenant Governor for the issuance of Supplementary Letters Patent for any purpose, such as a change of name, objects or powers;
 9. Changing the head office of the corporation;
 10. Allowing a quorum for board meetings to be less than a majority of board members (but never less than two-fifths of board members);
 11. Providing for the election of a chair by the directors and the duties of such a chair;
 12. Authorizing a by-law providing for the disposition of the corporation's property on dissolution to charitable organizations or organizations whose objects are beneficial to the community; and
 13. Approving a resolution increasing or decreasing the number of directors.

SCHEDULE B: MATTERS REQUIRING SPECIAL RESOLUTION UNDER THE CORPORATIONS ACT (ONTARIO)

The following is a list of the matters that require a two-thirds member approval under the *Corporations Act* (Ontario):

1. Authorizing the sale, lease, exchange or disposition of the undertaking of the corporation or any part thereof as an entirety or substantially as an entirety;
2. Approving a by-law, authorizing the borrowing of money on the credit of the corporation or mortgaging or pledging the corporation's assets;
3. Removing a director from office prior to the expiration of the director's term if authorized by by-laws;

SCHEDULE C: MATTERS REQUIRING MEMBER APPROVAL BY SPECIAL RESOLUTION UNDER THE NOT-FOR-PROFIT CORPORATIONS ACT (ONTARIO)

Approve Fundamental Changes – Special Resolution of Members

A specified list of fundamental changes to amend the articles may only be approved by a special resolution (two-thirds approval) of the members. In certain cases, a class or group may be entitled to vote separately on the matter even if the class or group are not otherwise entitled to vote. The list of special resolution matters includes:

1. Change of name;
2. Adding, changing or removing any restrictions on activities that the corporation may carry on;
3. Creating a new class or group of members;
4. Changing the conditions required for being a member;
5. Changing the designation of a class or group of members or adding, changing, or moving the rights or conditions of a class or group (includes voting);
6. Dividing a class or group into two or more classes or groups;
7. Changing or removing a provision respecting transfer of membership;
8. Increasing or decreasing the number of or minimum or maximum number of directors fixed by the articles;
9. Changing the purposes of the corporation;
10. Changing to whom the property remaining on liquidation or discharge is to be distributed;
11. Changing the manner of giving notice to members entitled to vote at a meeting of members;
12. Changing the method of voting by members not in attendance at a meeting of the members; or
13. Adding, changing or removing any other provision that is permitted by the Act to be set out in the articles.
14. Other matters requiring a special resolution:
 - Fixing the number of directors within a minimum and maximum or authorizing directors to fix the number;
 - Selling all or substantially all of the assets (non-voting classes vote and classes may vote separately if certain conditions apply);
 - Approving a contract for which a director has a conflict;
 - Approving an amalgamation (non-voting classes vote and classes may vote separately if certain conditions apply);
 - Applying to continue the corporation under the laws of another jurisdiction (non-voting classes vote); and
 - Approving a voluntary wind-up or voluntary dissolution.

Appendix I

List of Forms by Chapter

Forms can be found at the end of each chapter.

Chapter/ Form No.	Title
2-1	Members' Legal Requirements and Governance Principles
2-2	Sample Accountability Statement
5-1	Sample Statement of the Roles & Responsibilities of the Board
5-2	Balanced Scorecards
5-3	Dashboards – Quality Performance Illustration
5-4	Risk Assessment Framework Agenda Planner
5-5	Chief Executive Officer Annual Priorities Review
5-6	Chief Executive Officer Confidential Board Panel Appraisal Form
5-7	Chief Executive Officer Performance Evaluation and Compensation Policy
5-8	Chief Executive Officer Succession Planning
5-9	Guidelines for a Management Resources and Compensation Committee
5-10	Assessing Board Performance
5-11	Governance Quality Indicators
6-1	Sample Board Policy on Confidentiality
6-2	General Principles Regarding Conflict of Interest
6-3	Sample Board Policy on Conflict of Interest
6-4	Sample Board Code of Conduct
6-5	Sample Position Description – Board of Directors
6-6	Tips for Directors
6-7	Annual Director Declaration and Consent
7-1	Sample Board of Directors Skills Matrix and Inventory
7-2	Sample Guidelines for Director Selection
7-3	Sample Application for Membership – Long Form
7-4	Sample Application – Short Form
7-5	Sample Director Recruitment and Selection Process
7-6	Sample Board of Directors Nomination and Election Policy
7-7	Overview of Director Election Processes
7-8	Sample Board Orientation Manual Index
7-9	Sample Board Peer Assessment Questionnaire

Chapter/ Form No.	Title
7-10	Board Evaluation Process Overview
7-11	Guideline on Creating a Board Self-Assessment Survey
7-12	Sample Committee Self-Assessment Survey
8-1	Sample Board Chair Role Description
8-2	Sample Board Chair Selection Process Guidelines
8-3	Tips for the Chair
8-4	Committee Principles and Rules and Regulations
8-5	Sample Format for Committee Terms of Reference
8-6	Sample Committee Responsibilities
8-7	Comparison of Meeting Requirements
8-8	Sample Board Annual Work Plan
8-9	Sample Board and Committee Meeting Attendance Policy
8-10	Sample Policy for Open Board Meetings
8-11	Checklist for Developing a Policy for Open Board Meetings
8-12	Procedure for Members of the Public Addressing the Board
8-13	Sample Board Agenda Development Policy
8-14	Consent Agenda Policy
8-15	Sample Board Agenda
8-16	Sample Format for Board Briefing Report
8-17	Meeting Minutes Best Practices
8-18	Annual Meetings – Frequently Asked Questions
8-19	Sample Policy for Meeting Without Management
8-20	Sample Meeting Effectiveness Survey
8-21	Sample Meeting Evaluation
9-1	Sources Documenting a Board's Governance
9-2	Sample Governance Audit Questionnaire
9-3	List of Matters that Require a Special Resolution Under <i>Corporations Act</i>

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Appendix III

Glossary of Governance Terms

Code of Conduct

An agreed statement of the duties, accountabilities and behaviours of directors. The adopted code of conduct will reflect the fiduciary duties of directors.

Consent Agenda

A consent agenda is a process used during a board meeting to accept items that are not expected to be contentious or that are routine or recurring. The items are identified on the agenda as consent items and a single motion is moved to accept these items.

Constating Documents

“Constating documents” refers to the letters patent or articles, and by-laws that form the “constitution” of the corporation.

Due Diligence

“Due diligence” is often used in relation to a legal defence available under many statutes that impose liability on directors or officers. The general test for proving a due diligence defence is proving that all reasonable steps were taken to prevent the offence. Due diligence is often also used by boards of directors to describe the process of scrutiny that they may undertake in reviewing corporate actions and advice of management.

Ex officio

The term “*ex officio*” means by virtue of office and describes the method or process by which someone achieves a position. An *ex officio* director is a director by virtue of holding an office elsewhere. Unless the by-laws or letters patent provide otherwise, *ex officio* directors have all of the rights, duties and obligations of elected directors.

Fiduciary

“Fiduciary” describes a person or entity that stands in a relationship with another person or entity and by virtue of that relationship owes a broad range of duties and obligations that are described as fiduciary duties. Directors owe fiduciary duties to the corporation they serve. Fiduciary duties include the duty to act honestly and in good faith.

Flex/Floating Board

Under the *Canada Not-for-Profit Corporations Act* and the *Not-for-Profit Corporations Act (Ontario)* the articles may authorize the number of directors to be determined from time to time within the minimum and maximum number set out in the articles. The number is determined from time to time by the members, or the directors if the members have authorized the directors to determine the size of the board.

Generative Governance

From the book *Governance as Leadership* by Richard Chait, William Ryan and Barbara Taylor, the term is used to describe one of three modes of governance in which the authors recommend a board should be engaged; the other two being a strategic and a fiduciary mode. When operating in a generative mode, a board is not in a decision or approval mode. Instead, the board is engaged in a conversation about possibilities and opportunities with management. The board may be highly speculative, consider out-of-the-box ideas, and dig into what may appear to be operational matters. The value of these discussions is to provide a broad diverse perspective on identifying more than answering the key questions the organization needs to face. That conversation should assist management to develop well conceived proposals that will later come forward for the board to consider in its fiduciary or strategic mode.

In Camera

“*In camera*” refers to a closed proceeding of the board. Unless the corporation is subject to specific legislation requiring open board meetings, board meetings are not required to be open to the public. For those boards that do not have open board meetings, the term *in camera* is often used to describe the portion of the meeting at which management is excluded.

Limited Liability

“Limited liability” refers to the legal principle that the directors and members of the corporation are not, as such, liable for the obligations of the corporation.

Proxy

An authorization by a member entitled to vote that appoints the holder of the proxy to attend and vote in the members behalf.

Quorum

The minimum number of directors, committee members or members that must be present to properly constitute a meeting for the transaction of business at a meeting of the board, committee or members as the case may be.

Rules of Order

“Rules of Order” are the procedural rules that have been adopted by the board to govern its affairs and the affairs of members at meetings of members, the board and committees. Robert’s Rules of Order is the most recognized name, but there are a number of other procedural texts which contain Rules of Order that have been written specifically for not-for-profit corporations and may be more appropriate to these types of organizations.

Special Resolution

A “special resolution” is a term that is defined in the *Corporations Act* (Ontario). It is a resolution that is passed by the directors and confirmed with or without variation by at least two-thirds of the vote cast at a general meeting of the members of the corporation duly called for that purpose. In lieu of approving the resolution at a meeting, the members may also sign a written consent to the resolution; however, all members must sign the written consent.

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