



**British Columbia
Library Association**

BCLA Board Meeting
Monday, August 10th, 2020
Join Zoom Meeting

Present: C. Middlemass, T. Mundle, A. Farrell, A. O'Shea, P. Lesku, E. Henninger, P. Russell, N. Porter, L. Tripp, A. Sullivan, A. DeFaveri

Guest: Michael Blatchford from Norton, Rose, Fulbright

Meeting is called to order at 9:30am by President Chris Middlemass.

Land Acknowledgment and Welcoming Remarks (CM)

Adoption of the Regular Agenda (CM)

Introducing Michael Blatchford from Norton, Rose, Fulbright
Board Training, Part One
See attached slides

BCLA Membership Review (CM and Annette DeFaveri)

Chris and Annette explained that under the new Societies Act registered charities and not-for profits must get Board approval for any new members joining the Association. New member and renewing member list presented to the Board.

Motion to accept all new and renewing members.
Moved by Adam Farrell
Seconded by Lindsay Tripp
Motion passed.

Due to time constraints the Agenda item to present the Board with committee information will be moved to email

Closing Remarks (CM)

Adjournment (CM)

The next BCLA Board Meeting is a special meeting for Part Two of Board Training, September 11th, 2020

Financial institutions
Energy
Infrastructure, mining and commodities
Transport
Technology and innovation
Life sciences and healthcare



Board Governance Part 1: Fiduciary Duty

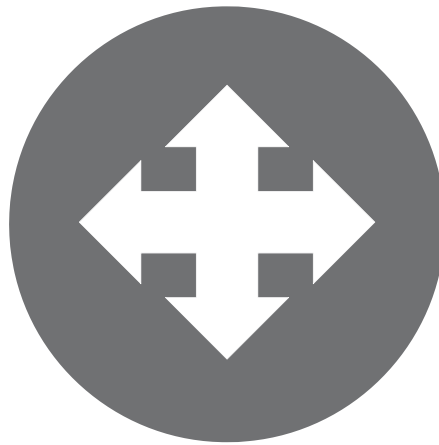
Prepared for BC Library Association

Michael Blatchford
Partner, Charities and Tax Exempt Organizations
Norton Rose Fulbright Canada LLP
August 10, 2020

Overview

1. why governance matters
2. board principles
3. directors' duties and obligations
 - being a “fiduciary”
 - the fiduciary duties
 - duty of loyalty and good faith
 - conflict of interest
 - duty of care
 - duty of confidentiality
 - duty of supervision
4. director liability & discipline
5. key policies

Why Governance Matters

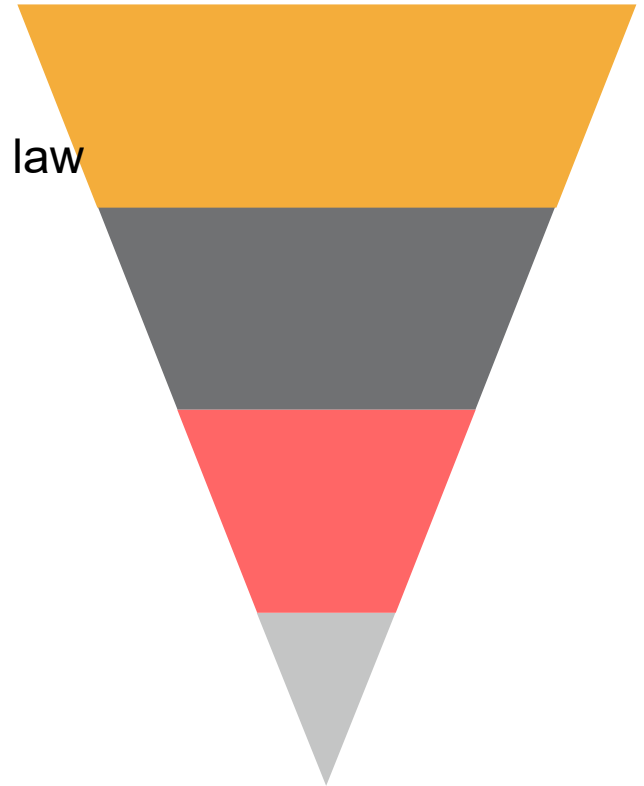


What is Governance?

- planning and leadership to help an organization meet its goals
- ensuring compliance with laws, constitution and bylaws
 - layers of “rules” that societies adhere to
 - rules on top overrule those below
- creation of policies and systems to maintain and entrench best practices
 - consistency
 - efficiency

The Compliance Pyramid

- provincial and federal laws
 - includes *Societies Act*, *Income Tax Act*, privacy legislation, employment legislation, case law
- constitution
- bylaws
- rules of order
- policies/regulations
- common practice



Why is good corporate governance important?

- enables good decision making
- provide accountability for decisions taken
- stakeholder and funder confidence
- administrative efficiency
 - balance between accountability and efficiency
 - delegation of operational affairs to management
 - directors not expected to micro-manage the organization
- continued existence

Principles of Board Governance:



Basic Principles for Boards

- operate in the best interests of BCLA
- open-mind, but not empty mind
- not the role of any director to “represent” interests of members, their employers or related groups, or bring their own “mandate” or “project” to their board service
- It is the role of the board collectively to understand these interests (and others) and then make appropriate decisions in the best interest of BCLA
- all board business is confidential, until the board decides otherwise

Basic Principles for Boards

- collective decision-making, collective authority. the individual director has no authority except as expressly delegated
- prepare for meetings and other board business; you do not help the organization merely by holding down a chair
- respect for process and for each other
- there are NO “dumb” questions, but there may be a better time or place to ask some of them
- consensus decisions where possible, majority where necessary
- having appropriate policies and procedures enhances efficiency and improves decision-making if followed; having bad ones is less effective, but having none is worst

Basic Principles for Boards

- understand your role and management's role - boards govern, management manages; be disciplined about keeping in your lane unless invited to merge



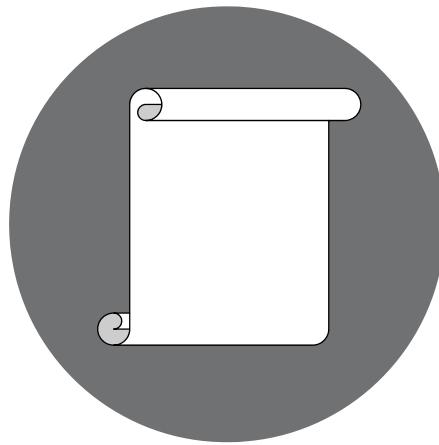
Basic Principles for Boards

- stay at the level of priority and strategy; avoid micromanaging and operational discussions; rolling up your sleeves does not mean getting into the weeds
- board's are expected to hold management accountable to ensure the work of BCLA gets done well, not to do that work or tell management exactly how to do it

Board Responsibilities

- mission and values
- strategic planning/policy
- fiduciary oversight
- risk management
- hiring/monitoring/evaluating the ED/CEO
- board succession planning
- other?
 - stakeholder/community engagement

Director Basics and Bylaws



What is a Director?

- Societies Act definition
 - “an individual who has been designated, elected or appointed, as the case may be, in accordance with the Act as a member of the board of directors of the society, regardless of the title by which the individual is called”
- the board is composed of the directors
- collectively, the board is responsible to manage or supervise management of the affairs of the society.
 - Act s. 52
 - Bylaws s. 7.1

BCLA's Board of Directors

- 3-15 directors, including named officers, directors at large, section directors and appointees (*bylaw 7.3*)
- terms of 1 or 2 years, 8 year total term limit, position term limits also apply (*bylaws 7.6 & 7.7*)
- members elect officers, automatic succession of certain positions
- board may appoint to fill vacancies until the next election cycle
- nomination and election rules in bylaws part 8 meant to be supplemented with policies and procedures to facilitate smooth operations

Qualifications of Directors

Bylaw 7.2:

- person may not be elected, appointed, or continue to serve if:
 - under 18
 - declared incapable by a court
 - undischarged bankrupt
 - convicted of certain fraud related offenses in the past 5 years without a pardon

In addition – must be a personal member of the society.

Powers of Board

Bylaw 9.1

- Board collectively has the authority to decide, exercise and do anything the Society can do, except as the Act or bylaws restrict to members:
 - amend constitution and bylaws
- Board has the “plenary authority”
- members still have rights, and powers pursuant to Act and bylaws, including ability to elect and remove directors

Governance: Directors' Duties and Obligations



Directors as Fiduciary

- **Fiduciary** = a person in whom trust is placed, with the legal authority to make decisions which affect the rights of another.
 - Because the fiduciary has discretionary power to affect the other party's legal or practical interests they are held to a high standard of conduct and have a duty to exercise their power for the other's benefit.

Directors' Duties

- Common Law
 - Fiduciary obligations
 - Duty of loyalty, good faith and obedience
 - Duty of care and diligence
- Duty of Confidentiality
- Duty to Supervise Management

Directors' Duties cont.

- section 53 of *Societies Act*
 - act honestly and in good faith with a view to the best interests of the society,
 - exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances,
 - act in accordance with the Act and the statutory regulations,
 - subject to above, act in accordance with the bylaws,
 - act with a view to the purposes of the society.
- replicated in Bylaw 9.2
- cannot contract out of duties

Duty of Loyalty

- Fiduciary duty is to the society, not to its members
 - society owes duty to members, directors owe duty to society
- Act in good faith
 - acting with sincere intentions
- Honesty
 - directors must be honest and forthright
 - not withholding information

Duty of Loyalty cont.

- Directors must place the interest of the society above their own interests
 - cannot have regard to own interests or personal/social/political views
- must not let personal interests bias or interfere with decision-making as fiduciary
 - conflict of interest rules

Duty of Loyalty (cont.)

- Other roles held cannot impinge on duties as director
 - when you're at the board table, you are a director, not a member, volunteer or stakeholder
 - represent the whole organization, not any one class of members
- cannot use director position to gain a personal benefit

What is a Conflict of Interest?

- new expanded rules
- directors with **direct or indirect material interest (pecuniary or non-pecuniary)** in a contract or transaction with society, or a matter for consideration by the board, must:
 - fully disclose the nature and extent of the interest
 - abstain from voting on resolution
 - leave board meeting when discussed, unless asked to provide information
 - leave board meeting when vote occurs, regardless
 - not take any actions intended to influence the discussion or vote
- consequences for failure to disclose?

Poll the Audience

- 1 director serves as ED/CEO of the organization
 - board wishes to hire director's daughter as ED
- ED/Senior staff wishes to hire director's spouse/child for a junior staff position
- society considering purchasing property from director
 - from director's sister
- board considering contract with company owned by director's spouse

Poll the Audience (con't)

- director is senior manager of the financial institution where the society intends to open new accounts/investments
- society may fund an organization on which a director also serves
- director serves on board of another organization, with which our organization will be partnering with on an important project
- society may fund an organization that has a significant contract with the director/spouse/company
- director is an elected official, and society is applying for re-zoning from city

Duty of Care

- Duty to act with reasonable diligence, care and prudence
 - knowledge & skills
 - prudence & diligence
- “reasonably prudent person”
 - a person managing the property of another
 - objective view of circumstances, court’s opinion

Duty of Care (cont'd)

- level of carefulness proportionate to the significance of the decision, its potential risk and its importance to the organization
 - encourage discussion and debate
 - examine all sides
 - consider alternatives
- properly document the decision
 - minute taking issues

Knowledge

- Directors should be informed by best information available
- Director should be familiar with
 - Constitution of the Society
 - Bylaws of the Society
 - Policies and systems of the Society

Skill

- Director is not required to be an expert
- Director expected to perform with the skill that a reasonably prudent person would exercise in the same position
- expectation varies with the experience, sophistication and qualifications of each Director
 - Greater the skill level and experience the higher the standard

Prudence

- Prudent person is someone who
 - avoids rash action
 - is careful of the consequences of a decision
 - is discreet, circumspect and careful of the “politics” of a situation
- Cautious and considered behaviour
 - cannot be reckless or cavalier
 - does not require the avoidance of all risk
 - thoughtful assessment of risk is required

Diligence

- Directors must work hard on Board matters:
 - become familiar with the nature of the Society and its administration
 - regularly attend Directors' meetings
 - read all advance material provided and prepare to contribute
 - take part in discussion and decision making
 - make reasonable inquiries
 - monitor affairs of the society
- Directors are entitled to seek and consider outside expertise but should monitor outside professionals making reasonable inquiries to ensure that the society is receiving proper information

Duty of Confidentiality

- directors have duty to respect confidentiality of society matters and board business
 - first duty is to the organization
- cannot choose to disclose board discussion to outsiders
- no disclosure without authorization
- duty of confidentiality can be overruled by an order from a court or other tribunal or authority; but it cannot be discarded by the director who feels it important to “speak out”

Duty of Confidentiality cont.

- directors may disagree around the board table but once a vote is taken and a decision made by majority, it is a decision of the board as a whole
 - directors should support the decision, even if they privately disagree
 - no behind-the-back talk to press, members, public
 - inappropriate to talk about who voted how
- directors may request formal dissent be noted on very significant issues

Duty of Confidentiality cont.

- **what IS confidential information**
 - information received at a board meeting, board package, board briefing or otherwise because of one's position as director
 - staff information, contracts, remuneration
 - BCLA financial and accounting information other than approved annual financial statements
 - board meeting minutes
- **what is NOT confidential information**
 - information already publicly available (not through the actions of the director)
 - information that the board has collectively determined should be accessible and/or shared

Duty of Confidentiality cont.

- while some aspects of the fiduciary duty end on leaving the board, some aspects continue permanently
- confidentiality is an ongoing obligation; departure from the board does not open the door to free information sharing
- directors who share confidential information without authorization, whether knowingly or negligently, have breached their fiduciary duty and may be held personally liable
- may also be subject to internal investigation and discipline

Duty to Supervise Management

- directors, not members, are responsible for managing the society
 - includes supervision of senior staff and development of policy
- directors are expected to understand the authority of the board of directors and how it functions
 - accountable to members, but not ruled by members wishes

Duty of Supervision (cont.)

- Delegation
 - directors may delegate management but should maintain a system for appropriate supervision (i.e. CEO reporting and evaluation)
 - **delegation does not release directors of fundamental duties**
 - delegation to committees permitted, but directors must supervise
 - committees report to board of directors

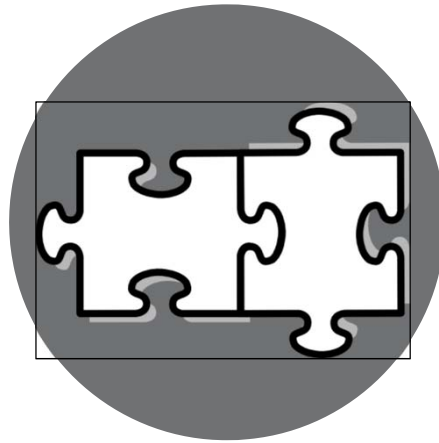
Director Liability

- directors liable for:
 - missed deductions, wages, etc.
 - breach or failure of duty, negligence
 - improper distributions from society
 - joint and several liability of all directors
 - 2 year limitation period
- due diligence defence available, and discretionary relief
- **indemnification** mandatory in certain circumstances, optional in others, prohibited where not acting in good faith

Director Discipline

- directors have duties, responsibilities, expectations
- board has authority to manage its own affairs, including discipline of directors who:
 - breach or ignore duties
 - act contrary to established policies/codes of conduct
 - consistently or egregiously fail to live up to expectations
 - do not attend board meetings regularly
 - act inappropriately and create risk for society – including reputational risk
- Bylaw 7.10 allows for a board-driven investigation and disciplinary process, including censure or removal from the board
- requires an appropriate policy to specify grounds and procedures

Key Policies



Governance Policies

1. code of conduct/board terms of reference
2. confidentiality and communications
3. conflict of interest
4. board discipline/investigation
5. nominations and election procedures
6. board-management interface
7. board meeting procedures
8. officer and committee terms of reference
9. privacy and personal information
10. access to corporate records

Questions



Contact

michael.blatchford@nortonrosefulbright.com

(604) 641-4854

@BlatchfordLaw

Disclaimer

Norton Rose Fulbright US LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright Canada LLP and Norton Rose Fulbright South Africa Inc are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

References to 'Norton Rose Fulbright', 'the law firm' and 'legal practice' are to one or more of the Norton Rose Fulbright members or to one of their respective affiliates (together 'Norton Rose Fulbright entity/entities'). No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any Norton Rose Fulbright entity (whether or not such individual is described as a 'partner') accepts or assumes responsibility, or has any liability, to any person in respect of this communication. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of the relevant Norton Rose Fulbright entity.

The purpose of this communication is to provide general information of a legal nature. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.