

Maximizing Governance in For Public Benefit Organizations

**Board Essentials Workshop
February 25, 2019**

AGENDA

- Objectives
- Introductions
- What is Governance
- What is Corporate Governance
- The Fiduciary Relationship
- Board Accountability
- Governance Functions
- Conditions for Good Governance
- Governance Models

WORKSHOP OBJECTIVES

To improve knowledge and understanding regarding:

- Principles of good governance
- Models, roles and functions of a Board of Directors
- Duties and responsibilities of individual Board members

INTRODUCTIONS

Sonja Nerad, BA., MSW

- Founder of SN Management; 10+ years consulting experience. 15+ years senior management experience in community health and social services. Expertise: strategic and business planning, organization design, stakeholder engagement, collaborative service and system planning and change management. Focus on health equity.

INTRODUCTIONS

- What is your name?
- What organization are you representing here today and in what capacity?
- What is your BURNING QUESTION?

GOOD GOVERNANCE

✓ Success

✓ Sustainability



SUCCESS

Enabling the organization to serve its purpose and achieve its objects:

- Mission
- Vision
- Values
- Strategic Plans

SUSTAINABILITY

Maintaining the capacity, credibility and viability of the organization over time so that it can carry out its purpose



DISCUSSION

- Are the mission, vision and values provided to prospective Board members?
- Are Board members oriented to the strategic plan?
- Does the Board receive or review financial statements?

CORPORATE GOVERNANCE

Corporation:

- Legal entity separate and distinct from its members
- It can sue or be sued
- It can hold property
- It will exist forever until dissolved

Not for Profit Corporation

- Exists to carry out activities that are typically philanthropic, social, charitable, etc.
- Members are prohibited from receiving financial gain
- May or may not have charitable status

FIDUCIARY RELATIONSHIP

- Legal and ethical relationship of trust
- Duties owed are among the highest standard imposed by law:
 - Honesty
 - Good faith
 - Best interest of the corporation
 - Apply skills and exercise judgment
 - Comply with legislation
 - Comply with the Corporation's articles and by-laws
 - Loyalty
 - Confidentiality
 - Conflict of interest
 - Obedience

BOARD ACCOUNTABILITY

To fully understand accountability, the Board must understand its obligations to different stakeholders:

- Clients/community
- Funders
- Legislative or regulatory bodies

DISCUSSION

- Who are your stakeholders?
- How does the Board's obligation to these groups differ?
- Are Board members oriented to by-laws?
- Are Board members aware of legislative or regulatory accountabilities?

GOVERNANCE FUNCTIONS

1. Approve strategic goals and objectives
2. Establish a framework for performance oversight
3. Oversee organizational effectiveness and quality
4. Oversee financial conditions and resources
5. Oversee organizational risk management
6. Supervise leadership
7. Oversee stakeholder relationships
8. Manage the governance of the Board

CONDITIONS FOR GOOD GOVERNANCE

1. Board's Role (WHAT?)

- The areas where the Board exercises a governance
- The approach to governance

2. Board Quality (WHO?)

- The quality of the people at the table
- The impact of collective skills

3. Board Structures and Processes (HOW?)

- Used by the Board to perform its role

CONDITIONS FOR GOOD GOVERNANCE

Board Role

- Role and function of the Board
- Duties of Directors
- Effective governance/management relationship

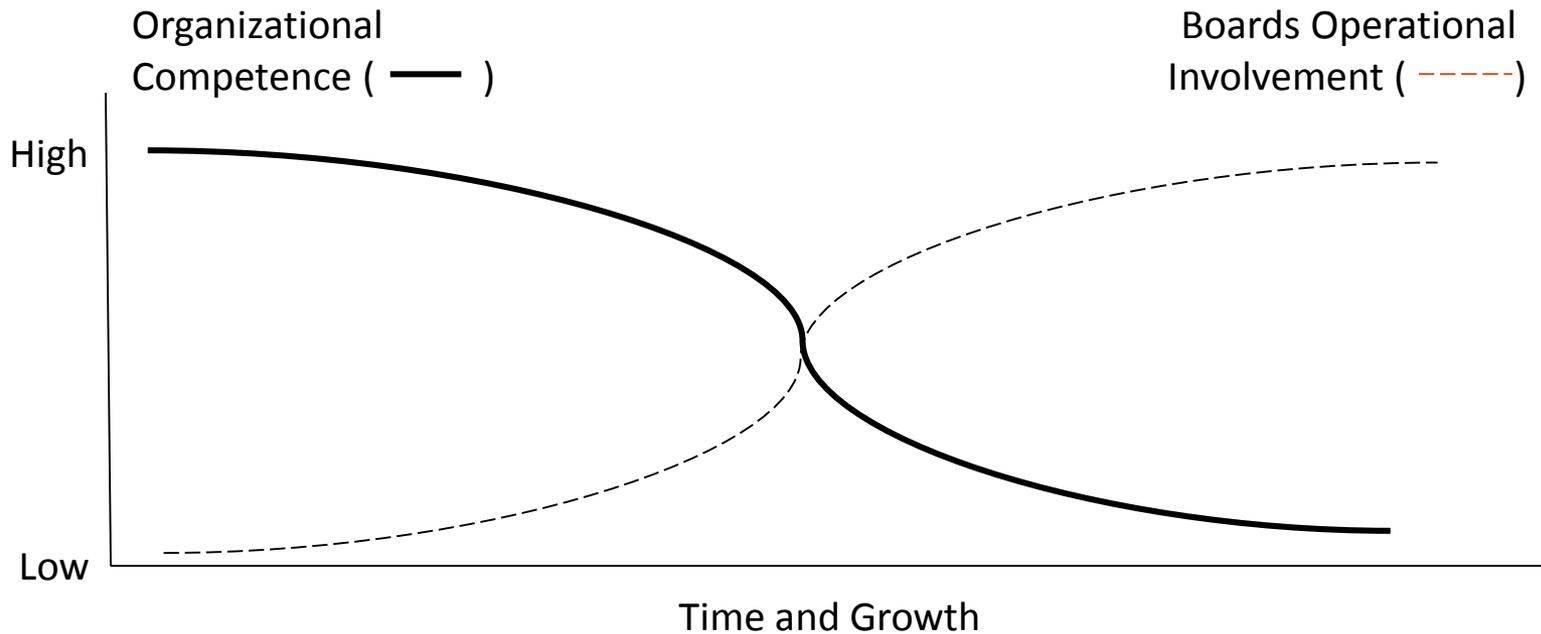
Board Quality

- Size
- Composition
- Recruitment
- Term and renewal
- Orientation/education
- Feedback and evaluation

Board Structure and Processes

- Board leadership – Chair role and Officers' role
- Committees – role and relationships
- Meeting processes
- Relationships – culture

GOVERNANCE MODELS



Working Board: Part staff, part oversight

Management Board: Less doing but involved in operational decision making

Policy Board: Carver Policy or Hybrid governance models

GOVERNANCE MODELS

- Where is your organization situated on the matrix?
- How would you describe your governance model?
- Do new Board members receive information about the governance model during the recruitment process?
- Many Boards use a code of Code of Conduct to create an open and supportive environment for Boards to conduct their business. Why are positive relationships among Board members important?

IN MY EXPERIENCE...



RESOURCES

BEST PRACTICES -BOARD GOVERNANCE

1. Understand mission, vision, values and accountability
2. Understand the Board's role
3. Understand Director's expectations
4. Enhance Director's performance
5. Determine board size for effective governance
6. Create a skilled and qualified Board
7. Educate new Directors
8. Appoint qualified Board leaders
9. Ensure Board independence
10. Establish and use Board committees appropriately
11. Ensure meetings enhance Board performance
12. Expressly commit to continuous improvement

Corbett, A., & Mackay, J.M., (2009) Governance Reviews and Best Practices in *Guide to Good Governance: Not-For-Profit and Charitable Organizations* (pp. 178-180). Ontario, CA: OHA Publishing

BOARD CODE OF CONDUCT

The Board commits itself and its members to ethical, businesslike, and lawful conduct, including proper use of authority and appropriate decorum when acting as board members. Board members shall agree to abide by the following code of conduct:

- Attend all meetings required to fulfill her/his responsibilities as a board member.
- Avoid all conflicts of interest and abide by the Conflict of Interest policy and guidelines.
- Be on time for meetings.
- Maintain confidentiality on internal board matters and organizational concerns.
- Show commitment and dedication to Wabano by being an active participant at meetings and functions.
- Act in the best interest of the beneficiaries and the organization.
- Reflect a positive public image of the board in the community. As such, board members will not act in a way that reflects poorly on Wabano.
- Show a willingness to be open and objective in board discussions and to respect the opinions of others even when disagreements occur.
- Be a positive role model.
- Stay focused on agenda items and address these items in a clear and concise way.
- Prepare in advance for all board and committee meetings.
- Respect the lines of authority and communications established by Wabano.
- Participate in Board Orientation sessions

••••• The Wabano Centre, Board Code of Conduct, retrieved from <http://www.wabano.com/about/our-board/> •••••

CHARITIES VS NOT FOR PROFITS

Topics	Registered charity	NPO
Purposes	Must be established and operate exclusively for charitable purposes	<ul style="list-style-type: none"> • Can operate for social welfare, civic improvement, pleasure, sport, recreation, or any other purpose except profit • Cannot operate exclusively for charitable purposes
Registration	Must apply to the Canada revenue agency (CRA) and be approved for registration as a charity	No registration process for income tax purposes
Charitable registration number	Is issued a charitable registration number upon approval by the CRA	Is not issued a charitable registration number
Tax receipts	Can issue official donation receipts for income tax purposes	Cannot issue official donation receipts for income tax purposes
Spending requirement	Must spend a minimum amount on its own charitable activities or as gifts to qualified donees	Not applicable
Designation	Is designated by the CRA as a charitable organization, a public foundation, or a private foundation	Does not receive a designation
Returns	Must file an annual information return (form T3010) within six months of its fiscal period-end	May have to file a T2 return (if incorporated), and/or an information return (form T1044) within six months of its fiscal period-end
Personal benefits to members	Cannot use its income to personally benefit its members	Cannot use its income to personally benefit its members
Tax exempt status	Is exempt from paying income tax	<ul style="list-style-type: none"> • Is generally exempt from paying income tax • May be taxable on property income or on capital gains

DIRECTOR LIABILITIES

Liability Checklist			
Subject	To Be Conducted By	How Often	Comment
1. Awareness of liability arising from acting beyond the corporation's authority	Director, in consultation with board colleagues and/or executive director	Annually	Does the director know the scope of the corporation's mandate, as defined by its corporate documents, and that the corporation is required to restrict its activities to that mandate?
2. Awareness of contractual liability	Director, in consultation with board colleagues and/or executive director	Annually	Do corporate documents provide for authority to sign contracts? Does the director know in what specific ways personal liability may arise?
3. Awareness of liability in tort	Director, in consultation with board colleagues and/or executive director	Annually	Does the director know in what specific ways personal liability may arise for claims of injurious conduct? Does he or she know that negligent mismanagement can result in claims?
4. Awareness of liability arising from common law duties	Director, in consultation with board colleagues and/or executive director	Annually	Does the director know that he/she is liable to the corporation for losses suffered as a result of failure to meet his or her 'fiduciary duties'? Does the director understand scope of fiduciary duties?
5. Awareness of liability arising from statute	Director, in consultation with board colleagues and/or executive director	Annually	Does the director know that, under certain statutes, personal liability of directors may arise?
6. Statutory liability relating to incorporating legislation (e.g., filings), wages, taxes, income, goods & services, sales, source deductions, employment, etc.	Director, in consultation with board colleagues and/or executive director	Annually	Does the director know and understand the requirements stemming from each of these issues, and the obligation on directors to ensure that these requirements are met?
7. Assessment of statutory liability arising from the specific mandate or activities of the corporation	Full board	Every two years	Has a review been prepared, either internally or though seeking external legal advice, identifying regulatory requirements that the corporation is required to meet?

BOARD STANDARDS/DUTIES

Duties Checklist			
Subject	To Be Conducted By	How Often	Comment
1. Procedures for distribution of material	Chair and executive director	Annually	A benchmark should be established that enables board members adequate time to consider material; limitation of the volume of material should also be considered, where the amount of material prevents directors from giving it adequate attention.
2. Director attendance record	Chair & individual board member	Annually	Does the director attend frequently enough to make a reasonable contribution to board deliberations?
3. Director performance re: preparation and familiarity with distributed materials	Chair & individual board member	Annually	Does the director regularly participate in board deliberations, and is this participation based on an informed understanding of the issues and materials relating to the matter being considered?
4. Is the director aware of, and discharging, his or her duties?	Chair & individual board member	Upon selection for the board, and annually after that	Is the director aware of, and discharging, his or her legal requirements vis-à-vis skill and diligence, loyalty, honesty and good faith, and avoiding conflict of interest?
5. Are there any additional duties placed on the director by the nature of the corporation or the activities it engages in?	Chair and individual board member	Upon selection for the board, and annually after that	Is the director aware of the extra requirements that may arise, for instance, from the corporation being a charity?
6. Is there a formal process in place for director performance review or removal?	Chair, executive director and/or nominating committee	Annually, in advance of the nomination and election process	Director performance review can be established by resolution, policy or other means. A process for removal of directors should be specified in the bylaws.
7. Is board business being fully discussed and completed?	Full board and the executive director	Annually	Feedback should be sought from directors both as individuals and as a group. It may be helpful to provide a means for anonymity.
8. Is there a need to adopt specific policies that will assist board members in fulfilling their duties?	Full board	Annually	Directors should review their duties and consider any measures that will facilitate full and informed compliance with what is required of them. Is there a conflict of interest policy? Is there a screening policy?

BEFORE JOINING A BOARD...

Helpful material to review includes:

- The organization's annual report
- The most recent audited financial statement
- The long-range program and financial plan
- A list of current board members, titles, and all affiliations
- A description of board members' responsibilities
- A board organization chart
- A staff organization chart
- The organization's newsletter, brochure, or other publications
- Newspaper or magazine articles about the organization
- A brief biography of the Chief Executive Officer or Executive Director

BEFORE JOINING A BOARD...

Helpful questions to ask include:

- What is the agency's financial health?
- Has the agency experienced a deficit in the past 2 years? Does it have a plan to correct this situation?
- Is the sector in which it operates poised for growth, or does it face significant challenges that cast a cloud over future prospects?
- Is there any litigation against, or regulatory investigations involving, the agency and/or its personnel?
- Have individual directors ever been sued as a result of their board service?
- Was there insurance available to defend the claim?
- What insurance is available to me as a Director?
- Is the agency in compliance with regulatory or legislative requirements?

REFERENCES

Board duties: <https://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/cl00692.html>

Statutory liabilities/Director liabilities: <https://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/cl00693.html>

Guide to Good Governance: Not for Profit and Charitable Organizations. Governance Centre of Excellence (2013)

Best Practices for Governance and Administration of Aboriginal Service Delivery Organizations. Institute on Governance (2009)

Diversity in Governance: A Toolkit for Non Profit Boards. Diverse City, The Greater Toronto Leadership Project