

TIPS FOR LAWYERS WHO WANT TO JOIN A NON-PROFIT BOARD

Exclusive web commentary

By Beth Deazeley, LL.B.

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Lawyers are frequently invited to join the boards of non-profit organizations in their communities. This can be an excellent opportunity but it is important to have a solid understanding of exactly what is involved in accepting a board position.

Directors of non-profit organizations have some important responsibilities as well as potential liabilities.

To ensure their board experience is satisfying for everyone involved and to protect themselves from liability, potential board members should ask some key questions before joining a board and educate themselves regarding the roles and responsibilities of directors.

Benefits of directorship

Directorship of a non-profit can be a highly rewarding experience, both personally and professionally. Lawyers will have the opportunity to strengthen their leadership skills, gain valuable governance expertise, expand their professional networks, and use their legal and business acumen in support of a cause in which they believe.

Law firms and other employers frequently encourage staff to take on director positions in non-profit organizations as part of good corporate citizenship as well as valuable leadership training.

Opportunities available

The voluntary sector in Canada is large and incredibly diverse. Organizations range from grassroots associations all the way to universities, hospitals, and major international agencies.

Non-profits address a range of causes including education, human and social services, hospitals and health services, culture and the arts, protection of animals and the environment, amateur sports and fitness, and faith and religion.

Finding a good fit

Taking the time to research potential board opportunities and carefully select an organization will help to ensure a fulfilling experience and a good fit between the lawyer and the non-profit.

Perhaps one of the most important factors is the purpose of the organization. Potential board members should review the organization's mission, vision, and values and ensure that they endorse them.

Directors should wholeheartedly support the non-profit and be prepared to be a public voice and advocate for its cause.

In addition to ensuring the organization is a good fit in terms of mission, potential board members should consider factors such as the organization's age and size.

Very different skill sets will be required to govern a new non-profit with few experienced staff versus a larger, long-standing organization with established policies and procedures, and experienced staff and advisers.

The stage of development of the non-profit is another important consideration. Some lawyers will have much to contribute to the board of a non-profit in a period of high growth and expansion.

Others will have key skills to help in refocusing and revitalizing, or be best suited to a more stable entity.

One of the unique features of non-profits is the large number of stakeholders. These may include clients or beneficiaries of services, members of the organization itself, its management, employees and volunteers, donors, funding agencies and foundations, business sponsors, and community partners.

When choosing a non-profit board, potential directors should consider the stakeholders with whom they will be working, as many lawyers contribute a great deal to their boards by way of their personal and professional networks.

Finally, lawyers should consider the board itself. Factors such as the number of directors and their backgrounds as well as the type of governance practised will be important.

Some boards, particularly those of larger, established organizations have a pure oversight role, whereas those of smaller organizations with fewer staff are frequently more hands-on and involved in operations.

It is important to ascertain the commitment expected of directors, both in terms of hours per month and meetings per year as well as length of term.

In addition to meetings, many non-profit boards have other expectations of directors, which may include membership on committees such as governance, fundraising or audit, as well as personal financial contributions or fundraising.

Roles, responsibilities, and risks

In addition to ensuring the organization is a good fit, it is important that lawyers joining a non-profit board understand their roles and responsibilities as directors as well as the potential risks involved.

The board of directors is responsible for the governance of the organization. This includes overseeing the organization's operations, stakeholder relations and funding, as well as providing strategic direction and financial stewardship. Directors' duties may vary with the size and complexity of the organization.

The most fundamental of directors' duties is fiduciary duty: the duty to act at all times in the best interests of the organization they serve. It has two parts: the duty of care and the duty of loyalty.

The duty of care requires directors to act with competence or skill as well as diligence. They must be prudent and make informed, independent decisions.

The precise standard varies with the jurisdiction, and in some provinces, professionals such as lawyers may be held to a higher standard. A higher standard will also generally apply to directors of charitable organizations.

The duty of loyalty requires directors act honestly and in good faith in the best interests of the organization. Directors must not profit from their position and must avoid any situation in which their duty to the organization conflicts with their own interests or their duties to others.

Directors of non-profits are potentially accountable to many different stakeholders through a variety of mechanisms, for example: to members of the organization who can replace directors or amend governing documents, to funders through reporting requirements, and to government and regulators who may institute investigations or impose penalties.

Directors can be liable to a non-profit organization for breaches of their fiduciary duties. They can be liable to third parties for torts committed in their role as directors.

They can also be liable under a large number of federal and provincial statutes which impose personal liability on directors for things such as breaches of reporting requirements, labour, tax, and environmental laws.

Non-profits have a variety of structures: unincorporated associations, trusts, or incorporated under provincial or federal legislation. Some may be registered charities pursuant to the Income Tax Act.

The type of organization will impact the duties, responsibilities, and liabilities of directors, as well as the protections available to them. When investigating a potential board opportunity, lawyers should ensure they find out how the non-profit is organized.

Director protection

Directors can minimize potential liability by performing their duties diligently and following best practices such as:

- familiarizing themselves with the incorporating statute as well as the organization's constitution and bylaws;
- reviewing the organization's financial statements, CRA filings, and insurance;
- preparing for, attending, and participating in all board meetings;
- making considered, informed, and independent decisions;
- ensuring the organization has policies in place to address matters such as investments and conflict of interest;
- holding management accountable and ensuring the board receives ongoing operational and program information;
- protecting and conserving property under their administration;
- ensuring adequate and accurate books of account, records, and minutes are maintained;
- ensuring all the corporation's reporting obligations are met with honesty and good faith, and accurately represent the corporation's financial or other position; and
- obtaining professional advice when necessary.

Directors may be protected from liability by way of indemnification: payment by the non-profit organization of a director's legal costs, expenses, settlements, and judgments arising out of legal proceedings based on acts or omissions while acting as a director. Ideally, indemnification should be set out in a contract between the director and the organization.

Board members of non-profit organizations may also be protected by directors' and officers' liability insurance, which is increasingly being purchased by non-profits in order to protect their directors, officers, and volunteers.

By taking these basic steps to prepare to join a non-profit board and minimize liability, lawyers can ensure their directorship is an enriching and rewarding experience both for themselves and for the non-profit organization.

Resources available

There are many excellent resources available to assist lawyers who are considering joining a non-profit board. The Canadian Institute of Chartered Accountants provides a series of practical guidance documents on non-profit governance.

Industry Canada developed an excellent Primer for Directors of Not-for-Profit Corporations. In addition, services such as Altruvest Charitable Services provide training as well as a matching service to link potential directors with non-profit boards.

Beth Deazeley, LL.B., is a principal, Risk Management, and Governance with the Canadian Institute of Chartered Accountants. Her responsibilities include development of guidance material for boards of directors and executives on governance and risk oversight. Materials are available at www.rmgb.ca.

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