

## When a director disagrees with a board decision

### The Question:

*What should a director do if s/he disagrees with a decision taken by the board?*

### The Answer:

Serving as a director of a non-profit organization always requires courage. Asking difficult questions, pushing for further information when necessary, or voicing a differing opinion can be challenging. Sometimes a director will disagree with a decision taken by the board, and this can be a downright lonely situation. However, to safeguard the best interests of the organization and to protect themselves, directors must not be afraid to speak up.

A decision made by the board of directors means that the board has spoken on behalf of the organization. Decisions may be made by consensus or by majority, two-thirds or another type of vote, but every director is responsible for the decision. This applies whether or not the director is present at the meeting when the decision is made. It also means that all directors could be liable if a loss occurs as a result of the decision.

If a director disagrees with a decision made by the board, it is important that s/he voices an objection at the meeting when the decision is made. S/he should request that the dissent be recorded in the minutes of the meeting, preferably with reasons. The director should then follow up to ensure that the minutes properly record the dissent. A properly recorded dissent may, depending on the circumstances, result in the director limiting his or her personal liability for adverse consequences of the board's decision.

Though it might be tempting to avoid meetings when contentious issues are on the agenda, this is not a wise course of action. Attendance at board meetings is part of the directors' duty of diligence, and can be helpful in limiting director liability in certain instances, provided the appropriate steps are taken when the director disagrees with the rest of the board.

If a director is unable to attend a meeting, s/he should obtain copies of the minutes and any materials considered at the meeting. After reviewing them carefully, any objections should be stated in writing and forwarded to the secretary or chair of the board.

There are some situations in which a dissenting director may wish to obtain independent legal advice – that is, personally retain a lawyer to provide advice to the director, independent from the organization and the board. As a general rule, if a director feels that s/he cannot properly discharge his or her obligations to the nonprofit organization for any reason or if a director considers that s/he may have personal liability, the director should seek independent legal advice.

Some examples of such situations include:

- A director is concerned about a particular issue and does not feel that these concerns have been properly addressed by the board or the chief staff person;

- A director believes that the board may be found negligent as a result of particular decision or omission;
- A director considers that several board members have an insurmountable conflict of interest regarding a particular matter which is being ignored by the board as a whole;
- A director is unable to obtain financial or other information concerning the organization from the board and staff;
- A director is concerned about his or her personal liability regarding an ongoing program and requires advice concerning the effects of his or her resignation.

In cases where there is an insurmountable disagreement between board members, or where a director disagrees with the direction the organization is going in and is a minority voice on the board, s/he may consider resigning. This may also be a consideration if the board is not functioning effectively and the director feels that s/he cannot fulfill his or her duties. Resigning from the board will not protect a director from liability for actions or omissions during their tenure, but will limit the potential for liability going forward. Independent legal advice will be very important in these circumstances.

Further information on the duties and liabilities of directors of not-for-profit organizations can be found in the CICA publication 20 Questions Directors of Not-for-Profit Organizations Should Ask about Fiduciary Duties, authored by Jane Burke-Robertson, LL.B. of Carters Professional Corporation . Much of this discussion is based on that publication.

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