

## Director Non-Performance

### The Question:

*What can we do with an underperforming director?*

### The Answer:

The failure on the part of a director to effectively fulfill his / her responsibilities as a board member is a troubling issue which most boards will face at some point. It is a sensitive topic which many directors feel uncomfortable addressing, and yet not dealing with the problem can lead to even greater challenges for the board, and may ultimately affect the well-being of the organization.

Director “non-performance” may include failure to prepare for, attend or participate in board meetings, or failure to fulfill obligations with respect to committee service or participation in strategic planning or other sessions. It may also involve behavioral dynamics such as the inability or unwillingness to voice opinions in a way that contributes positively to debate, or a failure to respect differing views. The director in question may be a long-standing contributor to the board whose participation has dropped off in recent years, or may be a new board recruit who isn’t living up to expectations.

Since the vast majority of directors of not-for-profit organizations serve as volunteers, there is often a reluctance to subject their performance to criticism. However, if the issue is not addressed, it is unlikely that improvement will occur. The problem may also spill over and begin to affect the performance of other members of the board.

### *Preventing Director Non-Performance*

Of course, the ideal would be to prevent director non-performance from occurring in the first place. While there are unfortunately no guarantees, there are some key steps that can help to set directors up for success.

*Think carefully about board size and director terms.* The size of the board contributes to its effectiveness. A board should have enough members to reflect the size, complexity and scope of the organization, meet the needs of committee work, and provide a healthy diversity of views and experience. The board should be small enough to encourage engaged, informed discussion and facilitate collective decision-making, but not so small that it becomes difficult to achieve a quorum and fulfill board obligations. Directors on boards that are too small risk burnout from overwork and may be vulnerable to “groupthink” due to a lack of diversity on the board. Directors on boards that are too large may be prone to behaviors such as “social loafing” or may be frustrated by difficulty in reaching decisions. Setting a limit on directors’ terms of office can be a way to keep board size under control and ensure rejuvenation on the board.

*Ensure that directors know what is expected of them.* One of the best ways to ensure that directors understand their obligations is by having written position descriptions. These should be provided to directors at the time they join the board and should describe how directors are expected to perform in terms of:

- attendance and participation at meetings
- preparation for meetings
- communication outside of meetings
- committee service
- contribution of skills and experience
- ethical standards and fiduciary duty (including compliance with the organization's code of conduct and conflict of interest policy)
- participation in orientation, educational and strategic planning sessions

*Conduct careful reference checks.* Taking the time to conduct careful reference checks can be very effective in preventing director non-performance by identifying board candidates who may have had performance-related issues in previous positions.

*Provide effective director orientation and ongoing training.* Directors need to understand the organization and their responsibilities before they can be fully effective. Orientation is an opportunity to give new directors an introduction to the organization and to begin developing them as informed, effective board members. Ongoing director development can help directors understand the changing issues facing the organization and can increase familiarity with strategic planning, risk management, financial management or other topics of interest. Less experienced directors can also benefit from mentoring by chairs and more experienced board members.

*Evaluate board and director performance regularly.* Regular assessments of the performance of the board and directors can help to surface numerous governance issues, such as:

- lack of clarity around roles, mandates and accountabilities
- undue influence of or reliance on a particular person or stakeholder
- difficulty removing directors
- information asymmetries
- poor staff relations
- ineffective board leadership or succession planning, or
- lack of board engagement or inability to address key issues.

### *Addressing Director Non-Performance*

Problems with director performance should be discussed with the individual director by the chair of the board. Reasons for non-performance may include lack of knowledge, lack of commitment, lack of confidence, or problems with integrity, conflicts of interest or other factors. In many cases, directors may be relieved to have the opportunity to discuss the reasons for their underperformance and to explore options for:

- a developmental plan (*e.g.*, mentorship, change of behaviour, relieving oneself of other commitments, *etc.*); or
- a face-saving solution such as serving in a less onerous role or resigning.

Many directors are receptive to constructive feedback and suggestions for improvement. In setting priorities and following up on action taken, ongoing monitoring by the board chair is important. Follow up action may include:

- a specific focus in board and director education,
- changes to board, committee and staff reporting, responsibility and accountability, or

- director rotation, retirement and recruitment.

Some directors, however, may be unwilling or unable to change their behaviour. They may be embarrassed at having promised more than they could contribute, or may fear losing a position that is important to them. In such cases, it may be preferable for the director to resign or not seek re-election.

If the director does not resign voluntarily, the governance committee may decide not to nominate that director for re-election upon the expiry of his or her term. If the director is appointed, the organization or individual responsible for the appointment should be informed of the performance-related issues, with a recommendation that the director not be re-appointed.

The board may, in practice, have limited powers to remove directors in mid-term. In some cases, directors may lose their positions if they fail to attend a prescribed number of meetings. For other forms of non-performance, the only remedy may be to seek their removal by a special resolution of the members and to hold an election to replace the director – a major and serious undertaking.

Although leaving ineffective directors on the board may appear to be easier than removing them, board members should be aware that the cost of doing so can be resentment by fellow directors and an overall decline in board effectiveness.

Further information on board evaluation for not-for-profit organizations can be found in the CICA publication *20 Questions Directors of Not-for-Profit Organizations Should Ask about Board Recruitment, Development and Assessment*, authored by Dr. Richard Leblanc, LLM and Hugh Lindsay, CA . Much of this discussion is based on that publication.

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