

CCCCC

SPECIAL EDITION

BULLETIN



Healthy *Church* Boards

INSIDE:

- > Duties of Directors
- > Effective Committees
- > Taming Conflict
- > Board Minutes
- > Understanding Financials
- ...and more!

A COMPLIMENTARY PUBLICATION OF THE CANADIAN COUNCIL OF CHRISTIAN CHARITIES

A WORD FROM OUR CEO



Serving as a church board member can be a highly rewarding experience. As a director, you have an opportunity to use your ministry gifts to shape the future direction of the church and to build the Kingdom of God.

Since our founding in 1972, board members, church treasurers, pastors, and administrators have relied on expert help and training from the Canadian Council of Christian Charities.

Every year about 96% of our supporters renew their membership because of the high-quality, practical resources they receive from us. Whether it is learning how to perform their duties, keeping up with all the changing rules and regulations, or finding out about best practices, we make their lives easier as a one-stop resource.

Our staff of accountants, lawyers, and ministry credential holders deliver numerous seminars, workshops, and articles every year to help our members to be exemplary, healthy, and effective.

Our member support team answers thousands of questions each year on topics like

- church board governance;
- receipting, accounting & finance;
- human resources, payroll & policies;
- clergy residence deduction;
- fundraising & stewardship;
- charity regulation.

We hope you enjoy this complimentary resource. It will give you a glimpse of some of the fabulous resources we provide.

We'd love to include you as part of our membership community that encompasses over 3,300 faith-based charities from coast to coast. To find out more about our great membership benefits and money-saving affinity programs, visit www.cccc.org/membership_options.

A handwritten signature in black ink that reads "John Pellowe". The signature is written in a cursive, flowing style.

Rev. John Pellowe, MBA, DMin
CEO

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Canadian Council of Christian Charities, 1-43 Howard Ave, Elmira, ON N3B 2C9
Phone: 519.669.5137 Fax: 519.669.3291 Email: mail@cccc.org Web: www.cccc.org

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QUICK PICKS FOR BOARD LEADERS



How boards can improve the success of the senior staff member

Who is responsible for the leader's success? Of course, the leader is, but should the board let the leader sink or swim as they watch from shore? Do the directors not have a partial responsibility for the leader's success?

Having selected a new senior leader for a church, it is in the best interest of the board and church for the board to do everything it can to improve the likelihood of its leader's success.

Here are some ways that the board can invest in the success of the person they've chosen:

- Prayer support
- Professional development opportunities
- Boundary expansion ideas
- Reinforcing teamship between the board and senior leader

Read the full post at cccc.org/successful_senior_leaders

Developing Effective Policies



Approving policy is an important part of being a church board member. [Go to cccc.org/free_policy_presentation](http://cccc.org/free_policy_presentation) to download a free presentation that will explain:

- why policies are important
- how to create a policy process
- which policies are essential for churches and charities

Developing Values, Mission & Vision for Christian Ministries

Every organization has a core ideology (its vision, mission, and values) that is the underpinning for everything that it does. Vision explains why the organization exists, mission defines its overarching strategy for accomplishing the vision, and values provide the rules it lives by.

A vision statement should always propel us toward the ideal. It should be aspirational, evocative, and highly emotional. A good vision statement will prevent the mission from being watered down to something "more achievable." It helps people to avoid settling for anything less than what the ministry feels called to accomplish.

Vision and mission come out of an understanding of God's purpose for your church. The starting place for discerning that purpose is to ask how people came to be associated with your ministry. Ask them how the ministry fits their own personal call to ministry and their answers will provide clues to God's intentions for the ministry.

Values should be assessed on two levels. First, there are the biblical values that should be present in every Christian ministry, and then there are the other values held by the people called to serve together in one particular ministry.



Read the full post at cccc.org/values_mission_vision



Did You Know?

That each year registered charities, including churches, must complete a file a Registered Charity Information Return (T3010) with Canada Revenue Agency?

The form must be filed within six months of the fiscal year-end of the charity. Failure to file this form may cause the charity to be de-registered and subject to a \$500 penalty as a re-registration fee—and re-registration is not guaranteed!

CCCC has a fillable T3010 to help you complete the form properly and on-time at ccc.org/t3010.
(Free for CCCC members!)

Which governance style is for us?

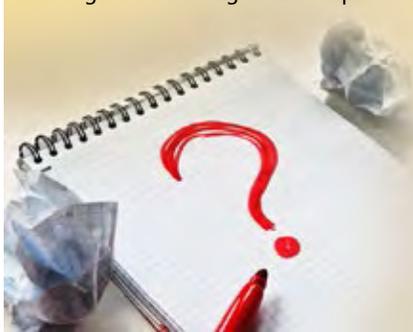
People often ask whether they should have a policy board, management board, or a working board. But rather than listing governance styles as mutually exclusive options, it is better to think of a continuum based on the degree of delegation by the board to staff. Another way to ask the question is “Where do we draw the line between board and staff responsibilities?”

Circumstances will often dictate how much is delegated to staff. If there are no staff members (whether paid or volunteer), the board members will have to do the work themselves. In this case, the board isn’t really doing the work because the board members take off their governance hats and put on their volunteer hats.

The governance model should match the circumstances. If there is a capable staff that is trusted by the board, then the board can afford to delegate all management responsibilities and all the work to the staff.

One level of delegation is not necessarily better than another. The key question to ask is, “What are the organization’s circumstances and how much do they allow the board to delegate?”

Read the full blog post at ccc.org/governance_styles



Serving as a Board Member



Directors want to understand their essential responsibilities, danger spots, and best practices. They want to know how to have vigorous discussion and debate while keeping board relationships healthy.

Serving as a Board Member will help directors shorten the learning curve and improve their governance skills. It is a great board orientation tool for new board members and an excellent refresher for directors with more experience.

- > Members \$17
- > Non-members \$19
- > Training also available in e-book and DVD format. (Quantity discounts available)

Available at www.cccc.org/store



Welcome to Charity Leadership Webcast

Our free charity leadership webcast is a fantastic way to provide new board members with the basics they need to understand the legislative boundary areas of running a church.

Topics covered in this webcast include:

- Legal and administrative aspects of running a Canadian registered charity
- Private vs public benefit
- Permitted business and political activities
- Types of gifts
- Year-end procedures

Download the presentation and view the webcast at ccc.org/free_webcast

THE DUTIES, RESPONSIBILITIES, AND LIABILITIES OF A DIRECTOR



JOHN PELLOWE, CEO

Board directors have a number of basic duties and responsibilities that have been developed over the centuries through case law. They are not all that onerous. If you apply common sense, you should have no trouble fulfilling these duties. Similarly, you can avoid most liabilities when you act prudently, and there are ways to cover off the risk that remains.

Duties and Responsibilities

There are four core duties of a board director: honesty, loyalty, care, and diligence.

HONESTY

As a director, you are obligated to act in an honest manner and in good faith. This means that if you have important information that relates to the charity, you must share it with the board. For example, if a director is aware of a suspected wrongdoing or a policy that is not being followed, the director has a duty to share what is known to the board.

LOYALTY

You have a duty to be loyal to the ministry when you are serving on the board. This means that you need to avoid any conflicts of interest. For instance, if you are a building contractor and a church board member and your church is going to build an addition in the near future, you need to choose between providing your contracting services and serving as a director. It would be a conflict of interest for you to engage in both activities. It also means that the interests of the ministry come before your own interests. The question is "What's good for the ministry?" rather than "What's good for me?"

CARE

You also have a duty of care as a director. You are to act prudently and know what the charity is doing. One aspect of your duty to care is to make sure that you are prepared

for board meetings. Make sure that you review the board package well ahead of time and pray about any issues of concern.

Another way to demonstrate the duty of care is to take steps to familiarize yourself with the ministry and its programs and policies. Ask questions: *How secure is that revenue stream? Do we have a policy and a plan to protect the vulnerable people we serve? What complaints has the ministry received in the last quarter and how have we dealt with them? What legislation imposes requirements on the ministry?* Show that you are actively engaged in board work and not just showing up as a disinterested observer.

DILIGENCE

You must be diligent as a director. Make sure that you ask any questions that are on your mind. As the saying goes, the only bad question is the one you had but didn't ask. Don't assume that another director with more expertise will look after the matter.

Years ago I was serving on a church board. As a commercial banker with an MBA, I typically had a few questions to ask about the financial statements at every



monthly meeting. One month I didn't have any questions, so I asked none. When the treasurer asked if there were any questions, all the directors looked at me! Someone said, "We leave financial questions to John because he knows what to look for." I was horrified. First, that put all the pressure on me to ask the questions. But more importantly, it meant that the directors were letting me do their thinking for them. Directors have a responsibility to think for themselves!

Liability

Directors need to be aware of potential liabilities, which are outlined below. The good news is that directors are not held liable for simple errors in judgment. Directors don't

always have the luxury of waiting until every bit of information has been found before making a decision. If decisions do not turn out for the best, they cannot be held liable as long as they are acting within the standard of care.

BREACH OF FIDUCIARY DUTY

Your fiduciary duties as a director are all about acting in a way that inspires trust and confidence in your faithful service. If you act in a way that does not do that, you are breaking, or breaching, your duty to be a good fiduciary. You can be held personally liable for breaching your fiduciary duty, and there are three ways you can breach this duty at law:

- **Negligence.** Negligence occurs when you cause harm to somebody else through either your action or your inaction. An example of negligence would be if the board decided to save money in the winter by not shovelling the front sidewalk of the church. Someone could get injured by slipping on the sidewalk and file a lawsuit against the church. The board would be considered negligent in this case, because the likelihood of injury could have been reasonably foreseen and prevented.
- **Acting Outside Your Authority.** You would be in a breach of fiduciary duty if you were to act outside of your authority as a director. For example, say your ministry wanted to buy new computers. You happen to be at a store where they have a sale on computers. You go ahead and sign a contract to buy a number of computers, thinking that you could just go to the board for approval. In this situation, you would be acting outside of your authority because you are not authorized to enter into contracts on behalf of the ministry. If the ministry didn't agree with your purchase, or if they wanted a different brand, then you would be held personally and financially responsible for those computers, and you would be in breach of your fiduciary duty.
- **Failure to Invest Resources Prudently.** Directors cannot invest the ministry's money the same way they would invest personal funds because their risk profiles

and investment goals are different from the charity's. Investments must be made prudently according to the circumstances of the charity. A failure to invest prudently could result in directors being held liable for losses.

A number of years ago, a church board member was held personally liable for breaching his fiduciary duty. The church had raised \$400,000 for a building addition, but this was only half of the money that the church needed. At one board meeting, the church treasurer suggested that the board invest in interest rate swaps for six months so that the church could double its money. One of the board members was a stockbroker and knew that interest rate swaps were very risky in the absence of an underlying business transaction. But because of the board's enthusiasm, the stockbroker did not share his knowledge and did not vote against the motion.

The motion passed and the church ended up losing the \$400,000. A major donor sued the church board for misinvesting the money. In the end, the judge found that all of the board members were unaware of the risks except for the stockbroker, who should have known better. The stockbroker was held personally liable for the \$400,000 because there was no record in the minutes of him speaking or voting against the decision.

One lesson to be learned from this example is that if you vote against a motion, you should have your name listed in the minutes as having voted "no." This will be your defence if the matter ever comes up in court. The other lesson is to speak up and share what you are thinking!

BREACH OF TRUST

In addition to breaches in fiduciary duty, you could be held liable as a director for a breach of trust. This can happen in one of two ways. The first would be if the board misused charitable funds or failed to apply charitable property for charitable purposes. This is especially important in the case of *special purpose funds*, such as a building fund or a mission fund. Using special purpose funds, also known as *externally-restricted funds*, for

anything other than their designated purpose is a breach of trust for which you are held liable. Another example of a breach of trust is to provide remuneration for directors, either directly or indirectly.

OTHER LIABILITIES

A 2001 study by the law firm of Gowling Lafleur Henderson LLP, entitled *A Study of the Liabilities Facing Directors and Officers of NonProfit Corporations in Canada*, found that there are about two hundred statutes across the country that make directors liable for the action or inaction of their organizations. Considering that there are ten provincial, three territorial, and one federal jurisdiction, there are a fewer number of statutes that apply to you. Most of these statutes have to do with health and safety, payroll deductions for taxes, vacation pay, GST/HST, and the environment. You need management to verify to the board that they are in compliance with all legislation and that payments to the Canada Revenue Agency (CRA) are not in dispute.

PROTECTING YOURSELF FROM LIABILITY

Fortunately, while these liabilities do exist, you can easily protect yourself:

- Act in accordance with the standard of care, fulfill your fiduciary duties, and stay within your authority as a director.
- Make sure that there is a good risk management program in place for the board, particularly if the ministry is dealing with vulnerable individuals, such as children.
- Have *Directors and Officers Liability Insurance* for your board, with an indemnification agreement with the ministry.

With these measures in place, you would pretty much have to do something criminal to be held personally liable. Acting with honesty, care, loyalty, and diligence is not difficult, and the standard is what a reasonably prudent person would do. If you actively participate in the work of the board, understand what the board is voting on, and make informed contributions to board discussions, you should be able to minimize your risks.

CREATING EFFECTIVE BOARD COMMITTEES



HEATHER CARD, COO

Committees can help a board do its work effectively and move the ministry forward. This article will help board members and senior leaders understand the authority of board committees, the factors that contribute to a successful committee, and the functions of typical committees.

Why Use Board Committees?

Many of us have had the painful experience of sitting around the board table languishing over an issue that dragged on and on. A committee can relieve the board of these situations by investigating issues and preparing recommendations. When issues are too complex or numerous to be handled effectively by the entire board, it's a sign that work should be delegated to a board committee.

Board committees can be established either by the charity's general operating bylaw, board policy, or specific board resolution. It is also important to note that board committees have no decision-making authority on their own, unless it has been delegated to them by the board.

Many boards use their board committee structure as a way to involve others who are not part of the elected board. This is an excellent way to introduce your ministry to those who are new to board work and to evaluate their potential for board leadership.

Types of Board Committees

There are two types of board committees: standing and ad hoc. Standing committees are those that are formed to do assigned work on an ongoing basis. For example, the nominating committee has ongoing responsibility to vet and recommend the names of qualified board candidates, so it continues to exist year after year.

On the other hand, an ad hoc committee is formed for the specific purpose of addressing a particular need. When the work is complete, the committee is dissolved. An ad hoc committee could be used in a variety of circumstances: to review



ministry bylaws; to recruit a new CEO or pastor; to direct, plan, or coordinate a major event; or to conduct specific research.

Factors that Contribute to Successful Board Committees

There are a number of factors that contribute to successful board committees, which are outlined below.

CLEAR TERMS OF REFERENCE

One of the most important ways a board can improve committee productivity is by

developing clear expectations, boundaries, and mandates for all board committees, which can be outlined in terms of reference or board policy documents. The terms of reference for a committee should include

- the committee name, membership, and expected duration
- the key responsibilities of the committee
- the outcomes requested from the committee, including whether the board wishes certain options to be excluded from the analysis

DID YOU
Know?



That CCCC has three blogs that will help you to explore Christian leadership practices, understand current issues involving law and religion, and stay up-to-date on the latest developments in charity law and policy? Access our blogs at cccc.org/news_blogs

Common Board Committees

In the table below, we've outlined some common board committees and a brief outline of the typical functions they perform.

Committee Name	Typical Function
Executive	Acts on behalf of the board between meetings when authorized by the larger board. Usually used for specific purposes by larger ministries whose boards meet less frequently. A potential problem with executive committees is that they can become a board within a board that makes all the "real" decisions. The rest of the board can become a rubber stamp, which is not a healthy situation. Therefore, executive committees should be used sparingly.
Audit	Liaises with the external auditor. Reviews the terms of engagement, audit report, and management letter. Recommends approval of audited financial statements and the appointment of the auditor to the board. (The board treasurer typically leads this committee.)
Nominating	Recruits, receives, and evaluates nominations for the board of directors.
Governance	Researches governance issues referred by the board, such as bylaw review or evaluation of governance structure.
CEO/Executive Director/Senior Pastor Review	Gathers feedback from the board on CEO/Executive Director/Senior Pastor performance. Meets personally with the chief staff officer to review the feedback. (The board chair typically leads this committee.)
Finance**	Prepares annual budget, monitors expenses, and reports to the board. May complete other financial analyses and reviews as required by the board.
Missions*	Develops and recommends missions policies and programs, reviews missions proposals, and engages in fundraising.
Building*	Liaises with stakeholders, architects, staff, and board. Prepares recommendations, creates plans, and develops budgets for building projects.
Fundraising	Provides leadership for planning and coordinating major fundraising events or campaigns.

**These committees are more common in smaller ministries and churches or where boards provide more direct oversight.

*These committees are more common in a church environment.

- a schedule of key decision points or reporting dates
- an outline of resources that will be made available, including budget and staff time

A DEFINED RELATIONSHIP BETWEEN BOARD AND STAFF

In addition to clear terms of reference, committees should understand how they will operate in relation to staff. If the board has adopted a policy governance approach and delegates most of the work to paid staff, board committee work may be limited in scope or not even required. For example, if a

ministry has a development department, it will likely not need a fundraising committee of the board. On the other hand, a church that does not have paid stewardship staff may have a board committee that actively participates in fundraising for a building program or other initiatives. To minimize frustration and confusion, the board needs to take some time before establishing committee structure to understand how it has divided various roles between staff and board. A potential danger of board committees is that they become a separate decision making body that expects the board to rubber stamp their decisions. This

takes away the authority of the board. Committees should be limited to providing analysis and recommendations, unless specific authority has been delegated to them by the board.

BOARD REPRESENTATION AND LEADERSHIP ON COMMITTEE

Sometimes board committees include members who are not part of the board because these individuals have a particular skill set or expertise. In these cases, it is common for a board member to chair the committee. By attending board meetings, the committee chair will be able to translate board direction or relevant discussion back to the committee. The board member will also be able to ensure that minutes and reports are prepared for inclusion on the board agenda. They will also be able to report directly to the board and answer and questions they have.

CONSISTENT COMMITTEE GUIDELINES & PROCEDURES

Ministries may want to establish a consistent set of guidelines or procedures for their board committees outlining

- the assignment of the committee chairperson
- the frequency of committee meetings
- the eligibility and terms for committee membership
- the requirements for confidentiality, minute taking, and reporting
- the availability of staff resources and budget

ACCURATE AND TIMELY COMMITTEE REPORTS AND RECORDS

Committee reports should provide adequate background information and research so that the board can understand all the relevant issues. Clearly written recommendations, provided in advance, will assist the board in making good decisions. Copies of minutes, research, and reports should be provided to staff so that appropriate continuity and records may be kept.

TAMING CONFLICT AT THE BOARD TABLE



JOHN PELLOWE, CEO

For many Christian boards, conflict within the board is a hypothetical scenario. The directors get along well together, and they move forward in harmony. But for some boards, conflict is all too common, and it likely causes more harm than they realize. It paralyzes the board and demoralizes staff and supporters. And since a conflict-ridden board is not a good witness to Christ or honouring to God, it may prevent the ministry from experiencing the blessing that God would otherwise like to give. Conflict simply must be tamed. This article addresses both its prevention and cure.

Good or Bad?

A general perception of conflict is that it is bad and sinful, but that is not always true.

1. Bad conflict occurs when someone says, "I want it my way!" and won't consider any other position.
2. Good conflict is when someone is against a proposal because they see something the others haven't and says, "I think we've missed a crucial element of the issue." When this is said in a helpful, positive way, this person adds to the group's collective wisdom.
3. Sometimes conflict isn't good or bad; it just is. A director might say, "We're all unique people, so we should expect different perspectives. Let's work through them together."

Whichever type of conflict it is, conflict is a call to put our faith into action by using spiritual discernment to reconcile relationships, find a way forward, and get our missions accomplished. Types 2 and 3 are fairly easy to work through, but the first can be very difficult.

Prevention

The board's goal should not be to eliminate all conflict, but to eliminate unnecessary or unhelpful conflict and agree in advance on how conflict will be handled.

RELATIONSHIPS

The quality of our relationships can make conflict more or less likely. Lack of



understanding or trust between people can quickly escalate a "regular" conflict into a bad conflict. Building relationships is thus a crucial step in reducing conflict.

- National boards often have directors from across Canada who only know each other through their time at board meetings. Without any other time together, it is hard to know someone well or to develop mutual trust. When there is no relationship, directors don't understand where the others are coming from and are more likely to attribute bad motivations to each other.
- Church boards may suffer the opposite problem. Directors may know each other too well and carry baggage left over

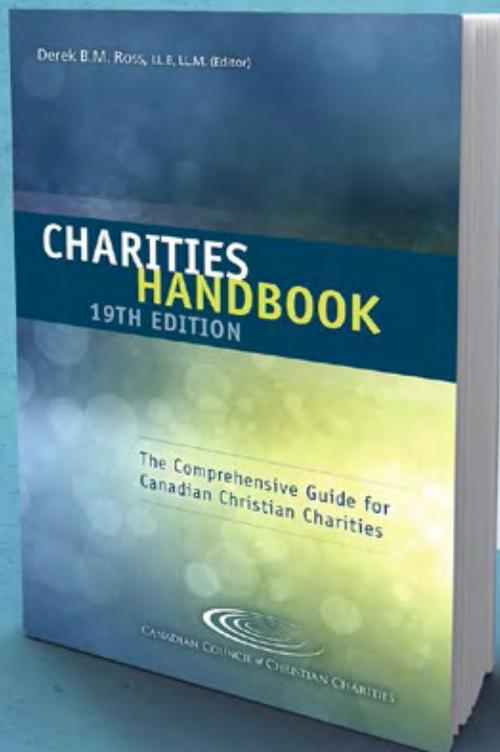
from old interactions. They may interpret the other person's actions through a lens fogged up by previous history and not be able to see clearly what that person is doing today.

Either way, the question is, "When do directors have a chance to develop relationships and mutual understanding?" The board should have an intentional program to help directors really get to know each other, not only as fellow directors but as fellow human beings.

Here are some ways to enhance board relationships:

- Provide directors with a bio and photo of the other directors (possibly on a private

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—Dean Cooper, Pastor of Administration, Peace Portal Alliance Church

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CANADIAN COUNCIL of CHRISTIAN CHARITIES
ADVANCING MINISTRY TOGETHER

board website), and if they rarely meet, use name cards at the meetings.

- Have directors take turns giving the devotional and sharing their reflections. You really get to know a person through the devotionals they choose to share.
- Barry Slauenwhite, Chair of CCCC and President of Compassion Canada, has both boards read a book each year for group discussion. Each director reviews a chapter with the board and then shares about how it intersects with their own life experiences. Self-disclosure raises understanding and trust.
- Have directors research and present on some aspect of governance or trends in your ministry sector. Encourage them to add their own personal thoughts so their personality and history are shared.

- Hold social events outside of the board meetings to increase the “get to know you” time in a different format. I host the CCCC board once a year for a home-cooked meal at my house. It is a very relaxed and comfortable environment that encourages conversation and mixing far more than having a meal in a restaurant.
- The board could also make field visits to witness the ministry at work. Especially if travel is involved, people will have a lot of downtime together, and they will also experience the ministry in ways that will trigger conversations that might not otherwise occur in the board room.
- Finally, a mutual covenant might be developed for directors to guide their relationships. A covenant invokes

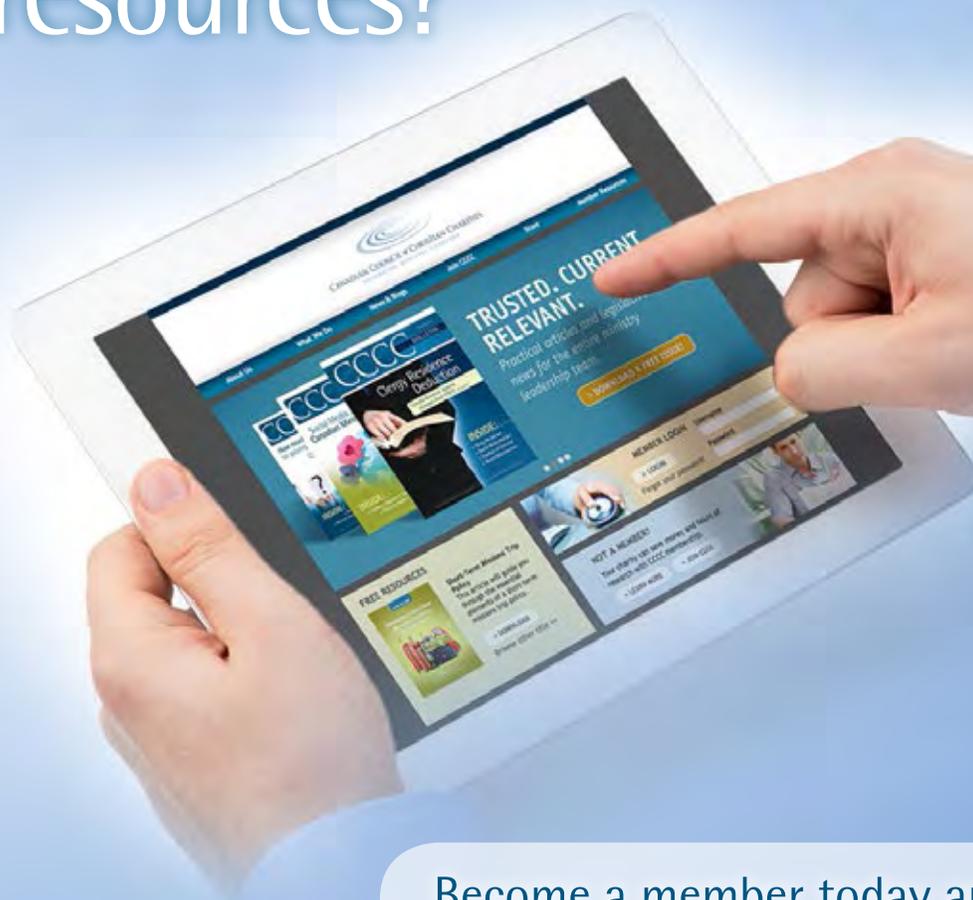
God’s presence in interpersonal relationships, and when difficulties arise, it can be called upon to bring people back together.

COMMON BONDS

Conflict will be reduced when directors adopt a shared sense of their identity in terms of the ministry they govern. Share ministry stories that cover “who we are” and “what we value.” Talk about the legends and lore of your ministry’s history: your founding, defining moments, and aspirations. Share the ministry’s culture and ethos. Support building common bonds by having many conversations about your ministry’s mission, values, priorities, and goals.

—continued on page 13

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—Darcy Drieger, Duchess Mennonite Church



TAMING CONFLICT AT THE BOARD TABLE

—continued from page 11

ESTABLISH PROCESS

The best time to decide how to handle conflict is not when a crisis has broken out and the conflict is escalating, but before. When conflict erupts, the board should be able to reach into its policy manual or into its past discussions and say, "This is how we have agreed to handle situations like this."

As directors of a Christian ministry, board members should pay particular attention to the Bible passages that mention how we should treat one another:

- James 1:19 (NASB): "... everyone must be quick to hear, slow to speak and slow to anger"
- Phil 2:4 (NASB): "... do not merely look out for your own personal interests, but also for the interests of others."

Whether it is a procedure, a list of shared values, or a set of principles, an advance agreement on how to work through conflict reduces the sense of crisis when it happens. People don't throw their hands up in the air and wonder what to do. Process promotes calmness!

Once directors have agreed on how conflict will be handled, there is an important next step. Athletes train for competition and orchestras rehearse music. Boards should practice their conflict resolution skills.

Miriam Carver has written about *board rehearsals*. Rehearsals are great because they are not real situations—there are no deadlines—and they aren't about any person at the table. Rehearsals are low-stress scenarios with nothing real at stake, allowing the board to discuss how they would handle certain situations without any immediate pressure. Board rehearsals enable the directors to practice the skills that will be needed if the real thing happens.

Cure

When conflict does erupt, the board needs to do three things: 1) tone down the conflict

(especially the emotions); 2) define the root issues; and 3) test alternatives.

TONING IT DOWN

If the argument is heated and emotions are running high, the best solution would be to take a break, separate people, and allow everyone to recover their composure. Send everyone away from the room to find their own quiet spot and take 20 minutes for personal prayer and reflection.

The alternative would be to stop the arguing so the group can immediately pray together as a group, but in this case all you are likely to get are platitudes and pleasantries. Perhaps some people will offer their own private prayer during that time, saying, "God, please persuade these obstinate people that I really have spoken for you!"

The goal is to give people a chance to soften their hearts and wills in response to God's promptings. If they spend 5 minutes talking to God, they should spend 15 minutes listening to him. Let God's voice penetrate all posturing, biases, preferences, pride, and self-righteousness. People will be changed when they return to the meeting, and you'll likely hear a number of apologies being made.

Here are some other ways to tone the conflict down:

- Remind directors of any pre-approved processes for conflict resolution (see above) or develop a process that all directors can agree with. Assure them they will be heard.
- Move from the specifics of the conflict to guiding principles; from personal preferences and biases to the ministry's mission; from personal emotions to corporate values. Look for what you can agree upon. When we come to an agreement on the big picture, it will be a lot easier to find agreement on specific issues and details.

- Agree to do more research outside of the board, if necessary, consulting more broadly to bring other perspectives that may help validate one position or another.
- If possible, make a tentative (rather than a final) decision with an agreed-upon timeframe for assessing the quality of the decision.
- If the decision is of a nature that allows for this, suggest that the ministry run a pilot to test out the assumptions.
- Ask what people on either side of the conflict are trying to achieve. Perhaps the real disagreement is about the goals.
- Check how people are interpreting the events or facts. The discussion may have jumped ahead to action items when it should be about defining the situation.
- Shift the discussion from the past (which is usually focused on justification, blame, and rationalizing) to the future (which becomes a more positive "how do we get there" conversation).

Everybody at the table has a role to play in toning down the conflict:

THE CHAIR

- Sets the table for how conflict will be dealt with and what behaviour will be tolerated.
- Isolates the points of divergence, develops a process for moving ahead, and assures directors that all voices will be heard.
- Influences the emotional climate by staying calm and even-keeled while making sure that there is proper decorum in the boardroom.

THE SENIOR STAFF LEADER

- Adds a staff perspective based on expertise in the ministry's work.
- Offers an observer's objective assessment of the conflict.

INDIVIDUAL DIRECTORS CAN HELP BY

- Holding their tongues
- Checking their emotions
- Believing the best about the other directors
- Exploring options
- Withholding judgment until a decision is needed

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TAMING CONFLICT AT THE BOARD TABLE

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ROOT ISSUES

A good way to think about conflict is that it points the board to issues that are truly worthy of board debate. What seems to be the issue may simply be the current manifestation of a deeper issue. Even if the surface issue is dealt with, if the deeper issue remains unaddressed, conflict will pop up again the next time something stirs up the real issue. So, look for points of divergent opinions: values, goals, priorities, methodology, and theology. Those are the issues that should be discussed. Resolve those, and the solution for most issues will be very clear.

For example, arguing over whether scarce funds should be allocated to this missionary or that missionary should lead to a significant discussion about how focused the mission of the church should be: Which countries? What kind of mission work? An on-going commitment or a one-time gift? What are the criteria for deciding who should be supported? The conflict points to deeper issues that need to be settled.

Another way to get to the root issue is to say, "Please help me understand why you believe this is a good idea." Asked in the right tone of voice, this invites an explanation. Tell the person that you know he or she has the best interest of the ministry at heart and you sincerely want to understand their position.

After the root issues have been uncovered and discussed, the board should define the parameters of a good decision so it can move to the next stage of conflict resolution: testing alternatives.

TEST ALTERNATIVES

Conflict usually revolves around mutually-exclusive options: A or B. But maybe with a little effort, the board might discover option C or an AB option. When someone makes a proposal, a couple of questions will help uncover more options:

- "Have you considered any other ideas?" If they haven't, the person will likely feel some

obligation to be reasonable and at least consider other ideas. If they have considered other ideas, then they should have some rationale as to why they discarded them. Their answer will suggest some of the deeper level criteria they are using to select a good option, and those could shape the discussion. Perhaps people with opposing ideas will discover they share the same goals, and just differ on methodology. At least they know they are working together for the same ultimate solution.

- "If you had to suggest the second best way to do it, what would that be?" This is a great question to move people off of a fixation on one particular solution. If they can come up with an alternative, they should be more open to a reasonable conversation about choices.

An excellent book, *Practicing Discernment Together: Finding God's Way Forward in Decision Making*, discusses the practical aspects of group discernment. The authors offer some great suggestions for working together as a team to discern God's leadership:

- **Listen respectfully to other directors.** They have as much right to their opinions as you do to yours.
- **Everyone should share from their own personhood.** God has given each director experience, knowledge, and personality. Each one is at the table because God placed the person there. Therefore, everyone should offer what they can from the way God made them to be.
- **God speaks in many ways.** The authors discuss some of the obvious spiritual ways, such as scripture and the counsel of the faith community. But others are not as blatantly spiritual, and so we downplay them. Our reasoning skills and emotions are examples. If God made you who you are, then your gut feelings are very important. Perhaps your stomach

gets tight or you feel sick every time you think of a course of action the board is discussing. The Holy Spirit could be nudging you to speak up. This feeling is just as valid as a presentation filled with facts and figures.

- **We need to listen spiritually and be honest about the deep feelings we have on the issues being addressed.** It is helpful to have times of silence and be open to hearing God saying something completely different than what we would have expected.

Conclusion

Christians should not be put off by conflict, but should see it for what it is. Bad conflict needs to be resolved so that fellow believers are reconciled and demonstrate the power of Christ's death and resurrection to redeem all people. Good conflict and conflict that "just is" should be seen as one of the ways the Spirit speaks to us. Something is being said that we need to hear, work through, and then discern God's preferred way forward.

Resources

The Joy of Conflict Resolution. 978-0-86571-515-8 This is a Canadian book that is a very easy and entertaining read. Its focus is the personal dynamics that underlie conflict and how to move through conflict to resolution.

The Conflict Resolution Toolbox. 978-0-470-83517-3 This book provides 8 models for resolving conflict, recognizing that no one model suits every situation.

Serving as a Board Member. 978-1-895199-33-8. Available at the CCCC bookstore and Amazon.ca. This is my book from which portions of this article were drawn. It deals with the attitudes and practices that make a person a good director.

Practicing Discernment Together. 978-1594980091. A short, but very good and very practical "how to" guide for group discernment.

The Board Member's Playbook. 978-0787968403. Full of board rehearsal ideas with the (Carver) solutions.

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UNDERSTANDING AND READING FINANCIAL STATEMENTS



WAYNE KROEKER, MANAGER OF MEMBER SUPPORT

Whether you are serving on the board, the finance committee, or the audit committee of a church or charity, you should not leave all financial matters to those with accounting or financial backgrounds. It's important for everyone at the table to understand financial statements and contribute their own analysis. The following article provides some basic information on reading and understanding key financial documents. This will assist you in assessing your ministry's financial health.

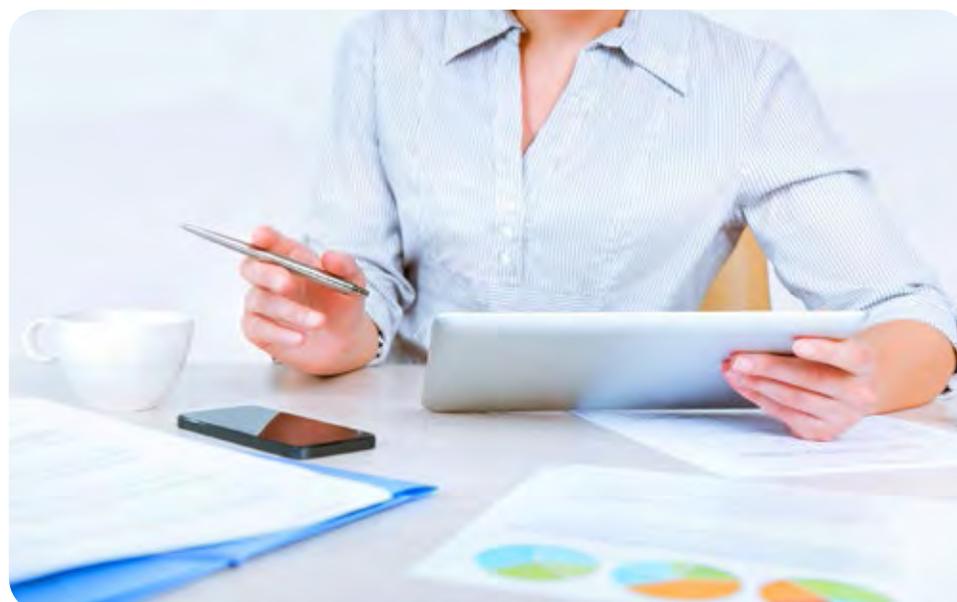
There are five main components of a charity's Financial Statements that collectively provide a comprehensive picture of the organization's financial health:

1. The Statement of Financial Position (the Balance Sheet)
2. The Statement of Operations and Changes in Fund Balances (the Income Statement)
3. The Statement of Cash Flows
4. Notes to the Financial Statements
5. The Auditor's Report

Statement of Financial Position (BALANCE SHEET)

A Statement of Financial Position, also known as a Balance Sheet, is a snapshot of what the charity owns and owes at a fixed point in time. It includes details about the charity's assets, liabilities, and fund balances.

- **Assets** are the available resources that the charity owns, such as physical property (e.g., cash, investments, furniture, equipment, land, buildings) and intangible property (e.g., trademarks and other intellectual property). The assets are listed in liquidity order for ease of converting them into cash.
- **Liabilities** are the amounts that the charity owes (claims against the



resources). They can include loans from the bank, money owed for rent, supplies, equipment, payroll owed to employees, source deductions, and tax owed to the government.

- **Fund Balances** are the amounts left over if the charity sold all its assets and paid off all its debts. In other words, Total Assets less Total Liabilities equals Fund Balances. In a for-profit company, this money would belong to the shareholders or owners. In a not-for-profit (charity), it can only be spent on activities that further the charity's purpose and does not belong to the members.

A healthy Statement of Financial Position would have positive fund balances and enough cash or near cash to pay for its current liabilities. The reader should be able to distinguish external and internal restricted funds from non-restricted funds. They will also gain a better understanding of the specific funds by reading the Notes to the Financial Statements.

Since the Statement of Financial Position is a static report, it only shows where the charity is, not how it got there. **Figure 1** is an example of a typical Statement of Financial Position, breaking down the amounts by Fund, with a comparison of the prior year. In this example, for the current year, ABC

FIGURE 1

ABC Ministry
Statement of Financial Position
As at December 31, 20[]

	General Fund	Capital Fund	Missions Fund	Total [Current Year]	Total [Prior Year]
Current Assets					
Cash	\$ 21,500	\$ 4,000	\$ 3,000	\$ 28,500	\$ 25,000
HST receivable	500	-	-	500	1,000
Long Term Assets					
Land	-	50,000	-	50,000	50,000
Building	-	900,000	-	900,000	889,000
Total Assets	22,000	954,000	3,000	979,000	965,000
Current Liabilities					
Accounts payable	2,000	-	-	2,000	1,000
Deferred revenue	2,000	-	-	6,000	2,500
Total Liabilities	8,000	-	-	8,000	3,500
Fund Balances	14,000	954,000	3,000	971,000	961,500
Total Liabilities & Fund Balances	\$ 22,000	\$ 954,000	\$ 3,000	\$ 979,000	\$ 965,000

Ministry has total assets of \$979,000 and total liabilities of \$8,000 resulting in Fund balances totaling \$971,000. ABC Ministry has \$20,500 (\$28,500 - 8,000) available cash to be able to pay for its current liabilities of \$8,000. This is a positive indication of the ministry's financial health.

Statement of Operations and Changes in Fund Balances (INCOME STATEMENT)

The Statement of Operations and Changes in Fund Balances, also known as the Income Statement, shows how the charity got to where it is. It reveals the different sources of income or revenues (i.e., donations, sales, fees, interest income) and where the charitable funds have been applied or expended. The end result is either an Excess or Deficit of funds. This statement should also show that the Restricted Funds (i.e., Capital and Missions) are properly recorded and identified.

The beginning Fund Balances are then added to the Excess or Deficit for the year,

resulting in the end of year Fund Balances. This amount is then carried forward to the Statement of Financial Position. The end of year Fund Balances should always be equal to the Fund Balances listed on the Statement of Financial Position.

Figure 2 is an example of a Statement of Operations and Changes in Fund Balances for a ministry with several Restricted Funds. In this example, the end of year Fund balances are positive and greater than the beginning of year Fund balances, which is in and of itself an indicator of health. When you compare the Revenues and Expenses with the prior year, you can also see that the end results are more positive. Or stated another way, the Excess of Revenue of \$9,500 for the current year is greater than the Excess of Revenue of \$8,500 the prior year.

Statement of Cash Flows

The primary purpose of the Statement of Cash Flows is to provide information about the cash receipts and disbursements of an organization over the reporting period. In other words,

this report shows the sources (inflows) and the uses (outflows) of cash. It is a reconciling of information from the other financial statements and a barometer to monitor whether or not a charity has enough cash on hand to be able to pay its current expenses. The beginning of year and end of year Cash are also reconciled on this statement.

There are three parts to the Statement of Cash Flows:

- **Operating Activities** identifies the actual cash used in "operating activities" by deducting the amortization from the Net Income and reconciling Balance Sheet accounts from the previous year. For example, increases or decreases in Accounts Receivable, Accounts Payable.
- **Investing Activities** identifies cash used for purchasing property or equipment (capital assets), cash from the sale or purchase of investments, and cash received from the sale of gifts (e.g., publicly listed securities).

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UNDERSTANDING AND READING FINANCIAL STATEMENTS

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FIGURE 2

ABC Ministry Statement of Operations and Changes in Fund Balances For the year ended December 31, 20[]

	General Fund	Capital Fund	Missions Fund	Total [Current Year]	Total [Prior Year]
Revenues					
Tax received gifts	\$ 205,000	\$ 1,000	\$ 13,000	\$ 219,000	\$ 215,000
Other gifts	4,000	-	500	4,500	5,000
Interest	500	-	-	500	400
Rental	-	3,000	-	3,000	4,700
Other	500	-	-	500	900
Total Revenues	210,000	4,000	13,500	227,500	226,000
Expenses					
Salaries & benefits	185,000	-	-	185,000	183,000
Building (occupancy) costs	12,000	-	-	12,000	11,500
Travel	2,500	-	10,000	12,500	12,000
Office supplies	3,000	-	3,000	6,000	6,000
Sunday school supplies	2,000	-	-	2,000	2,500
Other	500	-	-	500	2,500
Total Expenses	205,000	-	13,000	218,000	217,500
Surplus (deficiency) of revenue over expenses	5,000	4,000	500	9,500	8,500
Fund Balances, beginning of year	9,000	950,000	2,500	961,500	953,000
Fund Balances, end of year	\$ 14,000	\$ 954,000	\$ 3,000	\$ 971,000	\$ 961,500

- **Financing Activities** identifies where money was borrowed or repaid from a loan, mortgage, or line of credit.

Notes to Financial Statements

The notes are critical in helping the reader understand the financial statements. They should include the nature of the organization, such as its legal structure (i.e., incorporation), related organizations, purpose, income tax status, types of activities, and significant accounting policies. Some examples would be notes on designated

funds, property and equipment, investments, lease commitments, pension costs and commitments, contingent liabilities, and related party transactions.

Auditor's Report

The Auditor's Report usually explains that the financial statements are the responsibility of the management of the charity. The auditor performs the audit to obtain reasonable assurance that the statements are free of material misstatements. The auditor is responsible for providing the readers with an

opinion on whether the statements present fairly the financial position of the charity in accordance with Canadian accounting standards for not-for-profit organizations.

In conclusion, the Financial Statements are prepared so that the leadership or management of your organization can make informed, intelligent decisions that will influence the success or failure of the ministry. They also allow donors, members, and other stakeholders to assess the financial health of the charity and to hold the leadership and management accountable.

MUST-HAVE RESOURCES FROM CCCC

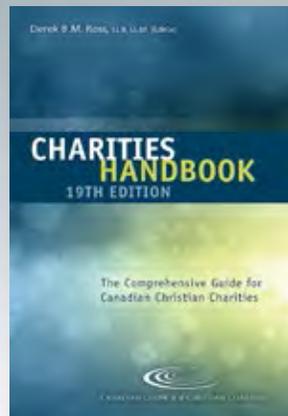
FOR ADMINISTRATORS, TREASURERS, FUNDRAISERS, AND BOARDS



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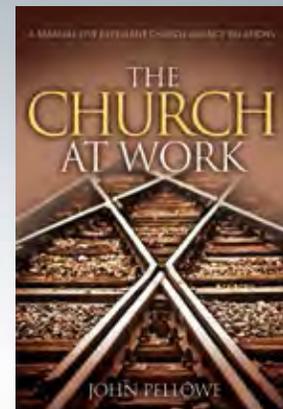


Charities Handbook

Charities operate in an environment that is increasingly complex. The Charities Handbook provides a comprehensive reference tool to help boards and staff navigate through legal and accounting issues.

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The Church at Work

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	Hard copy	E-book
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THE UNIQUE CHALLENGES OF CHURCH BOARDS



JOHN PELLOWE, CEO

Through my experience teaching, writing, and blogging about ministry boards, I've heard many stories about the problems that boards experience. The most striking thing I've learned is that the very worst problems seem to occur in churches. I know there are some very good church boards, but I mostly hear about the dysfunctional ones. This article will explore the unique challenges of church boards and provide some practical solutions for overcoming common problems.

Why Church Boards Have Special Challenges

Why are church boards so susceptible to problems? If we can understand the unique challenges inherent in church boards, we should be able to address the problems. I freely admit that I'm about to make assertions with no research other than the stories I've been told, but based on these accounts, I think there are four reasons why church boards get into more trouble than other boards:

1. BOARD MEMBERS HAVE A UNIQUE RELATIONSHIP WITH THE CHURCH: THEY ARE DIRECTORS AND BENEFICIARIES AT THE SAME TIME.

By design, board members are drawn from the church's members, so there can easily be a conflict between what the directors personally want from the church and their duty to put the interests of the church first. In contrast, other Christian agencies, such as inner-city missions or student ministries, usually do not have board members who also use the ministry's services.

Church directors may find it difficult to make objective decisions because of their emotional connection to the church. Perhaps they were married in the church, raised their family there, or buried a parent from there.

Church directors may also have strong feelings of how "church" should be done. This may come from volunteer experience in church ministries, their personal Bible studies, books they have read, or conferences they have attended. While agency directors usually defer program questions to the expertise of staff, church directors are more likely to feel just as knowledgeable as church staff regarding how things should be done.

The director/beneficiary combination means that church directors have a feeling of ownership that agency directors typically don't have. In theory, a church director may have to vote for something they personally don't want because it is in the church's best interest, but in reality many people find that hard to do. The result is that church boards are more likely to be driven by more personal, subjective opinions than agency boards.



2. CHURCH BOARD LEADERSHIP IS OFTEN THE FIRST EXPERIENCE MANY CHURCH MEMBERS HAVE IN LEADING AN ORGANIZATION.

Because church boards are often a church member's first experience with governance, the church can really bless its community by training members to be excellent board members and then sending them out to serve on local community boards. But because church members often do not have governance experience, new board members can create problems when they first join a church board. They may view their board service as an opportunity to make the church the way they want it. Sadly, local churches often endure the consequences of being a training ground for inexperienced directors.

3. CHURCH BOARDS HAVE SPIRITUAL OVERTONES THAT AGENCY BOARDS DO NOT HAVE.

The pastor is the spiritual leader of the church and therefore has a spiritual responsibility for the members, making it more difficult for directors to either vote against the pastor or to address performance issues with the pastor. It is difficult enough to do this with an executive director, but it is harder still with your own pastor, the person to whom you turn when in need of spiritual support. However, when issues are not dealt with openly, someone is likely to resort to politics to build support for the necessary corrections.

4. PASTORS ARE USUALLY NOT EQUIPPED TO PROVIDE LEADERSHIP TO THEIR BOARDS.

My doctoral research showed that a significant percentage of agency CEOs are second-career people who have already gained extensive executive experience in the for-profit world. This equips them to provide the kind of organizational leadership that boards expect of the senior staff person. Pastors, on the other hand, are trained in many things, but working with boards is often not one of them.

In Canada, a church is both an organization and a registered charity, so pastors need to know how to lead both. All too often, church leadership is seen by pastors simply as *program* leadership. If this were true, then a pastor is really a Program Director. However, this leaves a leadership vacuum at the board level. If the pastor doesn't provide organizational leadership, sooner or later a board member will step up to provide it and a power struggle will ensue between board and staff.

Solutions for Church Boards

To get overcome these issues, I suggest the following steps for church boards and pastors:

- **Provide board orientation for new board members.** All new board members should learn about governance and the role of a director. It is vital that they understand the conflicting roles they have as a director, a beneficiary, and perhaps even as a program volunteer. Help your directors to be good governors right from the start. CCCC's *Serving as a Board Member* provides practical training for board members. The material is available in several different formats: DVD, book, e-book, and online video (ccc.org/store).
- **Create a continuous learning plan for board development.** Every board meeting should include a time of group learning. Based on the number of regular board meetings you have per year and the number of years in a single board term, develop a learning plan that will allow every director to cycle through once per term.
- **Create a visible partnership between staff and board.** While you must follow your denominational practices, legislation and trust law require the board to exercise its authority in civil matters. Pastors and directors must never fall into the trap of thinking it's "us vs. them." I really like the way Charles Olsen describes the board:

The board of a Christian organization is the people of God in community, the body of Christ, with members having differing gifts, wisdom and functions. The group's life should be formed by scripture, prayer, silent waiting, witnessing and serving. Their meeting is not a gathering of individual people with business to transact, but is the functioning body of Christ.

Wow! That puts church governance into proper perspective.

- **Encourage pastors and church board directors to invest in leadership development.** CCCC offers a free webcast, *Welcome to Charity Leadership*, that provides an overview of the legal and administrative aspects of running a Canadian charity (ccc.org/free_webcast). The CCCC website has many other resources on other aspects of church and charity leadership, like strategy, organizational and program evaluation, governance, board/staff relations, and change management. Be sure to encourage pastors and board directors to learn from the best leadership experts. Some notable authors include Kouzes and Posner, John P Kotter, Jim Collins, and Robert Banks and Bernice Ledbetter.

Resources for Church Boards

The following books are recommended as the core of a church's governance library:

- *Transforming Church Boards into Communities of Spiritual Leaders* by Charles Olsen
- *Building Effective Boards for Religious Organizations: A Handbook for Trustees, Presidents, and Church Leaders* by Thomas Holland and David Hester.
- *Called to Serve: Creating and Nurturing the Effective Volunteer Board* by Max De Pree
- *Practicing Discernment Together* by Lon Fendall, Jan Wood, and Bruce Bishop.

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WHAT SHOULD BE INCLUDED IN THE BOARD MINUTES?



HEATHER CARD, COO

Board minutes serve as a permanent record of actions taken by a ministry's board of directors. This article provides an overview of why board minutes are important, a list of important items to include in the minutes, and suggestions for taking minutes of confidential sessions.

The board minutes serve as the official record of board discussion and decisions of a ministry. More specifically, these records detail when the meeting occurred, who was present at the meeting, and what actions were taken. Canada Revenue Agency (CRA) also requires a charity to demonstrate direction, control, and accountability for its resources. Proper books and records, including board minutes, can help satisfy this requirement.

If you've ever been in a board meeting with more than one person, you know that there can be times where people interpret the actual outcome of a discussion in different ways! Good minutes will decrease the likelihood of future misunderstandings on what was actually decided. It should be noted that when the board approves the minutes, it also has the opportunity to clarify what was recorded and ensure that everyone is on the same page.

Minutes can be helpful in providing history or the "corporate memory" of your ministry. When CCCC did its strategic review, we reviewed the board minutes since our founding in 1972. By doing this, we gained a deep sense of the original call of God on our ministry to serve the whole body of Christ and how God had lead toward that end in various ways throughout our history. The impact on our review was significant.

On a very practical level, minutes provide evidence that directors have fulfilled their responsibilities and provided the proper standard of care. The basic responsibilities



of a director are to act with honesty, loyalty, care, and diligence.

- **Honesty**—you acted in good faith and shared all information you possess that could have a positive or negative effect on the charity.
- **Loyalty**—you avoided conflicts of interest and put the interests of the ministry before your own.
- **Care**—you prepared for the discussions that will take place.
- **Diligence**—you thought about the issues to be discussed and asked appropriate questions.

Good minutes help directors demonstrate that they fulfilled their responsibilities well. Some specific examples are provided later in this article. If board members wish to make their own notes, they should compare those to the minutes put forward for approval.

Minutes can also generate follow-up for the next agenda as well as action items for individual board members or committees.

How Long Should Board Minutes Be Kept?

The *Income Tax Act (ITA)* requires that minutes of a charity's membership and governing board meeting be kept two years after the day that the registration of the registered charity is revoked.¹ For charities that are operating on an ongoing basis, this essentially means that the minutes of the board must be kept permanently. It is also recommended that minutes of board committees be kept permanently.

Three Approaches When Recording Minutes

Mina's Guide to Minute Taking provides a helpful overview of the three approaches to minute taking: decision only minutes, anecdotal minutes, and verbatim minutes.²

- **Decision only minutes** do not include any discussion or summary of what took place at the meeting—they only record the decisions that were made. This is often the standard for in-camera or closed meetings, since recording discussion may expose the organization to risk on sensitive issues.
- **Anecdotal minutes** provide a concise summary of the discussion and thought process that led to the decision as well as the approved motions. Because this type of

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WHAT SHOULD BE INCLUDED IN THE BOARD MINUTES?

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minute taking can assist in demonstrating that directors performed their duties well, it is usually the one most recommended.

- **Verbatim minutes** are a word-for-word account of everything that was said at the meeting and are only used in exceptional circumstances, such as formal public meetings of councils or government bodies.

What Should be Included in the Minutes?

Minutes should include the context for the meeting, such as the type of board meeting (regular or in-camera), date of the meeting, location of the meeting, board members present and absent, staff and guests present. A reference to the time the meeting was called to order, when the meeting ended, and future meeting dates should also be noted.

The body of the minutes should include the discussion summaries, motions, and voting outcomes. The following section provides practical examples of what should be included in the minutes.

DIRECTOR ATTENDANCE

By noting which directors were present and absent, the board is documenting that a legitimate quorum existed to conduct business. In addition, if a member arrives late or leaves early, it should be noted so that it is clear whether the director was present for a particular vote.

BOARD RESIGNATIONS

When a board member resigns at the end of their normal term, the minutes of the Annual General Meeting will normally reflect the retiring directors as well as the new directors. However, directors of federally incorporated charities are also required to submit their resignation in writing in order for it to be effective.³ Regardless of whether

it is required by corporate legislation, it is a good practice to request a letter of resignation from a director. The effective date of the resignation should be included in the board minutes as this establishes an end-date of their fiduciary responsibilities. The same practice would apply to those directors who resign before their term is complete. The key point is that the ministry's official minutes should reflect when the terms of the directors began and ended.

REVIEW OF FINANCIAL INFORMATION

The review of regular financial information as well as audited financial statements should be noted for the minutes. The minutes should reflect that the board asked questions and made appropriate inquiries as to the financial health of the ministry.

CONFLICTS OF INTEREST

When conflicts of interest exist, the nature of the conflict should be documented. At the beginning of each meeting, the agenda should provide an opportunity for any conflicts of interest to be declared. If a conflict of interest is declared, the board should follow its protocols, which typically include the member absenting themselves from the discussion and voting on the matter. Further resources on conflicts of interest are listed at the end of this article.

ITEMS RELATED TO RISK MANAGEMENT

The board wants to be able to demonstrate that it acted reasonably and that it took steps to be informed about matters that could pose risk to the charity or its beneficiaries. The following are some of the examples that a board should examine as part of its risk management activities:

- Insurance
- Policies
- Agreements related to activities outside of Canada

DISCUSSIONS RELATED TO CORPORATE DOCUMENTS AND MISSION

Making changes to incorporating documents, trust documents, bylaws, charitable purposes & objects, statements of faith, and strategic statements usually require significant discussion and debate. Recording the main viewpoints considered can be very helpful as these reviews often occur over a period of time.

MINUTES FROM BOARD COMMITTEES

Many boards delegate work to sub-committees of the board and request that a recommendation be brought back at a later time. It is a good practice to receive minutes from board committees and note this in the board meeting minutes along with discussion and debate on the issues.

Practical Tips for the Minute Taker

It is not always easy being the minute taker! It can be a challenge to sort through all the comments, suggestions, and decisions in order to produce an objective summary of the meeting within a reasonable timeframe. The board chair can assist the minute taker by ensuring that the motion is clear and by verbally summarizing the results of a lengthy or complex discussion. This will also ensure that everyone is in agreement. The following list includes a few tips for minute takers:

- Prepare for the meeting by using the meeting agenda as a template to create a fill-in-the-blank outline for taking minutes.
- Draft the expected meeting motions in advance. As a best practice, all agenda items should have a written report that contains background information on the matter being discussed as well as the recommended motion(s).
- Read background material to gain an understanding of the material being discussed.
- Record notes of the meeting to assist in creating a summary of discussion after the meeting. Some boards also record all board teleconference calls to assist in preparing the minutes.

- Record discussion summaries that capture both supporting and dissenting views.
- Ask questions if the motion being proposed is unclear.
- Record the results of the motion, noting by name any directors that are in opposition. This is a vital protection should the matter ever come to litigation.
- Note any follow-up items and who was assigned the responsibility to complete the work.
- Prepare the minutes as promptly as possible, before memory of the meeting fades.
- Request the board chair, lead pastor, or CEO to review the minutes before circulating to directors.

Who is Entitled to See the Board Minutes?

Corporate legislation does not typically either address the issue of who may view the board minutes or require access to them by anyone beyond the directors. Unincorporated charities are not required to distribute board minutes beyond the board members.

In ministries where there are paid staff positions, it makes good sense that the board minutes be distributed to the CEO, Executive Director, or Lead Pastor as well as other key staff who may need understanding of board decisions in order to carry on the work of the ministry. When circulating the minutes to a wider audience (i.e., beyond those who were in attendance at the meeting), care should always be taken to ensure that the information shared is appropriate in the circumstances (e.g., it may be necessary to exclude confidential matters or issues of a sensitive nature).

In-Camera Minutes

The term *in-camera* is a Latin legal term that means "in private." The in-camera meeting is confidential and is restricted to the Board of Directors and others who are asked to attend. Agenda items that are discussed in-camera include human resource and payroll issues, buying and selling property, and legal matters. Some boards do not keep minutes of their in-camera session because of legal concerns (see the section in this article on

board minutes and privilege). The main focus of the minutes for these sessions should be on decisions made. If the organization could be exposed to significant legal risk, and/or if a charity is concerned about what to record, legal counsel should be sought.

Board Minutes & Privilege

There is no special "blanket rule" that automatically protects a charity's board minutes from being disclosed in a lawsuit. Meeting minutes are like any other document in a charity's possession: they must generally be handed over if they are relevant to any issue in the lawsuit UNLESS they are subject to "privilege."

"Privilege" is a type of legal immunity that attaches to documents prepared in situations that the law views as particularly worthy of protection. Generally, there are only three types of situations in which privilege can arise:

- Confidential communications between a lawyer and client for the purpose of obtaining legal advice (called "solicitor-client privilege")
- Communications prepared for purposes of actual or contemplated litigation (called "litigation privilege")
- Certain confidential communications determined on a case-by-case basis (called "common law privilege") where a finding of privilege is at the discretion of a court and a number of factors will be considered in making the determination.

Depending on the circumstances, information contained in a charity's board meeting minutes could potentially fall into any of one these three categories, but the charity may have to convince a court of that fact. This can be difficult to do, especially for the latter two categories.

For these reasons, a charity should be careful about the sensitive issues discussed at meetings and recorded in its minutes. Only persons who need to be involved in sensitive discussions should be present—observers or other participants whose presence is not necessary should be excused. Similarly, copies of the minutes should

generally only be disclosed to those present at the meeting and, in some instances, other limited individuals who need access to the information (such as senior staff).

A charity is required to maintain records of its board meetings, and the minutes should contain a concise and accurate record of how the board arrived at any given decision. However, the minutes do not have to contain excessive details. Thus, depending on the situation, it may be more appropriate to include a simple summary statement, such as "The Board discussed the issue of X and decided Y," without recording every detail of what was discussed. In cases where particularly sensitive information is being discussed and the charity wishes to have a record of it, it may be best to have a lawyer present who can advise the charity on the issues and ensure that all communications are privileged.

Conclusion

Board minutes are an important tool that board members can use to demonstrate that they have met their fiduciary duties. However, ministries need to exercise care, particularly when preparing minutes on issues of a sensitive legal nature. By following the tips outlined in this article, ministries will be able to document their meetings well while protecting themselves from legal risks.

Resources

- > *Conflict of Interest: A Matter of Integrity* (CCCC Bulletin Issue 2, 2012)
- > *For the Record: The Importance of Good Record Keeping* (CCCC Bulletin Issue 2, 2005)
- > *The Minute Takers Handbook* (book) – Jane Watson
- > *Mina's Guide to Minute Taking: Principles, Standards & Practical Tools* (book) – Eli Mina

Endnotes

- 1 *Income Tax Regulations* (C.R.C., c. 945), 5800 (1)(d).
- 2 Eli Mina, *Mina's Guide to Minute Taking: Principles, Standards, & Practical Tools* (Vancouver: Eli Mina Consulting, 2004), 20–24.
- 3 Canada Not-For-Profit Corporations Act, s. 129(2).

CONFLICT OF INTEREST: A MATTER OF INTEGRITY



BY BARRY W. BUSSEY, V-P LEGAL AFFAIRS, CCCC

A conflict of interest occurs when a personal interest is at odds with the interest of one's position of trust. This article will address the dilemma of conflict of interest within the context of Christian charities.

The business world was shocked to learn that David Sokol, Warren Buffett's former heir apparent, misled his boss when he bought shares in a company (Lubrizol) and then recommended his employer, Berkshire Hathaway, buy the same company.¹ Berkshire's internal audit committee found that Sokol's activities "violated company policies, including Berkshire Hathaway's Code of Business Conduct and Ethics and its Insider Trading Policies and Procedures."² Sokol benefited some three million dollars from the transaction, but he is now facing a lawsuit by a disgruntled shareholder for the return of the gain.³ Berkshire Hathaway is also considering its own litigation and the Securities Exchange Commission is conducting an investigation. Buffett called Sokol's behaviour "inexcusable and incomprehensible."⁴

Conflict of interest has all the necessary drama for a scandalous headline and it remains a fertile breeding ground for corruption. The Christian community is not immune from similar incidents. We are just as vulnerable. As the example above shows, a conflict of interest occurs when a personal interest is at odds with the interest of one's position of trust. Charities are built upon public trust. The public expects charity leaders to put the interests of the charity first, above any personal gain or benefit. The courts hold directors of charities to an even higher standard of conduct – that of trustees.



Conflict of Interest Law in Canada

The law on conflict of interest is determined primarily in the common law (judicial decisions), though there are myriad pieces of legislation passed by the provincial and federal governments that deal with conflicts of interest in specific contexts (e.g., conflicts of interest of politicians, directors of corporations,⁵ charities,⁶ or trustees). Each jurisdiction has developed its own approach, yet the principles remain the same.

This area of law is rapidly evolving. For example, the new Canada Not-for-profit Corporations Act has an extensive requirement in s. 141 for disclosure of "the nature and extent of any interest that the director or officer has in a material contract or material transaction, whether made or proposed, with the corporation."

Since Canada Revenue Agency does not audit for conflicts of interest, some might be tempted to give this very little attention.

However, that would be most unwise. Ontario's Office of Public Guardian and Trustee (OPGT) investigates charities operating in Ontario to ensure there is no conflict or appearance of conflicts of interest.⁷

The OPGT will investigate the charities that have been subject of a complaint (which can come from any source). Therefore it behoves us, as a Christian community, to be mindful of our roles in working or volunteering for our charity and ensuring our personal interests are not at odds with the charity's best interests. Everyone has a stake in following the law. It does not take much for a disgruntled party, who may fall victim to a board action rife with conflicting interests, to file a complaint with the appropriate authorities and launch an investigation.

Having said all of that, there is a provision in section 13 of the Ontario Charities Accounting Act to obtain a court order, in rare occasions, granting authority to transact business with, or to be a client of, or to have

an employee on the board of the charity.⁸

We will discuss five examples of conflict of interest in detail below. Before addressing those specific scenarios, we will discuss three legally and morally normative principles that are engaged when dealing with conflicts of interest. Once we understand those principles, we can then apply them to our scenarios.

Principles At Stake *(Integrity, Loyalty, Disclosure (ILD))*

THE PRINCIPLE OF INTEGRITY

"Judge me, O Lord, according to my righteousness, and according to my integrity within me" (Ps. 7:8, NKJV).

Conflict of interest is a matter of integrity. Integrity is defined as "adherence to moral and ethical principles; soundness of moral character; honesty."⁹ Integrity goes to the heart, and it is the conflicted heart that we are concerned with when we talk about a conflict of interest. The legal term would be "acting in good faith."

The Lord's search of the heart is a consistent theme in scripture. When the prophet Samuel was interviewing the sons of Jesse, one after the other, to determine whom the Lord had chosen as the next king of Israel, he thought he had found him but the Lord said, "No." The Lord was blunt: "For the Lord does not see as man sees; for man looks at the outward appearance, but the Lord looks at the heart" (I Samuel 16:7, NKJV).

THE PRINCIPLE OF LOYALTY

Christ taught us to recognize life's conflicting loyalties: "No one can serve two masters; for either he will hate the one and love the other, or else he will be loyal to the one and despise the other. You cannot serve God and mammon" (Matthew 6:23-25, NKJV).

When we accept positions of trust with a charity, we are called upon to put our loyalty to the charity above personal profit. That does not mean we "sell out" all of our higher responsibilities – to God or to family – in favour of the charity. In fact, if we were called upon to violate those responsibilities, it would be necessary, in good conscience, to step down from such a position. Personal gain is not to be had at the expense of the

charity while serving as a fiduciary (a person of trust), whether as a board member or, I might add, its CEO and staff. The law speaks of the duty to act gratuitously and is very clear that no benefit is to be had from the charity unless there is a legal right to it (e.g., the reimbursement of expenses of a board member to attend a meeting).

THE PRINCIPLE OF DISCLOSURE

A conflict of interest is not necessarily evidence of impropriety, but rather it provides fertile ground for corruption to germinate and take root. It is a classic situation where one must be proactive early in eliminating even the appearance of evil. To linger could lead to compromise, bringing shame and breach of trust. That is why, for example, a judge will excuse himself from a trial in which he might have (or be seen to have) a personal interest in the outcome.

When we place ourselves in or simply come to the realization that we are in a conflict of interest in our roles vis-à-vis our charity, it is best that we deal with it expeditiously. Disclosure requires nothing less than an honest admission of our conflict to all parties concerned and an earnest effort to make good of the situation. That may require a stepping down; one interest or the other must usually give way.

Five Scenarios

There are any number of scenarios where a conflict of interest may arise. I will consider five.

SCENARIO #1: A charity is headquartered in a small urban setting. One of the directors on its board owns a local janitorial business. The janitorial firm is well-respected in the community as giving quality, efficient, and honest on-site service at a reasonable price. Any other janitorial firm is over two hours away and more expensive.

Is the director in a conflict of interest if the charity seeks to do business with his firm?

- The answer, of course, is yes. The director finds himself with two competing interests: personal profit from his business and his responsibility for looking after the best interests of the charity as a director.

What might be done to alleviate the concern?

- At a minimum, he should not attend any meeting where the issue of janitorial service is discussed. When the board is obtaining information on his company's services, another staff member should be the one who communicates with the board.
- Unfortunately, human nature being what it is, there will be a sentiment on the board that says, "If we do not give this contract to his company, he will think less of us." Here the remaining directors have to recognize their fiduciary roles and put the interests of the charity first and foremost over their own preconceptions of their relationship with the director who owns the janitorial firm.
- Should the director's janitorial firm be chosen to carry out the work, there will need to be adequate documentation to prove due diligence that the decision was motivated by the best interests of the charity.
- Some might suggest that the director's janitorial firm must never be hired by the charity because of the conflict. While there is no doubt that such a contract increases the complexity of the relationship, there has to be a balancing of risk. On the one hand, the conflict could lead to impropriety if not properly monitored, but on the other hand, the charity should not suffer loss by having to take a more expensive janitorial firm that would not meet its needs. If, on the balance, the charity has put in place safeguards to limit the risk, it could proceed with the contract.

SCENARIO #2: A director of a charity is the principal in an auto-leasing company. The charity staff has determined that the charity needs a vehicle for its work and leasing will make the most sense, so they make a deal with the auto-leasing company. The director does not get direct commission on the lease.

Is the director in a conflict of interest because the charity seeks to do business with his firm?

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CONFLICT OF INTEREST: A MATTER OF INTEGRITY

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- It is tempting to suggest that there is no conflict here because the charity staff independently decided that it needed to lease a vehicle. Further, it is not a decision of the board but of the staff. However, there is a potential for conflict: the board will be approving the charity's budget for the coming year. Part of that budget will include the funding of the car lease. Therefore, a conflict of interest will be present or seen to be present.

What might be done to alleviate the concern?

- Our three principles, ILD, will assist. The principal, as soon as he is aware, must disclose the relationship to all members of the board. His first duty is to the charity, therefore, it must be clear that the arrangement is in its best interests. His forthrightness will go a long way to assist the board in its evaluation.
- There is also a responsibility for the charity staff to reveal all factors to its own board as it seeks to perform its due diligence.
- The fact that the director does not get direct commission on the lease is just one factor among many in the board's determination. There is certainly a perception here of conflict that must be addressed. There are many other ways that the director's interest could be in conflict besides the issue of direct funds; there is also the public goodwill that occurs when a well-respected charity does business with his firm. That fact alone could prove more beneficial to his bottom line than the funding of one car lease.

SCENARIO #3: A small church employs a spouse of a church board member as its bookkeeper.

Is the board member in a potential conflict of interest?

- Yes, he is. There is a perception of a potential conflict. It would certainly

manifest in the areas of finance. Take, for example, the effect of a board's decision to cut the budget, resulting in the removal of the bookkeeper position.

What might be done to alleviate the concern?

- If this were in Ontario, the OPGT would not permit this to remain. The only way it could remain is through a court order, as described above. Given the cost and aggravation, it would not be worth the trouble.
- The best option is for the board member to step aside because, undoubtedly, there will be confidential matters that the board will discuss, dramatically affecting the staff. A spousal relationship has proven to be more than most people can handle in keeping confidences and being impartial when making decisions in the best interests of the charity that may adversely affect their spouse. Such a situation challenges the ideal that all board members will unreservedly put the interests of the charity above their own.

SCENARIO #4: A charity director is an insurance representative for a large insurance company. The charity was persuaded by the director to take a policy he sold for which he gets a commission.

Is the director in a conflict of interest if the charity seeks to do business with his firm?

- Yes, again. Even if we give the director the benefit of the doubt that his first concern was that of the charity in encouraging the policy, we are left with the reality that he personally benefited. It simply does not pass the "smell test." Appearances in such matters are not to be ignored. They are real and could cause the charity embarrassment.

What might be done to alleviate the concern?

- The board's duty requires it to ensure that

such an insurance policy was necessary.

- The board must search the market to determine that this in fact was the best policy for its purposes and the cheapest.
- It would be wise for the director to donate the commission to the charity. That would take away any possible criticism that the director's duty to the charity was compromised.

SCENARIO #5: A church board director is an insurance agent and persuades the church to purchase a policy with his company, but in this case he does not get paid a commission for the policy.

Is the director in a conflict of interest if the church seeks to do business with his firm?

- Yes, the commission is but one factor of concern. Other benefits remain besides cash. As noted above, there is the matter of goodwill. A charity that does business with a company makes a statement that this company is good to deal with. A director may end up getting a large number from the congregation to buy insurance through him just on the fact that the church bought insurance from him.

What might be done to alleviate the concern?

- The same as under number four above.

Board Agenda and Minutes

In the above scenarios it will be necessary to properly prepare the meeting minutes to show due diligence in addressing the conflict. At the beginning of each meeting, the board agenda ought to make time available for directors to declare any conflicts of interest on the proposed business of the day. If there is a declaration or a concern raised by another member, then it should be recorded in the minutes. The member with the perceived conflict of interest would be asked to address the board about the concern and be excused from the room to allow for proper deliberation. If the board finds a conflict of interest, then the board would follow its conflict of interest policies and take the appropriate action to meet the circumstance. A sample minute might look like this:

A conflict of interest was declared concerning the proposed agenda item addressing the bid of ABC Janitorial to perform janitorial services of our charity. Mr. X, a member of this board and the owner of the ABC Janitorial, declared the conflict of interest. He excused himself from the meeting. After some considerable discussion there was a consensus that the Board would not entertain ABC Janitorial's bid because it was not in the charity's best interest to do so.

Mr. X was informed of the board's decision and returned to the meeting for the remaining agenda items.

Depending on the circumstance, the meeting minutes may have to be curtailed because of the sensitivity of the subject matter. The bottom line is, you want to ensure that if a third party – such as a lawyer from a provincial Office of Public Guardian and Trustee – investigates a complaint, they will have the necessary information to determine whether due diligence was made to alleviate the concerns raised by the conflict of interest.

Conclusion: Things To Think About

The advice that I have given in this article can be summed up this way: conflicts of interest are common in all human relationships. The problem is not that they exist – the problem is how they are handled. Applying the principles of integrity, loyalty, and disclosure in a timely fashion to the conflict will save the charity and persons involved untold hours of grief.

Finally, here are some suggestions: First, review your current relationships and determine whether there exists a current or potential conflict of interest. Once the conflict has been declared, the options for appropriate action, as we have noted above, fall into three broad categories: (1) the person is permitted to stay in the position because of the circumstances; (2) the person must leave the meeting and is not permitted to vote; or (3) the person must step down. Remember, stepping down alone may not be enough in certain circumstances. Sometimes further action needs to be taken to void any contract or other relationship that gave rise to the conflict in the first place.

Second, ensure that your charity has

a conflict of interest policy that clearly articulates the needs of your charity and has a well thought out approach to deal with conflicts as they arise. Each individual holding a position of trust in your organization should be required to sign a declaration of conflicts on an annual basis. CCCC members may view a sample policy at www.cccc.org/members_sample_documents_view/html/7

Third, remember a conflict does not imply any wrongdoing – it raises a flag of warning that the relationship needs to be clarified to ensure nothing untoward happens that would put the individual and the charity in jeopardy.

Fourth, document all transactions that the charity has undertaken that give even an appearance of conflict. Full disclosure to the board and staff handling the financial transactions must be made. Disclosure **before** the transaction takes place is key. The minutes must accurately reflect what has been done to address the conflict.

Fifth, remember conflict of interest is a matter of integrity which in turn is a matter of our hearts. As Christians involved in the Gospel Commission, we can expect no less than the Lord to require our full loyalty and purpose.

Endnotes

- 1 <http://www.berkshirehathaway.com/news/MAR3011.pdf>
- 2 <http://www.berkshirehathaway.com/dlsokol/dlsokolreport.pdf>
- 3 <http://www.forbes.com/sites/francinemckenna/2011/04/20/its-not-futile-shareholder-sues-sokol-buffett-and-berkshire-hathaway-board/>
- 4 <http://www.guardian.co.uk/business/2011/may/01/warren-buffett-accused-of-scapegoating>
- 5 The British Columbia (BC) Society Act, R.S.B.C. 1996, c. 433 in s. 25. Newfoundland and Labrador, Manitoba and Saskatchewan have codified an objective standard in Corporations Act, R.S.N.L. 1990, c. C-36; Corporations Act, C.C.S.M. c. C225; and Non-profit Corporations Act, 1995, S.S. c. N-4.2. While the old Ontario Corporations Act, R.S.O. 1990, c. C38 does not – it will be replaced by the new Ontario Not-for-profit Corporations Act, S.C. 2009, c. 23. The new Canada Not-for-profit Corporations Act, S.C. 2009, c. 23, has an extensive requirement in s. 141.
- 6 Charities Accounting Act, R.S.O. 1990, c. C.10
- 7 <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/charbullet/bullet3.asp>
- 8 <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/proc4order-s13-CAA.pdf>
- 9 <http://dictionary.reference.com/browse/integrity>



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FACING THE RISK: "LIABILITY INSURANCE 101 FOR CHURCH LEADERS"

BY KEN HALL, ROBERTSON HALL INSURANCE



As a Christian ministry leader, you are probably already aware of the increasing legal responsibilities and personal liability being imposed on those who serve as board members and trustees on behalf of charitable organizations in Canada. You may even have heard the term "fiduciary duty," without ever understanding its significance in your role as a leader on behalf of your church or charity. It is an extremely important concept in common law, and as a matter of fact, it is the highest standard of care owed by directors and trustees!

Interestingly, the term "fiduciary" originates from the Latin word "fides," meaning "faith." The fiduciary relationship is characterized by good faith, loyalty, and trust. Directors, officers, and trustees are fiduciaries who are entrusted with the important responsibility of managing resources and trust property on behalf of the organization's members and donors in accordance with its charitable objects. This includes real property, such as land and buildings; chattels, such as equipment and furnishings; as well as investments and donor funds.

One of the main responsibilities of board members and trustees is the preservation and prudent use of charitable trust property, including its protection through effective risk management and insurance coverage. Traditionally, this responsibility has been understood to mean arranging adequate insurance coverage for fire, theft, and other loss or damage to your buildings and chattels. However, in the current legal climate, it is equally important to understand and make a prudent decision in purchasing the right liability coverage to protect your organization and leaders against lawsuits.

Properly understanding the various types of liability coverage available is not only crucial to your own personal financial



protection, but also for the benefit of all the other individuals and stakeholders in your organization who depend on your insurance purchasing decision for their protection, including other directors, officers, trustees, members, employees, and volunteers!

Plaintiffs, courts, and juries are treating Christian charities with the same standards of legal liability as "for-profit" entities. Multi-million dollar civil damage awards and out-of-court settlements can result from lawsuits by a wide variety of potential parties. These include members, donors, participants, visitors, outside user groups, current and former employees, joint ministry

partners, and many others. When claims are based on frivolous or false allegations, the legal and investigation costs to successfully defend them can also be substantial.

Sound risk management practices can greatly reduce foreseeable and preventable risk; however, organizations and their leaders are still vulnerable to legal responsibility for accidents, injuries, and damage caused by their operations, ministries, programs, and events. Even with indemnification agreements in place to protect directors from personal liability while acting within the scope of their duties, the reality is that Christian ministries usually

lack the resources to fulfill these financial obligations to their board members.

Effective protection is available in the form of liability insurance; however, the subject of insurance can be a complicated one. The scope and types of coverage available and how they fit together to form an effective and comprehensive protection plan are often oversimplified or misunderstood.

Sometimes in order to save a few premium dollars, consumers make costly mistakes when purchasing insurance by falling prey to common myths about liability insurance.

Myth #1 - All liability insurance policies are the same

REALITY - Certain kinds of liability protection, such as mandatory third party liability coverage for licensed vehicles, are governed by provincial law, and policies are required to contain standardized policy language. However, the vast majority of other personal, professional, business, and institutional liability insurance policies differ from one insurance company to the next. These "apples for oranges" differences can be significant and are often contained in the "fine print" of insuring agreements, conditions, limitations, exclusions, and definitions contained in each policy.

Myth #2 - We only need one kind of liability coverage

REALITY - Almost all non-profit and charitable organizations require **two or more** kinds of liability protection in order to cover the entire range of insurable risks faced by their directors, officers, trustees, members, employees, and volunteers. Depending on their operations and activities, these usually include General Liability and Directors & Officers Liability. A common oversight by organizations concerned about protection for their board members is in thinking that they only require Directors & Officers Liability (i.e., D & O policy).

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FACING THE RISK: "LIABILITY INSURANCE 101 FOR CHURCH LEADERS"

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To help you and your organization ask the right questions of your insurance broker or agent, the following is a general overview of the two most important forms of liability

protection for the vast majority of churches and Christian ministries. Keep in mind that the following tables describe some of the typical coverages and exclusions that are

currently in use in the Canadian insurance marketplace, although exact coverage terms may differ between insurance companies.

Table 1

Common Liability Coverages

GENERAL LIABILITY (CGL)

- > **BODILY INJURY**
Physical injury, disease, death, mental injury, etc.
- > **PROPERTY DAMAGE**
Damage to tangible Third Party Property
- > **PERSONAL INJURY**
Libel, slander, defamation, invasion of privacy, etc.

DIRECTORS & OFFICERS LIABILITY (D&O)

- > **NEGLIGENT ACTS, ERRORS, OMISSIONS, MISSTATEMENTS, BREACHES OR NEGLECT OF DUTY, etc.**
Examples:
 - > Wrongful Dismissal
 - > Other Employment Practices
 - > Discriminatory Practices
 - > Discipline Proceedings
 - > Financial Mismanagement

- Directors & Officers Liability policies exclude any and all legal liability for bodily injury, personal injury, and tangible property damage claims, as the scope of D & O coverage is not intended to overlap with a General Liability policy.
- Directors and officers can and should be named as "Insureds" in both types of coverage to provide them with protection against the full range of insurable risks while acting within the scope of their duties on behalf of the organization.
- Due to the types of insurable risks addressed by each coverage, it is usually recommended that the limit of coverage be higher in a General Liability policy, as the amount of civil damages awarded in a catastrophic bodily injury claim involving multiple fatalities and/or serious and permanent injury can be in the millions of dollars.

Matters that are coverable under a D & O policy can involve significant legal defense costs, awards, and settlements, but not on the same monetary scale as bodily injury claims. For example, it is common to see charities carry General Liability (including excess Umbrella coverage) in the range of \$5,000,000 to \$25,000,000; versus D & O Liability between \$1,000,000 to \$5,000,000.

- Some Directors & Officers policies contain exclusions or limitations for wrongful dismissal claims and certain forms of employment practices liability. Be aware of this, as supplemental coverage may be required.
- General Liability policies are on an "occurrence form" coverage basis. This means the insurance policy that covers a claim arising out of a particular accident, injury, or negligent act is the one that was

in effect during the time period the claim or accident actually occurred, regardless of whether civil action is commenced immediately or many years into the future. This is the preferred form of coverage for bodily injury and abuse claims.

- Directors & Officers policies provide coverage on a "claims made" basis. This means the insurance policy covering a particular negligent act is the one that is in effect at the time legal action is made or commenced, regardless of when the negligent act, error, or omission originally took place. Most D & O policies contain this retroactive coverage feature, unless there is a retroactive limitation date indicated on the policy. Prior and pending claims or legal actions known to the directors at the time they applied for the coverage are not coverable.

Table 2

Common Liability Exclusions

GENERAL LIABILITY (CGL)

- > Expected/Intended Injury
- > Abuse Claims
- > Professional Services
- > Contractual Liability
- > Employment Practices
- > Pollution Liability
- > Owned Vehicles
- > Non-Compensatory Damages

DIRECTORS & OFFICERS LIABILITY (D&O)

- > Bodily Injury, Property Damage, and Personal Injury
- > Abuse Claims
- > Fiduciary Liability for Pension and Benefit Plans
- > Pollution Liability
- > Professional Services
- > Non-Compensatory Damages

- General Liability and Directors & Officers Liability policies both contain exclusions for matters that are uninsurable by law, including intentional injury and criminal or fraudulent acts. These exclusions apply to the "perpetrator" but do not necessarily exclude coverage for the vicarious liability of the organization and its directors.
- Liability claims for mould, pollution, terrorism, war, or nuclear energy are usually excluded, with few exceptions.
- Abuse claims are commonly excluded under both types of liability coverage as there are very few insurance companies prepared to cover this risk. If coverage is

available, the preferred type of protection is on an "occurrence form" policy. This is because civil claims from abuse incidents may arise years or even decades after the incident takes place, as the statute of limitations is often waived by courts for alleged victims of childhood physical and sexual abuse. Occurrence form protection has an indefinite obligation to cover future litigation for claims that took place during the policy period.

Some insurance companies offer "claims made" abuse policies that have none of the retroactive coverage advantages and have the added disadvantage that claims discovered in

the future after the policy ceases are not covered. This can leave a church, children's ministry, or youth organization with a huge gap in their abuse protection. Limited and conditional abuse policies also often contain reduced coverage limits, high deductibles and policy restrictions that severely limit the scope of coverage, both now and in the future.

- The vast majority of liability policies cover only the Compensatory Damages awarded by a civil court. Very few insurance companies offer coverage for insurable Punitive, Exemplary and Aggravated damages awarded by a court of law.

Table 3

Other Forms of Liability Coverage

- > Fiduciary Liability (pension plans)
- > Media Liability (publishing, telecasting, and broadcasting)
- > Auto Liability (owned and leased vehicles)
- > Professional Liability (often known as Errors and Omissions or Malpractice Insurance)
- > Umbrella Liability (or Excess Liability)

- All General Liability policies and most Directors & Officers Liability policies contain an exclusion for professional services. A separate Professional Liability policy (sometimes known as Errors & Omissions or Malpractice Insurance) is usually required for organizations providing professional services such as medical, dental, engineering, legal, financial, counselling, etc.
- Since Directors & Officers Liability policies exclude coverage for sponsored employee pension and benefit plans, it is important for sponsoring organizations and plan trustees to obtain coverage through a separate Fiduciary Liability policy.
- Organizations whose primary business or operations involve telecasting, broadcasting, or publishing may require separate Media Liability coverage.
- A separate primary Auto Liability policy

is required by law for all vehicles owned or leased by an organization. However, General Liability policies can and should contain Non-Owned Automobile Liability coverage protecting the organization against legal liability arising out of the use of private or non-owned vehicles operated on their behalf.

- Due to the increasing size and scope of civil damage awards, the insurance marketplace offers Umbrella or Excess Liability policies to provide extra protection above the standard \$1,000,000 or \$2,000,000 primary coverage amount. This type of optional coverage is intended for claims that are coverable under a primary General Liability or Third Party Automobile Liability policy and is available up to \$10,000,000, \$15,000,000 or even \$25,000,000 in combined limits. This is

particularly important protection for churches or charities that own, lease, or operate personal multi-passenger vehicles (such as buses or vans) for transportation to and from sponsored activities or for organizations that operate higher risk activities, such as short-term mission trips, youth programs, camps, schools, or day cares, where accidents could potentially involve serious and permanent injuries or fatalities to multiple victims.

Summary

Now that you know all liability insurance policies are not the same and that more than one type of coverage is required to protect against the full range of insurable risks, we hope this guide will help you ask the right questions to obtain the right kind of liability protection for your organization.

The Group General Insurance Plan available through CCCC covers many of the risks excluded in standard insurance policies and offers a wide variety of optional coverage well-suited to the unique needs of churches and charitable organizations. For more information, please contact Robertson Hall at 1-800-640-0933 or churchinsurance@robertsonhall.com.

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