



Directors

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This Fact Sheet provides information about being a director of a non-profit in British Columbia.

Definition

A director of a non-profit, also known as a “board member”, is a member of a non-profit who has been elected or appointed to oversee its activities and internal affairs. Directors have legal duties and responsibilities under the Societies Act.

Duties

Duties are the standards which must be met by a director of a non-profit. A director of a non-profit must:

- ✓ Act honestly and in good faith (without ulterior motives) in the best interests of the non-profit.
- ✓ Act toward the purposes of the non-profit.
- ✓ Exercise the care, diligence, and skill of a reasonable person in the circumstances.
- ✓ Follow the bylaws of the non-profit.
- ✓ Follow the law, including the Societies Act.

Directors who fail to meet these standards can be held legally responsible for failing to meet those standards of care.

Qualifications

The Societies Act provides for the minimum qualifications for directors of a non-profit:

- ✓ At least 18 years of age;
- ✓ Has not been found by any court, in Canada or elsewhere, to be incapable of managing the individual's own affairs, unless a court, in Canada or elsewhere, subsequently finds otherwise,



- ✓ Not an undischarged bankrupt; and
- ✓ Have not been convicted of an offence in connection with the promotion, formation or management of a corporation or unincorporated entity, or of an offence involving fraud.

These qualifications are not exhaustive. A non-profit can set out more qualifications in its bylaws. If a director ceases to be qualified, the director must resign promptly. At least one of the directors must be ordinarily resident in British Columbia.

Director Positions and Term

The Societies Act requires non-profits to have a minimum of three directors. A non-profit's bylaws should state the number of directors. The number is often stated as a range between three and seven directors. There are no upper limits set out in the Act.

A director's term is the time the director may sit on the board until they must be re-elected, be re-appointed, or step down. A director's term usually begins when the director is either elected or appointed to the board. A director's term ends when the director's term expires or when the director seeks re-election or re-appointment. This should be set out in the non-profit's bylaws. The default in the Societies Act is that directors' terms expire at the close of the next AGM.

The Societies Act does not set a limit on how many consecutive terms a director can serve. Best practice is to put a limit in the bylaws setting the maximum number of consecutive terms a director can serve.

Removal of Directors

Removal is the process of taking someone off a non-profit's board, so they are no longer a director. Removal typically happens where a director is behaving poorly or is not fulfilling their duties. Directors can be removed by other directors if allowed for in the bylaws.

Usually that will be by a director's resolution with a $\frac{2}{3}$ or $\frac{3}{4}$ majority vote. If the bylaws are silent or the non-profit does not want to give the directors the right to remove directors, then the members of the non-profit have the power to remove a director at the next AGM or at a Special General Meeting.



Director Liability

Failing to meet certain standards can result in the director being held personally responsible in law. Directors of a non-profit can be held personally responsible (meaning paying out of their own pocket) for:

- ✓ Failing to fulfill their duties as director
- ✓ Failing to disclose their own conflict of interest
- ✓ Failure of the non-profit to deduct and remit employee income taxes to the CRA (including CPP and EI)
- ✓ Failure of the non-profit to pay wages owed to employees.
- ✓ Authorizing the distribution of money or property contrary to the non-profit's bylaws or the Societies Act.

There are other things for which the non-profit can be held liable but for which the directors are not personally liable such as a failure to pay rent or to collect and remit taxes such as GST and PST.

Directors are held personally liable for some things and not for others because in Canadian law, an incorporated entity such as a non-profit, is treated as though it is a separate person from its directors. However, in certain circumstances, the courts and certain statutes may “pierce the corporate veil” and ignore the separate person principle.

For example, s. 227 of the Income Tax Act allows the CRA to hold directors personally liable for failure to deduct and remit taxes. Most other creditors do not have the powers of the CRA.

Avoiding Personal Liability

Neither a contract nor the non-profit's bylaws can relieve a director from their duties under the Societies Act nor from liabilities arising from the director's negligence, default, breach of duty, or breach of trust. In addition, liabilities do not go away if the non-profit is dissolved. Directors must always ensure the information they act upon is accurate.

Directors will not be held personally liable if they reasonably and in good faith relied on any of the following:

- ✓ The financial statements of the non-profit



- ✓ Statements about the non-profit's financial position by the director responsible for the preparation of financial statements
- ✓ The written report of the non-profit's auditor
- ✓ The written report of a person whose profession lends credibility to that statement (e.g. lawyer, accountant, engineer, appraiser)
- ✓ A statement of fact by another director
- ✓ Any record, information, or statement the court decides was reasonable grounds for the director's actions, even if there was forgery, fraud, or inaccuracies.

Consequences of Personal Liability

The best protection from personal liability is to proactively learn about directors' duties and to always act honestly in the best interests of the non-profit using the best available information. Directors should not vote for or consent to resolutions when they are unsure about the consequences or legality of that resolution.

In addition, s. 66 of the Societies Act permits a non-profit to purchase liability insurance, which can cover directors of the non-profit. Persons considering becoming a director of a non-profit ought to enquire about the sort of insurance the non-profit carries, including any directors and officers policies.

Paying Directors (Remuneration)

Remuneration means money paid to someone for their work or services. Remuneration for being a director means that the non-profit is paying a fee to the director for coming to meetings and doing the duties of a director. It is common in the business context but not in the non-profit world.

Charities and most funders of non-profits do not permit directors to be paid as directors. In those infrequent situations where a director is remunerated, the Societies Act states that a director can only be remunerated (paid) if this is allowed for by the bylaws.

These payments must be disclosed in the non-profits' financial statements. A non-profit is allowed pay a director their expenses for coming to meetings, but most non-profits do not pay directors for being directors

Conflicts of Interest

The term conflict of interest is used to describe a situation in which a director has a duty to act in the best interests of a non-profit when they have personal interests that conflict with



that duty. For example, a board director voting on an increase in salary for a family member who works for the non-profit is in a potential conflict of interest. A conflict of interest includes not only a material interest but the perception of an interest. The Societies Act requires non-profits to keep records of any conflicts of interest.

Employment of Directors

Directors can also work for the non-profit as employees or contractors if the majority of that board is not employed by or under contract with the non-profit. An example might be catering an event. Any non-profit with these practices should have a conflict-of-interest policy in place to guide directors. They should also have written contracts with the director who is providing the services.

The director would have to declare a conflict of interest and not vote while the Board considers the contract. The Board can then decide to waive the conflict and enter the contract for services with the director.

Ex-officio Directors

An ex-officio director is a person who is a director “by reason of their office” rather than by being elected or appointed to the position. This person’s director position is due to their power or influence. Ex-officio directors can hold the same rights as other directors. Most non-profits will not have ex-officio directors. If they do, the specific rights for ex-officio directors should be clarified in the bylaws. Some bylaws will use the term ex-officio to cover the role of the Executive Director but this practice is best to avoid.

Director versus Officer

A director is a person responsible to ensure proper supervision and management of the activities and internal affairs of a non-profit. Directors are elected by the membership subject to the bylaws. The term “officer” dates from the previous Society Act which used terminology common to the BC Company Act (now the BC Corporations Act).

The BC Corporations Act regulates for profit companies. In that context, officers have specific legal duties and liabilities to shareholders that do not apply in the non-profit sector. For this reason, “officers” in the non-profit sector are now referred to as roles or positions.

In many non-profits bylaws the references to officers are to those directors who have specific roles. These positions are often president, vice president, secretary, and treasurer.



They are often referred to collectively as the executive. These days they are known often as Chair, Secretary, and Treasurer.

The Societies Act is silent on board roles. The roles described above are set out in the Model Bylaws. The directors of the non-profit can share the duties of the various positions or assign them to individuals. The important thing is that records are maintained, minutes be taken, financial statements are prepared, and that there is a board policy that covers how these basic functions are done.

Senior Managers

A senior manager is an individual appointed by the directors to exercise the authority of the board and manage the activities or internal affairs of the non-profit. Senior managers can be an employee, contractor or volunteer, so long as they exercise decision-making authority.

A senior manager is not automatically a manager who is in a senior role. The term “senior manager” is more like an “officer” in the business world - they are a category of people with particular duties and therefore liabilities. Every non-profit should be very careful about delegating their authority to anyone outside the directors or an employee by contract.