



Top Tips for Serving as a Director of a Canadian Registered Charity

By Mark Blumberg (December 20, 2017)

There are approximately 600,000 Canadians who voluntarily serve as directors of the 86,000 Canadian registered charities. Board service can be very fulfilling. You can learn a lot about important issues that the charity deals with and be a part of making society better. You can meet lots of new people with similar interests.

There is no guide to being a great board member. There is no one-size-fits-all approach. Every charity is different and their needs change over time. Also some directors wear different hats in the same charity such as being a board member but also an officer or committee member or charity volunteer and the needs and requirements for each position may be different.

Here are some general tips that may be helpful when serving as a director of a Canadian registered charity:

- 1) Due diligence before joining a charity board. Do some research before agreeing to join the board. This may make you decide not to join the board. Alternatively, if you want to join the board you will be better prepared. You may wish to review the articles of incorporation, by-laws, most recent financial statements, most recent T3010 Registered Charity Information Return, the organization's website, and the list of current board members. You might want to ask some questions including:
 - a) What are the objects and the mission of the organization?
 - b) How effective is the current management?
 - c) Are there any existing claims or liabilities against the charity?

- d) Is there directors and officers indemnity/liability insurance?
- e) Who is providing professional advice to the organization?
- f) What is the organization expecting of you?
- g) Do your skills and your passions align with the needs of the charity and gaps in the current board?
- h) Do you have potential conflicts of interest with the organization that will make it difficult to be on the board?

Too often, individuals are asked to join boards for the wrong reasons – they are wealthy so will obviously contribute large amounts to the organization, they are ‘connected’ so will have their friends and colleagues contribute to the organization, they have a legal background so all legal issues will magically be dealt with for free. Unless the fit is right, you are not doing yourself or the organization any favours by joining the board. It is important to keep in mind that there can be other important roles within the organization that may be more appropriate, fulfilling and enjoyable than joining the board.

- 2) Are you eligible to be on the board? Different charities may have different requirements to be on the board. If you are under the age of 18, bankrupt, don't have the capacity to manage your own affairs, or are an [ineligible individual](#) under the *Income Tax Act* (Canada) (for example for being convicted of tax evasion), then in most cases you will not be able to join the board of a registered charity.
- 3) Understand the Fiduciary Duties owed by Board members to the Charity. Fiduciary duties are obligations on directors of a charity that are similar to the expectations of a trustee. These come from common law and the *Income Tax Act*. Fiduciary duties include a duty of care and a duty of loyalty to the organization, various sub-duties like duty of diligence, duty of obedience, and duty to act honestly. As the Ontario Public Guardian and Trustee [notes](#):

Directors manage charitable corporations. Trustees manage unincorporated charities and trusts. Directors and trustees have full responsibility for the administration and management of charities and must always ensure compliance with all laws. Directors and trustees are expected to be actively involved in the charity's decision-making process. They should be selected on the basis of

their experience, skills and knowledge. They will be ensuring that the charity operates effectively and within the law. Directors and trustees are sometimes referred to as charitable fiduciaries.

The Charities Directorate of the CRA usually focuses on *Income Tax Act* compliance requirements and not fiduciary duties but it has described those duties as including:

- the duty to act honestly and in good faith, in the best interests of the charity and not in a manner that is self-serving;
- the duty to follow the laws and rules that apply to charities;
- the duty to use all charitable property and funds for only charitable purposes; and
- the duty to be accountable for the charity's property and funds.

Perhaps, an easier way to understand your obligations as a director is through a description of those basic duties by the Charity Commission in England and Wales:

- a. Ensure your charity is carrying out its purposes for the public benefit
- b. Comply with your charity's governing document and the law
- c. Act in your charity's best interests
- d. Manage your charity's resources responsibly
- e. Act with reasonable care and skill
- f. Ensure your charity is accountable

- 4) Understand the Role of the Board versus Management. Some non-profits are all volunteer. Then it is important to understand the distinction between the role of the board and other volunteers of the charity. When there are paid staff the board has an important role to play, and so does management. A board member needs to not only fulfil his or her responsibilities but also not interfere in matters that are beyond the purview of board members (i.e. getting 'lost in the weeds'). If the staff are knowledgeable, committed, efficient and effective then there is rarely a need for board to be involved in operational matters. If the staff are not

appropriate for the organization then the solution is not to do their jobs, it is to find a new CEO who can hire the correct staff.

By way of example: let's say that your charity has never done foreign activities before and the staff now have a plan to do certain foreign activities. As a board member, you would inquire as to whether (i) it is a good idea for the organization to expand its mission, (ii) it is within the objects of the organization to do so, (iii) there are special rules relating to foreign activities that must be followed, (iv) the staff are aware of those rules, (v) they are obtaining advice, if necessary, from a professional advisor and, (vi) steps are being taken to mitigate risk. As a director, you don't need to scrutinize every aspect of the agreements relating to those foreign activities; but if the staff are not implementing basic measures then you should raise your concerns at the board level. The role of the board can be expressed in many ways but it focuses on strategy, accountability of the management, ensuring there are enough resources for the mission and that the board is operating effectively.

- 5) Attend the Board Orientation. It is important to understand how the organization operates. The orientation is an opportunity to learn about the organization, its governance, and its challenges. If the organization does not have a board orientation then you should encourage them to start.
- 6) Have a Mentor. If there is someone who has been on the board for a long time and you connect with them, it may be a good idea to have them as a mentor who can give you some more background on the organization, dynamics within the board and how to deal with difficult issues.
- 7) Experience and knowledge is a double-edged sword. If you have extensive experience and knowledge in business, government or the military this can be very helpful. However, a non-profit charity is not a business, government or military and you need to carefully consider the differences (a good dose of humility is an equally helpful asset). If you don't fully understand the non-profit landscape, you may try to apply certain concepts that don't necessarily apply in the non-profit sector and the results can be disastrous. The pace, resources available, number of stakeholders, legal compliance obligations, involvement of unpaid volunteers, public trust rather than a product, are not the same as in some other contexts. If you have a wonderful idea that is going to revolutionize

the organization, consider talking to the CEO and a few well-respected experts before dropping it on an unsuspecting board and derailing other discussions.

- 8) Governing Documents. Review the governing documents at least once per year. Be aware of the content of the articles of incorporation (especially objects and restrictions) and the by-laws. Also, if you are a registered charity, review your Notification of Registration from CRA for any restrictions or requirements that are specific to your charity. The legal objects, sometimes referred to as purposes, are like a box and your activities must be in furtherance of those objects and not outside those objects/the box. This is quite different than your 'mission' which is how, within your objects, you focus your time, resources and attention. If your objects are outdated or too narrow, you may want to carefully consider the possibility of changing them.
- 9) Read Material Before Board Meetings. The organization should provide new members with a board binder with important documents. It can be an electronic folder. Depending on the size and complexity of the organization, board members should be provided with material for review prior to every board meeting. Board members should read that material. As well they should understand the material or at least ask questions if they don't understand.
- 10) Attend all board meetings and participate in the meeting. Ideally the organization will have a schedule of the next years board meetings or a day and time that they are typically held. Ensure that these dates are in your calendar to minimize conflicts. If you cannot attend a meeting, make sure you alert the organization as soon as possible. In some cases if more than one board member cannot make it the organization may change the date of the meeting, although this can be aggravating for everyone concerned. If you anticipate that you will not be able to attend the next couple meetings, consider resigning from the board because being a director of a charity and not attending meetings is frustrating for other board members who have to rehash issues and it reduces the effectiveness of the board. You can always come back on to the board a few years later when your situation changes. You cannot be fulfilling the duties of a director if you are not attending board meetings.

- 11) Ensure that there are enough board meetings. If there are only one or two board meetings per year and if it is an operating charity you should wonder whether that is enough to fulfill your oversight responsibility. Without good governance, it is difficult to know if your non-profit is doing well or floundering, whether beneficiaries are being well served and whether you are accruing potential personal liability.
- 12) Ensure the charity has a risk management program in place. What are the worst things that can happen? What are the most likely things that can happen? Generally speaking, don't focus on hundreds of issues; rather, pick two or three real concerns and deal with them. Then pick another two or three issues and deal with them. If your idea of risk management is to buy insurance, then you are ignoring about 90% of your charity's risks. Always be mindful that insurance companies are running a business and they like to exclude certain events that are more likely to happen or are more costly. Know what is excluded under the terms of your insurance policy, you may be surprised.
- 13) Avoid conflicts of interests. If you are a director of a charity based in Ontario, you cannot receive any compensation (other than reimbursement of reasonable expenses actually incurred in furtherance of the charity's objects) for being either a director or an officer/employee/contractor unless you receive court approval. Act in the best interest of the organization for which you are a director, not in your own best interest or that of another charity. Remember: a charity is not a piggy bank or a personal business. Also, certain expenses which may be permissible in the business world may be a legal or reputational problem in the charity world.
- 14) You are a role model. Whether you like it or not, as a director you need to act as a role model for many different groups with whom your charity interacts. You need to be especially thoughtful about the sensitivities of your particular charity and its stakeholders. The values and sensitivities of different charities will vary greatly.
- 15) Understand the basic legal requirements for registered charities. You should understand the basic legal requirements for registered charities and also certain areas that are important to your charity if any such as fundraising, receipting, foreign activities, business activities, or areas of work such as child care, hospitals, research etc. There are many

resources freely available including CRA's [Charities and Giving website](#), my article on [Top Canadian Charity Law Issues](#) and a [Canadian Charity Legal Checklist](#) which covers top CRA compliance issues.

- 16) Legal Advice. When you are concerned about a situation, obtain legal advice prior to acting, rather than afterwards. It is a lot cheaper and less stressful. Also, obtain other forms of advice when necessary and prudent to protect the charity and its beneficiaries.
- 17) Contracts. Only enter into contracts if properly authorized by the articles and by-laws, which typically means the board should approve major contracts. Make sure that the charity uses appropriate contracts such as employment agreements, independent contractor agreements, etc.
- 18) Investments. Ensure that all investments are prudently invested with professional advice.
- 19) Filings. Ensure that the CRA T3010 Registered Charity Information Return is filed within 6 months of the charity's fiscal year end. Failure to file the form will result in revocation within a few months, which can be disastrous for a registered charity. As well, make sure that all corporate filings are completed.
- 20) Finances. Regularly review the finances of the charity, including financial statements and reports to the board. Don't let the charity over-extend itself. Make sure the organization has a sufficient reserve to weather the inevitable ups and down of running any organization.
- 21) Audit and Investigation. If the activities of the non-profit are being investigated by the Charities Directorate or other regulatory authority, ensure that the organization is responsive and co-operative.
- 22) Risk Review. Consider an informal risk review at least every five years to identify issues prior to them becoming a problem. These are usually best conducted by a lawyer who is very knowledgeable about charity compliance issues.
- 23) Confidentiality. Respect confidentiality of information and board proceedings.

- 24) Privacy. Respect privacy rights of donors, members, etc. Ensure that the charity also does that.
- 25) High Risk Activities. Limit, eliminate and/or carefully control higher risk activities such as serving alcohol, having volunteer drivers, bungee jumping, etc.
- 26) Guarantees and Indemnities. Although not common, never sign a personal guarantee or indemnity in favour of your charity without first obtaining independent legal advice and carefully weighing the risks.
- 27) Disaster Recovery. Spend a little time planning and preparing for disasters such as computer failures (backups), floods, fire etc.
- 28) Consider ongoing education. There are lots of helpful courses geared towards people and issues in the non-profit sector. On the one extreme, there is the Carleton [Masters of Philanthropy and Nonprofit Leadership](#). After the two-year program, you will definitely have a better appreciation of the non-profit sector, its challenges and how you can assist the board. Practically, for most board members you would be looking for half day or full day programs in your community or even webinars which are sometimes offered for [free](#). As people are very busy, it is sometimes more efficient for a charity to bring in experts to talk to its board directly in order to increase their understanding of issues. If this is not happening at your charity, suggest that they do this. Also, you can read numerous resources that are available on the internet although a few cautions – much of the information on legal compliance of charities is not accurate or up to date and certainly not tailored to the needs of your charity. So be careful. Some resources that you might find helpful include the [Charities Directorate](#), www.canadiancharitylaw.ca and www.charitydata.ca, the Ontario [Public Guardian and Trustee](#) and [Corporations Canada](#) if you are a Federal non-profit corporation.
- 29) Be aware of what other charities are doing in your space. Awareness is important because it can provide opportunities for basic collaboration, or perhaps even a [merger](#) one day. Also, it can give you an idea of new and better approaches to dealing with a problem or opportunity. However, never make the assumption that because others are doing something that it is therefore appropriate (or legal) for your organization.

- 30) Evaluation. Are you evaluating your own involvement in the board? You should do so at least annually. Are you feeling like your contribution is worthwhile to the organization? Is that contribution worthwhile in relation to the amount of time you are spending in this role? Is the organization evaluating its own board members and/or having other board members evaluate each other? If not, your organization should implement a board evaluation system every year.
- 31) Keep relationships professional. Boards have to hire and sometimes fire the senior staff person. The number one job of a board, and often a job not well done, is to evaluate the senior staff person. It is very helpful for every board member to have a good relationship with the CEO. However, if that person is your best friend it is going to be more complicated and perhaps even impossible to properly carry out your duties to the charity. Keep the boundaries professional and if personal friendship is more important than your duties to the organization, don't give up on your friendship but it is time to leave the board. Many of the worst governance disasters have happened because boards were not asking the right questions of senior management or put too much trust in management.
- 32) Keep track of when you joined and left the board. Have an email or written trail of when you joined the board and when you resigned from the board. One does not want lack of clarity – which can make a difference in terms of your duties and responsibilities to the organization.
- 33) Know when it is time to leave. Generally, one leaves when your term is up. Sometimes it is best to leave earlier. If you cannot make meetings you should definitely leave. Making the meetings is really the minimum – in some cases if you cannot read the material and prepare for the meeting you might not be positively contributing even if you show up. If your life changes dramatically and you cannot commit to the organization in the way you had it might be time to leave. If you are going to have an ongoing conflict of interest you should seriously think about leaving. Board service is a very important volunteer contribution but it is not a prison sentence. If you are often having emotionally charged arguments with other board members and you are alone or in a small minority it may be time to leave gracefully and either find another role in the organization or find another organization that wants your skills, connections and views.

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