

# Operating According to Your Policies

Board Development Workbook Series



Legal and Ethical Duties of Directors  
of Not-for-Profit Organizations

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# Contents

Acknowledgements.....	1
The Purpose of This Workbook .....	2
How to Use this Workbook .....	3
<b>Part I: Introduction.....</b>	<b>4</b>
Being a Leader .....	4
Understanding Your Legal World .....	5
What Are Policies?.....	7
Why Have Policies? .....	9
Making Good Decisions .....	9
Checklist for making good decisions.....	11
Delegating Authority.....	12
<b>Part II: Making Policy Decisions.....</b>	<b>13</b>
Creating Good Policies .....	13
Common Policies .....	14
<b>1. Director’s Code of Conduct.....</b>	<b>15</b>
Code of Conduct Checklist for Directors .....	15
SAMPLE Code of Conduct for Directors .....	16
Worksheet 1: Developing a Code of Conduct Policy .....	18
<b>2. Conflict Policy.....</b>	<b>19</b>
Worksheet 2: How to tell if you have a Conflict .....	21
Conflict Policy Checklist.....	25
SAMPLE Conflict Policy .....	26
SAMPLE Disclosure of Conflict of Interest/Conflict of Loyalty for Board members .....	31
Worksheet 3: Developing a Conflict Policy .....	32
<b>3. Fundraising Policy.....</b>	<b>34</b>
Checklist for Developing and Reviewing Your Fundraising Policy .....	35
SAMPLE Fundraising Policy.....	37
Worksheet 4: Developing a Fundraising Policy .....	38
<b>Part III: Operating According to Your Policies and Practices.....</b>	<b>39</b>
Worksheet 5: Tracking your Policy Decisions .....	40
Glossary .....	41
Series Information .....	43

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This workbook does not replace legal advice.

This workbook can only provide general background on some of the most common matters a board may have to deal with. Do not rely on it to make decisions or to take any action.

Always check with a lawyer or other expert to get advice on your specific situation. See [Getting Professional Legal Help For Your Board](#) for some suggestions on where to start.

# The Purpose of This Workbook

This workbook is designed to help members of the boards of not-for-profit organizations carry out their roles as directors. It is the companion to the workbook *Understanding Your Governing Documents*.

One of the main responsibilities of boards is to provide leadership to their organizations. They do this in many ways, including creating the policies that guide their organizations' activities. This workbook discusses that important role, suggests ways of writing good policies, and provides some examples of key policies your organization might need.

It will also suggest that your organization establish a way of keeping track of its policies. One of these ways is by putting them in your **Organizational Binder**, if you have one. If you don't, or if yours has become out-of-date, you may find the workbook, *Organizing Your Corporate Documents*, helpful.



If your organization is not incorporated, this workbook may be of interest to you but will not apply directly to your organization.

If you wish to consider incorporating, you may find the workbook *Drafting and Revising Bylaws for Not-for-Profit Organizations in Alberta* helpful. It is available at the Muttart Foundation's website ([www.muttart.org](http://www.muttart.org)) or at

<https://www.alberta.ca/assets/documents/board-development-program-drafting-revising-bylaws.pdf>

# How to Use this Workbook

This workbook has been divided into three parts:

Part I discusses the board's role in providing leadership to its organization through the policies it develops.

Part II provides assistance in developing three key policies:

- a director's code of conduct,
- a conflict of commitment and conflict of interest policy, and
- a fundraising policy.

Part III provides some tips on operating according to your policies.



If you do not know whether your organization is incorporated or if you have difficulty finding your constitution or the legislation that enabled your organization to be incorporated, you may find it helpful to do the workbook, [Organizing Your Corporate Documents](#), before doing this one.

We hope this workbook will help you keep your organization on a firm legal foundation and prevent many problems from arising. However, we ask you to keep the following cautions in mind:

- The law is complex and there are important exceptions to many rules. There are also many legal issues that are not covered in this workbook, and many situations and options that are not discussed.
- The law is always changing, so some of the information in this workbook may be out of date by the time you read it.
- Every organization is different and its problems may be unique. This workbook cannot cover all those situations.

Please remember that this workbook does not replace legal advice. Do not rely on it to make decisions or to take any action. Always check with a lawyer or other expert to get advice on your specific situation. See [Getting Professional Legal Help For Your Board](#) for some suggestions for where to start.



Throughout this workbook, we sometimes refer to an incorporated not-for-profit organization as a "corporation". This may seem odd if you are used to thinking of a corporation as a large, for-profit business. However, if your organization has been formally incorporated, whether as a society, a co-operative, a not-for-profit company, or a federally incorporated not-for-profit organization, it is considered in law to be a corporate entity or corporation.

# Part I

## Introduction

Although incorporated organizations have their own legal identity, they can only act through their board of directors. Directors are responsible for the leadership and overall management of their organizations.

As a director, your job is to make sure that your organization operates in the best interests of its stakeholders and according to:

- its governing statute,
- its constitution,
- its policies and practices, and
- the law of Canada.

***If your organization is a registered charitable organization, your board must also be sure that it only undertakes activities that are allowed under the Income Tax Act rules for charities.***

## Being a Leader

Boards of not-for-profit organizations are responsible for the leadership of their organizations. Leadership is about having a dream or a vision and about making that dream a reality. Leadership is also about being able to communicate that dream effectively to others. The board is then responsible for making sure that that vision is implemented appropriately by the staff and volunteers.

As leaders, directors of not-for-profit organizations are responsible for making their organization's vision clear to others and for making sure that their organizations are doing the right things to promote their vision. One of the chief ways that boards do that is by making policies about:

- what the organization believes in,
- what the organization will do,
- who it will do it for,
- what standards it will meet in doing it,
- how it will manage its funds,
- how it will make its decisions, and
- how it will deal with staff.

## Leadership versus Management

To paraphrase Peter Drucker, leadership is about doing the right things and that management is about doing things right. Some boards will need to do both. However, boards of organizations that have staff or stable volunteers may be able to delegate some or all of the management of their organization to those other people.

Either way, one of the responsibilities of the board will be to make the policies that guide what they or their staff and volunteers can and can not do.

The board will also have to create policies about how they will monitor their own activities as well as the activities of anyone else who has responsibilities in the organization.

## Understanding Your Legal World

Not-for-profit organizations operate within a framework of laws that govern what they can do and how they must do it. Some of these rules are made by governments and can be thought of as external rules. Other rules are made by the organization itself and are its internal rules. Your organization must follow all relevant external rules as well as its own internal rules.

### External Rules

Laws have developed over the years to provide some sense of order and stability in our lives. They reflect our need to know that other people and organizations will keep their promises if at all possible. Laws also give us ways of dealing with promises that are broken. Laws may be made by all levels of government: federal, provincial, or municipal. Like ordinary people, incorporated organizations must obey the law. Those laws touch on almost all aspects of the activities of boards and their organizations.

Unfortunately, there isn't a single statute or even area of law that sets out all of the rights, duties, and liabilities of boards of directors. As a result, board members tend to learn about the law by:

- serving on boards of incorporated not-for-profit organizations,
- talking with others,
- going to conferences and workshops,
- consulting experts from time to time, and
- reading news stories, magazine articles, workbooks, and other resources that have been prepared to help them.

[Getting Professional Legal Help For Your Board](#) contains a list of organizations that provide resources to the not-for-profit sector. You may find some of them of particular interest.

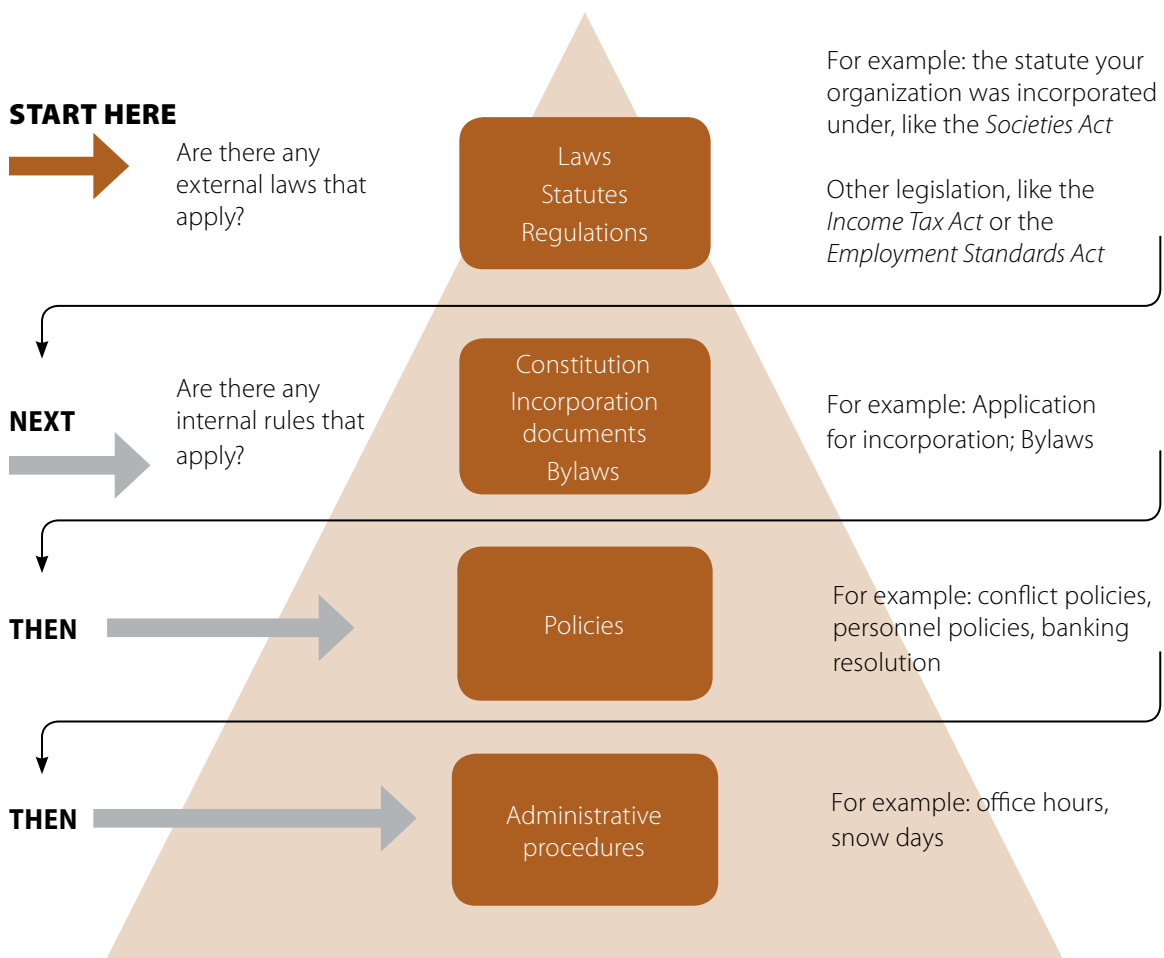


## Internal Rules

Through their constitutions, policies, and customs, boards create their own rules. Some of these internal rules are also legally binding. Board members are responsible for knowing and following their organization's policies and for up-dating them from time to time as necessary. The organization's constitution usually says how those changes are supposed to be made. Policies can often be changed using the same procedures that were used to create them.

### Hierarchy of Rules Governing Your Organization

In making good decisions, Boards must follow both external rules (laws) and internal rules



# What Are Policies?

Policies are simply the internal rules that your board makes about how your organization is to operate. There is nothing magical about policies. They do not need to be long and complicated. In fact, the simpler the policy, the more likely it is to be read and understood. They do not need to be written in any particular way but, again, the more clearly they are written the more likely they are to be read and understood.

However, the most important part of writing good policies is thinking about what you need. The more carefully a policy is thought out, the more likely it is to work.

**Once your board has made a policy, follow it.** Applying policies in some cases but not others will likely confuse everyone affected. Is it a policy or isn't it? Confusion may cause people to lose confidence in your board. It may also cause legal problems. It may look like your board is not taking its policies seriously and doing its job properly. So, **if a policy is not working well, change it. Do not ignore it.**

## Policies versus Bylaws

Policies are different from bylaws. They do not form part of your constitution. As a result:

- your board can change them when they need to, and
- the consequences of not following policies are likely less serious than not following your bylaws.

## Failure to Follow Bylaws

If your board doesn't follow your bylaws, the courts may order it to do so. Although this does not happen often, the courts can review decisions your board makes or actions it takes that do not follow your organization's bylaws. The courts may also order the board do things again properly. In rare cases, the courts may fine board members or make them pay for any harm that the organization did to someone.

## Failing to Follow Policies

If your board doesn't follow its policies, several things could happen. For example:

- If the majority of your board agrees to do something that goes against an existing policy, then the board may actually have overruled the policy. However, if your organization is ever sued for acting negligently, the fact that your board went against its policies might be used against it. It could be seen as evidence that you were negligent.
- If an individual director or employee is not following a policy of your organization, the consequences could be more serious. A director might be exceeding his or her authority and be personally responsible if someone was harmed by his or her actions. This could be quite costly. The employee would probably be in breach of their terms of employment and could be disciplined or even fired.

## Policies versus Procedures

Organizations may need rules that say *how* a policy is to be implemented and who is supposed to do it. These procedures may include routines for keeping proper records, staff time sheets, filing practices, and other staff activities. These are usually dealt with by the executive director rather than the board. However, the board may ask the executive director to provide a report on some of the procedures from time to time to ensure that the executive director is dealing with policies effectively.

## Failure to Follow Procedures

When you create procedures and practices, you should also decide what you will do if they are not followed. That will vary depending on how important they are. For example, procedures that affect health and safety must be taken very seriously. You may have legal liability if they are not followed properly. The consequences for not following those procedures should be set out very clearly and staff should be reminded of them from time to time. On the other hand, policies about how vacation time can be used may be more flexible. They could be written in a way that gives the supervisor wide discretion about what is allowed.

You might decide to deal with failure to follow procedures as a matter of staff performance. For example, it might be appropriate to require someone to check frequently to see that procedures are being followed. You might want the executive director or other supervisor to carefully explain or review the procedures with a staff member who isn't following procedures. If the staff member consistently fails to follow procedures, you might want them to get more training or professional development. In extreme cases failure to comply may be grounds for discipline or even dismissal.

## Why Have Policies?

A good set of policies will make it clear what the organization is about and how it carries on its operations. Policies make it very clear to everyone who deals with your organization:

- what it is your organization stands for,
- where it wants to go,
- how it will make the decisions necessary to get there, and
- what is expected of everyone along the way.

The length of time the policy is in effect can vary. You may only need some policies for a short term. However, you may need other policies to set long-term rules for the organization. For example, you may have an unusual event or project that you want managed in a particular way, so you create policies to cover that situation. On the other hand you may need a conflict of interest policy, an investment policy, or a fundraising policy to set standards that your board wants to maintain indefinitely.

A clear set of policies will reduce the amount of work your board will need to do to direct routine activity. It will make it easier and less risky to delegate authority to committees, staff, and volunteers. Your board will have more time to spend on its priorities.

Clear policies also provide a framework for evaluating your organization, your board, staff, programs, and services.

## Making Good Decisions

The process of making policies is basically the same process as for making any good decisions.

### **The way Decisions are Made**

Your bylaws will set out the way your organization has to make many of its decisions. However, the bylaws often don't cover all types of decisions or all aspects of the decision-making process. You may need to check other documents for guidance. For example, the statute that your organization was incorporated under might cover some types of decisions or some aspects of the decision-making process. Your policies might cover others.

Sometimes a majority of the members voting in favour of the decision is needed. Other decisions can only be made by a specified majority. For example, a two-thirds majority of the members present may be needed to pass a special resolution.

In some organizations, members can vote even if they are not at the meeting in person. If voting by proxy is allowed, then the member can get someone else to attend for them. Mail-in ballots may also be permitted in some organizations.

## Decisions by members

Certain kinds of decisions can be made only by the members. Those rules are set out in legislation or, sometimes, in the organization's constitution or bylaws. However, decisions by members should not interfere with the ability of directors to fulfill their duties. If they do, directors may have no choice but to resign.

## Decisions by board members

Organizations require a certain number of directors to be at the meeting for a decision to be binding. That number is called the quorum. The size of your quorum is usually set out in your organization's bylaws.

Many organizations make their decisions on the basis of a majority vote. However, some organizations make decisions by consensus. If so, consensus may also be defined in your organization's bylaws. Generally, consensus means that the whole quorum of directors must agree to the decision.

**Check your bylaws and the statute that your organization was incorporated under to see what rules apply to the decision you are considering making.**

## Decisions that you Disagree with

Being part of the board means accepting the democratic process of voting on decisions. Occasionally though, you may believe a decision that your board makes is wrong. If that happens, you will have to decide how important the decision is to you and to the organization.

Most disagreements among board members are over matters not critical to the success of the organization. Consider the matter carefully. Respect the democratic process and the judgment of your fellow board members. If appropriate, accept the board's decision.

Unfortunately, there are times when boards make decisions that go beyond their authority or that may be bad for the organization. If you think that may be the case, begin by checking the organization's bylaws to see if the decision was made according to your organization's rules. Also check your organization's policies to see if they were followed.

- If the decision was beyond the board's power or contrary to your organization's policies, you may be able to have the decision set aside until proper procedures have been followed. You may need legal help to do this properly.
- If everything was done properly, you will have to decide whether the decision is about something that is so serious or affects your ability to carry out your responsibilities as a director that you should resign from the board.

If you think the decision puts the organization at risk legally, put forward a motion to get legal advice before making a final decision on the matter.

**Note: Any time that the board makes a decision that you are strongly opposed to, it is important that you insist that your dissent be recorded in the minutes of the meeting. Otherwise, you may be liable for any damages that result from the decision. Of course, if you think the board is about to do something that is actually illegal, you should go directly to the police.**



## Checklist for making good decisions

- Find out as much as you can about your organization's mission, its financial affairs, and its programs or services.
- Ask the president, another board member, or the executive director to give you:
  - a copy of the statute that the organization was incorporated under, and
  - a copy of organization's constitution and policies.
- If you are not sure what to ask for, you may find other workbooks in this series helpful. Both *Organizing Your Corporate Documents* and *Understanding your Legal Documents* have information on these topics.
- Ask an experienced board member or a senior staff member to explain the history of the organization, its current activities, the problems it is facing, and how it hopes to deal with these problems.
- Ask if the organization has a board manual or other document that explains what the organization is about and the role of directors.
- Have the board keep an **Organizational Binder** for your organization and have it at all board meetings. See the workbook, *Organizing Your Corporate Documents*, for help in creating an organizational binder.
- Be sure someone keeps your **Organizational Binder** up to date and review it at least quarterly.
- Prepare for and attend all board meetings.
- Read any material that is sent to you before meetings.
- Make notes about any matters that are not clear to you.
- Do further research if necessary.
- Participate actively in board meetings.
- Be sure to ask any questions you have about the matters being discussed.
- If you are not satisfied with the information you are given, ask for the decision to be tabled to the next meeting. Then ask for more information to be provided by the person responsible for bringing the matter to the board.

## Recording Decisions

Board meetings can be held formally or informally. If you have formal meetings, the chair or president should conduct the meeting according to the “rules of order” your organization has decided to follow. Quite often meetings are held without following formal rules of order. However, if one of the directors insists, the meeting should be conducted formally. Either way a record should be kept of all decisions that have been made.

Your bylaws may also provide that a written resolution signed by all of the directors is valid even if a meeting on the issue was never actually held.

## Delegating Authority

Boards may carry out their responsibilities directly through the decisions they make or they may delegate some of their responsibilities to staff and volunteers. The Act they are incorporated under and their constitution may put limits on when and how this can be done.

**Boards are accountable for both:**

- **the decisions that are made, and**
- **anything that is done on behalf of the organization.**

**They are responsible even if they have asked someone else to make the decision. They are responsible even if they do not know about a decision that has been made or an action that has been taken.**

So boards must ensure that the executive director is reporting to them regularly on the organization’s activities and alerting the board to any issues that may affect the organization. The board should ask for assurance from the executive director that all source deduction remittances have been made, and that other *Income Tax Act* obligations and any other legal requirements are being met. The board should also ask for reports on decisions that they have delegated so they can be sure these decisions are being made properly. They should be fully informed about the organization’s operations.

**Note: Collectively your board is responsible for ensuring it and your staff or volunteers are meeting all your legal obligations. *If your organization is a registered charity, your board must also be sure that it follows the rules for charities set out by the Canada Revenue Agency.***

# Part II

## Making Policy Decisions

### Creating Good Policies

Making good decisions about your organization's policies includes asking the following questions:

- Do we need a policy for this situation? Why? What do we want to accomplish with it?
- Who is responsible for implementing it?
- When is it to be used?
- How will we monitor it?
- When will we review it?

### Writing Policies

There is no set way to write policies. The styles used in the examples in this workbook are all different. Some may suit your organization's needs better than others.

**What matters most is that your board has given the matter careful thought and has written the policy clearly.**

Usually, it is best to keep the language and sentence structures simple. Make sure it is clear who or what the policy applies to and who is responsible for ensuring it is followed.

Sometimes it helps to write out a few sentences about why you need the policy and what you want it to accomplish. Discuss this statement at a board meeting to ensure there is agreement on both the need for the policy and what the policy should do. Revise it if necessary. This statement will also serve as a background when it comes time to review the policy. Is it doing what you intended?

When you are satisfied that you know what the policy should be and why, you can pass a motion referring to the statement. Someone should be delegated to write the actual policy. It should then be adopted by the board in a formal motion. The motion should include:

- the type of policy (e.g. financial, personnel, conflict, fundraising, etc.),
- the actual policy,
- the date the policy takes effect, and
- the date for reviewing the policy.



**It is important to keep a record of when the policy was approved by the board, when it takes effect, and when it is supposed to be reviewed.** If you are keeping a board calendar, enter the dates in it.

Sometimes the policy itself can be stated quite simply or refer to another document that sets out the specific terms.

**Example 1:**

<b>Policies relating to Personnel</b>				
MOTION	MEETING	DATE OF MOTION	DATE POLICY TAKES EFFECT	REVIEW DATE
That the executive director is responsible for recruiting, hiring, and supervising all staff.	Monthly board meeting	15 March 2018	Immediately	Every five years. Next review date: <b>March 2023</b>

**Example 2:**

<b>Policies relating to Property</b>				
MOTION	MEETING	DATE OF MOTION	DATE POLICY TAKES EFFECT	REVIEW DATE
Approval of attached guidelines for use of facility by outside groups.	Monthly board meeting	16 Nov 2018	January 1, 2019	Every two years. Next review date: <b>November 2020</b>

## Common Policies

We have used examples of three common policies to give you a starting point for thinking about policies you might need:

1. a Code of Conduct for Directors,
2. a Conflict Policy, and
3. a Fundraising Policy.

For each example we have provided:

- a checklist of items for your board to consider in drafting its policy,
- a sample policy, and
- a worksheet to help you create your own version.

# 1. Director's Code of Conduct

Learning to work together as a board takes time and effort. Some boards find that it is helpful to develop a Code of Conduct for their directors so that they know what is expected of them in their meetings. Consider the items in the following checklist.



## Code of Conduct Checklist for Directors

As a director, your job is to:

- Act carefully, honestly, and in good faith in promoting the best interests of the organization, even if that may be against your own personal interests.
- Follow the law and rules under which the organization is established.
- Maintain the legal status of the organization.
- Engage in no conduct that is inconsistent or in conflict with the purposes or objects of the organization as set out in its constitution.
- Never involve the organization in criminal activities or engage in activities that might bring the organization into disrepute.
- Never exceed the authority that you actually have, for example, by entering into unauthorized contracts.
- Never use your position (directly or indirectly) to influence someone else:
  - to do something or
  - not do somethingthat benefits
  - you or
  - someone close to youif it would harm the organization.
- Never use information learned as a result of being a director for your own personal gain or to benefit a person or group connected to you. This duty continues even when you are no longer a director.
- Treat all discussions at board meetings, and any other information obtained as a result of your position as a director, as confidential, unless the board gives permission otherwise.
- Ensure the organization lives up to its contracts and other legal obligations.

## Upstanding Society of Alberta Code of Conduct for Directors

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I, [ *name of director* ], am a director of the Upstanding Society of Alberta (the “Society”). In carrying out my duties as a director of the Society during my term of office I declare that:

1. I will act carefully, honestly, in good faith and in the best interests of the Society. At all times I will use care, skill and diligence in carrying out my duties.
2. I will respect the Society’s:
  - legal obligations,
  - governing documents,
  - policies approved by its Board of Directors, and
  - decisions of its membership.
3. I will publicly support the policies and positions of the Society as approved by the Board of Directors.
4. I will keep confidential all information I learn about matters determined by board motion to be matters of confidence. Where I am uncertain in determining whether something is a matter of confidence, I will seek direction by way of a resolution of the Board of Directors.
5. I will publicly support actions taken by the Society’s management to implement programs and achieve the objectives contained in the Society’s approved plans and budgets.
6. I will strive to place the interests of the Society and its Board of Directors ahead of my personal interests and I will immediately declare any conflicts of interest or conflicts of loyalty that arise.
7. If I do not abide by this Agreement or I find that I am in a situation where my continued presence on the Board of Directors would cause legal problems, embarrass the Society, or undermine member confidence:
  - I will immediately resign, or
  - I will ask the board if they think I should resign, or
  - I will resign if the board raises the matter itself and decides that I should resign.

The board must give me a chance to present my side of the story before the board makes its decision. The board decision must be made by a vote of two-thirds of the directors attending a meeting.

**SAMPLE: Code of Conduct for Directors**

The board of the Society can determine what are matters of embarrassment or matters tending to undermine member confidence. These include:

- charges under the Criminal Code,
- failure to comply with requirements of regulators, or
- any other matters which in the sole and absolute opinion of the board could bring the reputation of the Society into disrepute either with its members or more generally.

Signed by:

---

Date:

---

SAMPLE

## Worksheet 1: Developing a Code of Conduct Policy

- Review the Code of Conduct checklist with your board.
  - Do board members already understand the duties set out in the sample code of conduct?
  - Do they need more education about those duties?
- Review the sample Code of Conduct Policy with your board. What does it cover that you need to include?
- Work with your board to create a Code of Conduct for your organization.
  - What are your expectations for board members? Have there been problems in the past that you think should be covered by the policy? Can you foresee any problems in the future?
  - How specific do you need to be about your expectations?
  - Do you need to emphasize any particular responsibilities that are not in the sample Code, like attending meetings, participating in organizational activities?
- Draft a Code for discussion by the board. Does everyone understand it? Are there some parts that are confusing to some members? Revise the draft until it is written in a way that everyone understands what is expected of them.
- Formally approve the policy at a board meeting. Make a note of when it is to be next reviewed.
- Have each board member sign the Code. Keep a copy in the organization's files and give a copy to the board member.
- Make sure new members get copies of the code when they join the board. Arrange for a board member to review the code with them and answer any questions they may have.
- Make sure new members sign a copy of the Code.

## 2. Conflict Policy

Another policy your board may need is a policy dealing specifically with conflicts of loyalty and interest that board members may have. As a board member, you are required to meet the highest standard of conduct when you are dealing with your organization's assets and affairs. Your responsibilities are the same as they would be if you were looking after the assets and affairs of another person.

One of your obligations as a director is to always put the organization's interest ahead of the interest of yourself, any other person, or any other organization.

**Note: It is important that board members have no conflicts or even the appearance of a conflict.**

### Conflict of loyalties

If you find that you have to make a decision that may benefit or harm someone else or something that you care about or believe in, you may have a conflict of loyalties. You do not have to benefit financially to have a conflict of loyalty.

Conflicts of loyalties are very common in not-for-profit organizations and should be taken seriously.

### Conflict of interest

Conflicts of interest arise if you or someone you are associated with would benefit or be harmed financially. The most common examples of conflicts of interest arise where a board member gets paid to do some work for the organization.

These types of conflicts can arise in most organizations. So, it is a very good idea for an organization to have a conflict policy that is signed by directors when they join the board. Such a policy alerts directors and the board as a whole when there might be a potential conflict and sets up procedures to deal with them when they occur.

## Examples of situations that could arise

You must	You must NOT
Maintain confidentiality regarding board business.	Disclose information about discussions at board meetings and any other information obtained as a result of your position as a director, unless the board specifically authorizes the disclosure.
For example, you should not tell people who are not directors about plans the organization might have. You should also not discuss the views of other directors have about issues the organization is considering.	
Maintain clear separation between the organization's financial business and your own.	Use your powers as a director to further your own personal gain or to benefit a person or group connected to you. This would include your employer or a relative. Doing so would be particularly bad where it causes loss to the organization in some way.
For example, directors should not vote on contracts where they have a direct or indirect personal interest.	
Be clear about your own boundaries of influence.	Use your position (directly or indirectly) to influence someone else <ul style="list-style-type: none"> <li>• to do something or</li> <li>• not do something</li> </ul> that benefits <ul style="list-style-type: none"> <li>• you or</li> <li>• someone close to you</li> </ul> if it would harm the organization.
Act in good faith on behalf of the organization.	Use information learned as a result of being a director for your own personal gain. This duty continues even when you are no longer a director.

If you are having trouble sorting out what is best for the organization and what is best for you (or someone you have ties to), try writing out the issue as clearly as you can.

- Think how someone outside your organization might view the possibility of a conflict.
- Talk to other directors, to someone outside your organization, or a lawyer to help you understand your proper role.

Once you write things down, you will likely see your duty more clearly.

You may also find **Worksheet 2** helpful.

## Worksheet 2: How to tell if you have a Conflict

Many situations might lead to conflicts. You may sometimes find it difficult to tell when you have a conflict to declare.

Test yourself in the following situations.

### Is this a conflict of interest?

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You own a computer shop and offer the board you sit on a good deal on equipment for the office. If you add minimal mark-up, the board will still get the equipment for a good price.

#### Consider

A shareholder or owner of a company may also be a board member. The organization will want to pay the lowest price for any services or goods. On the other hand, it will be in the director's interest to be paid a higher price. It might be better for the organization to seek other opportunities and better prices.

You should not be part of the board's decision making. Make your offer and leave the room. If the board decides not to accept your offer, accept their decision. They have acted in the best interests of the organization and in this case their decision must be your decision.

### Is this a conflict of interest?

---

You serve on a board in two different organizations: A and B. Serving on Board A, you learn of a new and little-publicized grant. You owe a duty of good faith to Board A, which is applying for the grant. On the other hand, you owe a duty to Board B, which would also benefit from the grant. You want to act in the best interests of Board B. Do you tell Board B about the grant?

#### Consider

You are definitely in a conflict! You owe a duty of confidentiality to Board A. You cannot tell Board B what you have learned.

If Board B does learn about the funding program and wants to discuss it at a meeting, you should declare that you have a conflict. Leave the meeting while they discuss whether to apply for a grant or not. If this situation is likely to arise often, you may need to resign from one of the boards.



### **Is this a conflict of interest?**

---

You work as a staff member of a charitable foundation and serve as a board member in a non-governmental organization. At work and as a board member, you are expected to maintain confidentiality. A foundation policy is being drafted that may impact the financial resources of the organization. Since it is budget-planning time at the board, you would like to recommend significant changes in funding sources. What can you say?

#### **Consider**

You are definitely in a conflict! You owe a duty of confidentiality to your employer. You must not participate in the board discussion or decision on this issue. If it is an issue that has a major impact on the organization, you may have to resign from the board.

### **Is this a conflict of interest?**

---

You serve on the board of a volunteer agency that has been given the exclusive use of a beautiful boardroom, kitchen, and office overlooking a river valley. In your capacity on the board, you have a key to the boardroom. On Thanksgiving weekend, you serve dinner there to your extended family. At the end of the festivities, the rooms look exactly as they were found. Is this appropriate?

#### **Consider**

No. Conflicts can also arise where a director gives to him- or herself privileges that are not available to others.

### **Is this a conflict of interest?**

---

The board you serve on uses one printing company exclusively. Since you are often the one taking the printing requests to the company, the owner of the company offers to print personal Christmas cards for you this year at no cost.

#### **Consider**

It is a conflict of interest to accept gifts or other benefits from third parties with whom the organization contracts or might contract. In this case (as in most others), decline the offer. Instead, suggest they print complementary greeting cards for the organization's use.

## Consequences of acting when you have a Conflict

The law treats the duties of a director very seriously. As a director, you must avoid situations of conflict. It is not an excuse to say that you were put in an impossible situation or that you made a mistake.

Being involved in activities when you have a conflict can lead to legal problems. You can be:

- sued by the organization for any losses or damage suffered as a result of the breach;
- forced to account for and repay anything you or a spouse or related company might have earned from the breach;
- the subject of a court order (called an injunction) that will stop you from breaching your duties;
- ordered to pay punitive damages (a sum of money which reflects that fact that you have done something wrong, potentially based upon the premise that a breach of director's duties is similar to a breach of trust) by the court even though the organization has not suffered any financial loss;
- dismissed from any senior position that you hold in the organization, for example, as an officer – breach of fiduciary duty is generally considered just cause for dismissal; and
- prosecuted in the criminal courts in some situations.

Any contract made by the organization involving a breach of a fiduciary duty can be cancelled or declared not enforceable. In situations where a conflict arises for you, particularly in a decision-making capacity, it is unwise—and in some cases unlawful—for you to:

- vote on the matter,
- be present for discussions on the matter,
- participate in discussions on the matter,
- fail to disclose your interest to other directors, or
- stay on as a director where the conflict will continue and will affect your ability to carry out your duties.

Even though people feel capable of making good decisions in a conflict situation, it is often not as easy in reality. Further, the appearance of conflict may be the most damaging, even when the organization does not suffer any loss.

**Note: The law concerning the duties of a director is complex. General issues have been outlined here, but there may be exceptions and other actions for which directors may be liable. If you have any specific questions or concerns you should seek legal advice.**

## Creating your Conflict Policy

If your organization does not have a conflict policy, it is helpful to create one before you actually need it. Then everyone knows the rules from the start. **Every director should sign a statement that they have read the policy and be given a copy. As new directors join the board, they should also be required to sign a statement and be given a copy.**

Every organization has different needs. Financial conflicts of interest policies are probably most common.

Board members may experience conflicts of loyalty between their personal or work obligations and their obligations as a board member. Some organizations may need policies relating to other potential areas of conflict, such as political or religious issues.

In a small community a retired professional may be in high demand as a director and may sit on the boards of organizations whose mandates overlap to some extent. In such instances, it is always important for them to make clear what capacity they are acting in when dealing with funders or other stakeholders.

It may take some time and hard work for your board to create a conflict policy that meets the organization's needs. Review the legislation under which your group was established and become familiar with the rules for dealing with conflicts in it.

### **At the very least a conflict policy should contain:**

- a requirement to avoid both conflicts of loyalty and interest;
- a requirement that each director will disclose interests, holdings, and relationships (and anything else relevant to the interests of a particular organization) that might result in a conflict, and will keep that information updated;
- a requirement that each director disclose any interests in a contract or decision where they (or their business or other not-for-profit affiliation), family, employer, or close associate would benefit; and
- the procedure for handling conflicts that are disclosed
  - Put in place clear procedures for dealing with ongoing or repeated conflict. Keep stakeholders informed about these types of situations.
  - Should directors have to resign if their conflict will be on-going? Consider how directors are chosen or other structural reforms to eliminate ongoing conflicts.

Make sure there is time and opportunity to deal with conflicts during board meetings. If a conflict issue isn't, or can't, be dealt with during a meeting, ensure there are additional resources available for it to be further researched and sorted out. Seek legal advice if necessary.

Make sure the conflicts policy is regularly updated.



## Conflict Policy Checklist

As a director, you should:

- Ask for the organization's conflicts policy and learn what its procedures are for dealing with conflicts.
- Review meeting agendas ahead of time to see if there might be a new conflict on any of the items.
- Identify any conflicts that come from your own situation.
- Identify any conflicts that are part of how the organization is structured.
- Be aware of your roles with any organization or any personal financial or other issues that may conflict with your responsibility to always act in the best interest of the organization of which you are a director.
- Consider both your own situation and people you have family, business or other ties with and who that might benefit from your decisions or actions as a director.
- Evaluate questionable situations to see if a reasonable person might think there is a potential conflict even if there is not an actual conflict.

**Note:** If you are a charity, become familiar with the rules for dealing with conflicts in charities. These rules come from a number of different places – including the *Income Tax Act*, provincial laws and decisions in court cases – so ask your organization's staff or your colleagues where the best current material on this topic can be found.

## Upstanding Society of Alberta Conflict Policy

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This policy was approved at a board meeting held on March 19, 2019. It came into effect immediately and is to be reviewed by March 31, 2024.

### I. RATIONALE, PRINCIPLES AND VALUES

Our organization is well-known and highly regarded. To maintain our reputation, we must make decisions and carry out our work carefully, honestly, and in good faith. We must act professionally and fairly.

1. We must put the interests of our organization above any other interests that we might have. We must not allow ourselves to be influenced by our own personal or professional interests.
  - We must not favour another organization or another person. If we do, we will have or seem to have a conflict of loyalty.
  - We must not receive any financial benefit from the work of the organization. If we do, we will have or seem to have a conflict of interest.
  - We must not even look like we are being influenced by inappropriate reasons, like our own interests or those of our friends or families.
2. Our directors, committee members, and staff and volunteers must always report a conflict of interest or conflict of loyalty to the board or the executive director. They must also report anything that might be seen by someone as possibly being a conflict.
  - Board members, members of board committees, and the executive director must report their conflict or appearance of conflict to the president. The president must then ask the board what it thinks should be done about the situation.
  - Staff members, volunteers, or members of an advisory or project committees must report their conflict or appearance of a conflict to the executive director. The executive director must decide what to do about the situation or refer it to the president for a decision by the board.

## **II. POLICY OBJECTIVE**

The objective of this policy is to provide a way to identify and deal with conflicts. It applies to

- actual conflicts,
- potential conflicts, and
- perceived conflicts.

It applies to directors, committee members, staff and volunteers when they are carrying out their duties on behalf of our organization.

Conflicts can involve loyalties or duties to another organization or person or they can be financial.

Deciding whether someone has a conflict and whether it is actually a problem is a judgment call. It will depend in part on the context.

- How serious is the issue?
- How substantial is the conflict?

The board and the executive director will consider factors such as those in deciding what to do about the conflict or appearance of conflict.

Directors, committee members, staff, and volunteers must read this policy before they get involved in our organization. They must also sign a copy of the attached document stating that they understand this policy.

## **III. DEFINITIONS**

In this policy we have used the following terms in specific ways.

Conflicts

- 1.** A conflict exists when a reasonable observer would believe that a person's loyalty to another organization or interest, including the individual's self-interest, may influence that person's judgement or loyalty to our organization.
- 2.** Such conflicts include situations where:
  - (a) a person involved in a decision (or an immediate family member of that person) gets a benefit or a disadvantage from the decision (conflict of interest);
  - (b) a person owes a loyalty to other people or organizations and there doesn't seem to be a way to serve the common interests of those others and our organization (conflict of loyalty); or
  - (c) a reasonable person could believe that a decision-maker's actions are influenced by things other than the merits of the issue even if that is not actually the case (perceived conflict).

## **SAMPLE: Conflict Policy**

3. It is not considered to be a conflict where a matter being decided or acted upon applies generally to a broad group that the decision-maker may incidentally be part of. (For example, all members, all clients, the general public, all directors, all officers or all staff.) It is also not a conflict if the decision or payment applies to a person who is being sued or faces a court or regulatory proceeding as a result of decisions or action they took to fulfill their role with the organization.

### Immediate Family Member

The following are considered the members of an individual's immediate family:

- (a) a spouse, common-law partner, or interdependent adult; and
- (b) a son or daughter, or a son or daughter of the individual's spouse, common-law partner, or interdependent adult.

## **IV. PROCESSES FOR DEALING WITH CONFLICTS**

### Directors

1. A director who has a conflict or perceived conflict in connection with any matter before the board shall not take part in any discussion or vote related to that matter.
2. It is the director's responsibility to report the conflict or perceived conflict to the president, who shall bring it to the attention of the board, or provide the director with the opportunity to bring it to the attention of the board.
3. When a conflict or perceived conflict is reported, the secretary must note that in the minutes of the board meeting.
4. The director should explain the conflict or perceived conflict to the board and then leave the meeting. The secretary must record the fact that the director left the meeting.
5. Where appropriate, the other members of the board may, by motion, require the affected director to take measures to remedy the conflict. Such measures, however, must comply with governing legislation and the organization's bylaws and policies.
6. The board should then discuss and address the matter that gave rise to the conflict.
7. Once the board has made a decision on the matter, the excluded director can rejoin the board meeting.

The secretary must note the time when the excluded director rejoined the meeting and any directions given to the director regarding the conflict or perceived conflict.

## Staff and Volunteers

1. The executive director must report any situation in which there is or might be a conflict of interest, conflict of loyalty or perceived conflict to the president in a timely manner.
2. The president must assess the significance of the conflict and determine what measures, if any, the executive director or any other person needs to take to address the conflict or appearance of conflict. The president may seek the advice and direction of the board in making those decisions.
3. The executive director must comply with the direction provided by the president.
4. Staff members, volunteers, and members of project or advisory committees have a responsibility to report any conflict of interest, conflict of loyalty or perceived conflict to the executive director.
5. The executive director must assess the significance of the conflict and determine what measures, if any, the staff member, volunteer, or project or advisory committee member needs to take to address the conflict or appearance of conflict. The executive director may seek the advice and direction of the president or the board in making those decisions. The staff member, volunteer, or project or advisory committee member must comply with the direction provided by the executive director.
6. Any instructions given by the board chair or the executive director (as the case may be) with respect to conflict must comply with governing legislation and the organization's bylaws and policies.

## V. OTHER CONSIDERATIONS

### Committees and External Committee Members

Where a committee is established by bylaw or by the board, the board must consider at its inception, and at least every two years thereafter, whether other conflict rules should be adopted for that body in light of its mandate and personnel. These other rules shall be in addition to, and not in substitution for, the rules set out in this Policy. Committee members who are not directors or staff shall be subject to the rules in this Policy, as well as any other rules that apply to the committee on which they serve. Applicable disclosures of committee members should be made to the Committee Chair.

### Contracting with Directors or other Stakeholders

Nothing in the organization's incorporating documents or in its bylaws prevents the awarding of a contract to a director or other stakeholder, or to an immediate family member of a director or other stakeholder. However, such arrangements should be reviewed to ensure they comply with any applicable statutory obligations. As well, the



organization's Board of Directors has a responsibility to ensure that any such contract is reasonable under the circumstances and would withstand independent scrutiny.

Nepotism

No person who is related to a director, committee member or staff member shall be appointed to staff, awarded a contract, or hired on a casual basis without the prior specific authority of the Board of Directors. This authority may not be delegated.

## **VI. ANNUAL COMMITMENT**

The executive director shall annually circulate a copy of this Policy to each director, committee member and staff member and ask that the person acknowledge having reviewed it and commit to complying with it. The executive director shall retain on file the documents signifying such review and commitment.

SAMPLE

Upstanding Society of Alberta

## **Disclosure of Conflict of Interest/Conflict of Loyalty**

### **for Board members**

To the Board of Directors/Board Chair/Executive Director

I have reviewed the organization's conflict of interest/conflict of loyalty policy dated March 19, 2012 and understand that I am bound by it.

The organization's policy requires me to report any situation where I have a conflict of interest, conflict of loyalty or a perceived conflict.

I already have some interests and loyalties that may affect my work with the Upstanding Society of Alberta. That means that any matter involving those on the list may be a conflict of interest or loyalty or a perceived conflict for me. If that happens, I will leave the meeting at which the matter is discussed or follow any other instruction given me in accordance with the procedure set out in the Conflict Policy.

**Name of person or organization**

**Nature of conflict**

I understand that it is my responsibility to also report any specific conflicts that arise in connection with any matter involving [the name of the organization].

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Signature)

Please return this form to the Executive Director

## Worksheet 3: Developing a Conflict Policy

- Review the Conflict checklist with your board.
  - Do board members understand the difference between conflict of loyalty and conflict of interest?
  - Do they need more education on these concepts?
  - Discuss any issues board members may have.
- Review the sample Conflict Policy with board members. What does it cover that you need to include? What is missing?
- Work with your board to create a Conflict Policy for your organization.
  - What are your expectations for board members? Have there been problems in the past that you think should be covered by the policy? Can you foresee any problems in the future?
  - How specific do you need to be about your expectations?
  - Do you need to emphasize any particular types of conflicts that are not in the sample Conflict Policy?
- Draft a conflict policy for discussion by the board.
  - Begin with a statement that the board requires all its members to avoid conflicts of loyalty and interest.
  - Include a definition of conflict of interest and loyalty.
  - Design a form for each director to use to disclose interests, holdings, and relationships (and anything else relevant to the interests of a particular organization) that might result in a conflict of interest or loyalty. Indicate on the form that the board member is required to keep this information updated.
  - Indicate on the form that directors are required to state any interests in a contract or decision where they (or their business or other not-for-profit affiliation), family, employer, or close associate would benefit. Indicate on the form that the director must disclose the conflict before or as soon as an issue comes to the board for discussion.
  - Describe the procedure for handling conflicts of loyalty or interest or perceived conflicts that are disclosed. For example, the director may be asked to leave the room following the disclosure. The minutes of the meeting should record the conflict and the absence of the director from any discussion.
- Review the draft with the board. Are there some parts that are confusing to some members? Revise the draft until it is written in a way that everyone understands what is expected of them.

- Formally approve the policy at a board meeting. Make a note of when it is to be next reviewed.
- Have each board member sign a copy of the Conflict Policy. Keep a copy in the organization's files and give a copy to the board member.
- Make sure every new board member signs a copy of the Conflict Policy.

**Note: Every board member should sign and complete the disclosure form immediately (set a deadline). Every new board member should be required to do the same within a reasonable time limit.**

**Make sure there is time at every board meeting to deal with any conflicts that might arise.**

### 3. Fundraising Policy

An organization's mission and the amount of fundraising it does will determine how broad and detailed its fundraising policy needs to be. Some organizations depend heavily on gifts, while others rely more on other sources of revenue for their funding. Substantial fundraising efforts are more common among charities than not-for-profit organizations.

**Note: There are special rules about fundraising for charities from the Canada Revenue Agency, under some provincial laws and through the courts.**

However, not-for-profit organizations can face some similar legal rules and run a similar risk to their reputation if they engage in poor practice. So it is worthwhile for them to have a policy in this area as well.

Most organizations are glad to receive donations even if they don't actively seek them out. A number of umbrella bodies have developed standards or codes about how to conduct fundraising, and organizations may wish to adopt part or all of these standards in their policy.



## Checklist for Developing and Reviewing Your Fundraising Policy

As a director you should:

- Ask for the organization's Fundraising Policy and about what its procedures are for dealing with transparency, privacy and courtesy.
- Be aware of any federal or provincial legislation on how fundraising is to be conducted. If your organization is a registered charity, be aware of the *Income Tax Act* rules about fundraising.
- Be familiar with legislation on privacy of information.
- Know of the types and extent of your organization's fundraising.
- Ensure that your Fundraising Policy deals with any areas where your group is active.
- Make sure fundraising activities are regularly reported to the board, and that the organization carefully manages any risk associated with its fundraising.
- Regularly assess the reputational risk your organization is exposed to in dealing with donors or potential donors.
- Ensure transparency about the revenues and expenses related to fundraising. Ensure that disclosures provide enough context for those looking at the information to get a full picture.
- Identify any ongoing issues that are part of how the organization's fundraising is set up and monitor how those are being dealt with.
- Consider whether there are any actual or potential conflicts of loyalty or interest in how the organization's fundraising is done or involving those who do it. In particular, be aware of how companies or employees are paid for their fundraising work, and whether this may result in a possible conflict.
- Check to see that requirements of the Fundraising Policy are in sync with the requirements of other policies, for example the privacy policy and the complaints policy.
- Ensure the Fundraising Policy is regularly reviewed and updated.

Upstanding Society of Alberta

## Fundraising Policy

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**Approved by Board: April 23, 2019 to take effect immediately**

**Review date: by April 30, 2022**

### Introduction

Our organization encourages the solicitation and acceptance of gifts for purposes that will help to further and fulfill its mission. Volunteers, staff or third parties who solicit or receive funds for the organization must:

- act with fairness, integrity, and in accordance with all applicable laws;
- cease solicitation of a prospective donor who identifies the solicitation as harassment or undue pressure, or who states a desire not to be solicited;
- disclose immediately to our organization any actual or apparent (perceived) conflict of interest or loyalty; and
- not accept donations for purposes that are inconsistent with the organization's mission.

### Fundraising Solicitations

In all its fundraising solicitations, our organization will:

- be truthful;
- accurately describe the organization's activities;
- disclose the organization's name;
- disclose the purpose for which funds are requested; and
- disclose, upon request, whether the individual or entity soliciting donations is a volunteer, employee or contracted third party.

Our organization includes its address or other contact information in all fundraising solicitations.

### Treatment of Donors and Donor Information

Our organization honours donors' and prospective donors' requests to:

- limit the frequency of solicitations;
- not be solicited by telephone or other technology;
- receive printed material concerning the organization; and
- discontinue solicitations where it is indicated they are unwanted or a nuisance.

Our organization respects the privacy of donors. Donor records are kept confidential to the greatest extent possible. Donors have the right to see their own donor record and to challenge its accuracy.

## **SAMPLE: Fundraising Policy**

Our organization does not sell, rent, exchange, or otherwise share its donor list. Please see our organization's Privacy Policy for detailed information on the protection of donor information.

### **Payment of Fundraisers**

The organization does not, directly or indirectly, pay finder's fees, commissions or percentage compensation based on tax-receipted contributions.

### **Transparency**

To demonstrate transparency and accountability, our organization posts a variety of information on the organization on our website. Information posted on our website includes our financial statements, annual reports, Registered Charity Information Return (T3010), list of members of our Board of Directors, Complaints Policy, Privacy Policy, and Investment Policy.

The organization provides, upon request, its best available information on gross revenue, net proceeds and costs of any fundraising activity (including the fundraising costs categorized as education and/or public awareness).

### **Gift Acceptance Policies**

Our organization will accept unrestricted gifts and gifts for specific programs and purposes, including endowment gifts. All gifts must have purposes that align with our organization's mission and priorities.

### **Anonymous Gifts**

Our Executive Director is authorized to accept, subject to our organization's Privacy Policy, anonymous gifts to our organization. In the event the Executive Director is uncertain about the desirability of accepting an anonymous gift, a decision on the acceptability of the gift shall be made in consultation with the Chair of the Board.

### **Issuance of Charitable Receipts**

**(only use this if your organization is a registered charity)**

Tax receipts will be issued in accordance with the guidelines of the Canada Revenue Agency (CRA). If there is uncertainty about whether a donation qualifies as a charitable gift, a ruling may be sought from our organization's legal counsel, independent counsel, and/or the CRA.

### **Commitment to Imagine Canada's Fundraising Standards**

Our organization follows the standards in the Fundraising section of Imagine Canada's Standards Program and any company, employee or volunteer must obey those Standards when fundraising for us.

**Note: Other issues your Fundraising Policy may deal with include, among other things: how the organization deals with certain types of donations (bequests, shares in a public corporation, endowments, gifts-in-kind, etc.), and naming of facilities or programs after donors.**



## Worksheet 4: Developing a Fundraising Policy

- Review the Fundraising Policy checklist with your board.
- Do board members already understand the issues set out in the checklist and sample policy?
- Do they need more education about those issues?
- Review the sample Fundraising Policy with your board. What does it not cover that you need to include?
- Work with your board to create a Fundraising Policy for your organization.
  - What types of fundraising do you think your organization will do?
  - What fundraising practices do you want to cover?
  - Do you need to develop your own code or can you adopt another association's code?
  - Have there been problems in the past that you think should be covered by the policy? Can you foresee any problems in the future?
  - How specific do you need to be about your expectations?
  - Do you need to emphasize any particular issues that are not in the sample policy – such as, donor rights, what types of gifts are accepted, whether gifts can be designated for a particular project or program, or when and how gifts are received.
- Draft a policy for discussion by the board. Does everyone understand it? Are there some parts that are confusing to some members? Revise the draft until it is written in a way that everyone understands it.
- Formally approve the policy at a board meeting. Make a note of when it is to be next reviewed.
- Keep a copy in the organization's files and give a copy to the board member.
- Make sure new members get copies of the policy when they join the board. Arrange for a board member to review the policy with them and answer any questions they may have.

# Part III

## Operating According to Your Policies and Practices

In making decisions in your organization, you must not only follow your constitution, you must also follow existing policies and any decisions that your board or general membership have made. Keeping track of all these internal rules can sometimes be difficult. Your organization may find it helpful to keep track of its key documents in an **Organizational Binder**. If your organization doesn't already have a binder, you may find the workbook, *Organizing Your Corporate Documents*, helpful.

The following worksheet suggests a way of tracking your policy decisions.

## Worksheet 5: Tracking your Policy Decisions

It is not enough just to have policies. You need to be able to find them when you need them! It helps to have a list of them all and one place where they are all kept.

Maintaining a policy section in your Organizational Binder will help you find those answers.

Does your organization:

- Have a policy manual?
  - If not, read the following steps and appoint a board member to gather all policies into one document.
  - If yes, review the following and continue to maintain your manual.
- Have an Organizational Binder?
  - If not, see the Organizing Your Corporate Documents workbook.
- Pass formal motions and keep formal minutes of board and member meetings. All policy decisions should be recorded in this way in board minutes.
- Include in the motions review dates for your policies and make a note of those dates in the Calendar section of your Organizational Binder.
- Keep your minutes up-to-date in the minutes section of your Organizational Binder or somewhere else that is readily accessible by board members.
- Keep minutes of board meetings separate from minutes of your Annual General Meeting, members meetings, and special meetings.
- Name someone on the board to gather and/or maintain all policy-related decisions for the policy section of your Organizational Binder or other place that is readily accessible by board members.
- Organize the policies by subject matter. Identify the meeting (for example, board or members) and the date of the original motion. Make note of the review date.
- Delegate a board member to review the minutes of meetings once or twice a year for policy-related issues.
- Report to members at your Annual General Meeting on any changes to the policies that were made by the board during the year.

# Glossary

## Absolute Majority

When a motion or nominee has the support of more than half of the voters.

## Act

An individual piece of legislation passed by a government. This term is used interchangeably with “statute” except when used in the name of a specific act.

## Common Law

The body of past custom, legal decisions and approaches by the courts that have never been put into legislation. This includes English cases and practices adopted into the Canadian legal system.

## Consensus

A general agreement among the members of a given group or community.

## Consensus Decision-Making

A process that not only seeks the agreement of a majority of participants, but also seeks to resolve or minimize the objections of the minority to achieve the most agreeable decision.

## Constitution

The documents used to incorporate an organization. The specific documents will vary depending upon the statute that the organization is incorporated under. The constitution sets out the purpose of the organization and the way it is to be governed. The constitution is binding on the organization’s directors and members.

## Contract

A set of promises or an agreement that the courts will enforce.

## Corporate Seal

A seal adopted and used by a corporation as part of its official signature.

## Dissolution

The breaking down or ending of the organization.

OR

The act of ending, terminating or winding up a company or state of affairs. For example, when the life of a company is ended by normal legal means, it is said to be “dissolved”.

## Fiduciary

A fiduciary is a person having a legal duty to act primarily for another person’s benefit and is a person who (a) owes that other person the duties of good faith, trust, confidence, and candor; and (b) must exercise a high standard of care in managing that other person’s property. As a general matter, fiduciary duties are imposed by law to protect those who are vulnerable from those who have power over them.

### Fiduciary duty

Directors' have a fiduciary duty of care and duty of loyalty. It is generally accepted that directors of charitable organizations have a heightened duty of care.

### Incorporation

The process of creating a corporation. Incorporated bodies can include business corporations, co-operatives, not-for-profit companies, and societies. Incorporation takes place according to the specific requirements of an act passed by a province or the federal government.

### Legislation

Acts or statutes passed by governments together with any regulations made under the authority of the statute.

### Majority

The number of people who must favour a motion before it can be carried. A "simple majority" is more than half the members voting, that is, 50 percent plus one additional person.

### Majority Rule

The system of giving the largest group in a particular place or area the power to make decisions for everyone.

OR

Rule by the choice of the majority of those who actually vote, irrespective of whether a majority of those entitled to vote participate.

### Objects

Aims or purposes of the organization.

### Quorum

The minimum number of people, as specified in the bylaws, required at each board meeting, general meeting, or special meeting for business to be legally carried out. In the absence of a quorum, debate can continue but no votes can be taken, except the vote to adjourn.

### Special resolution

Some statutes require certain decisions to be made by more than 50% of members or directors. These are referred to as special resolutions. Check the statute that your organization was incorporated under to see what decisions must be made by special resolution and what the requirements are for special resolutions. Check your constitutional documents to see if they have added anything more.

### Statute

An individual piece of legislation passed by a government. It is used interchangeably with "act" except when used in the name of a specific statute.

### Winding Up

The process of settling the accounts and liquidating the assets of a corporation for the purpose of distributing any assets and dissolving the organization.

## Series Information

Additional copies of *Operating According to Your Policies* and other titles in the *Legal & Ethical Duties of Directors of Incorporated Not-for-Profit Organizations* series are available for downloading at:

[www.muttart.org/publications/board-development-workbooks/](http://www.muttart.org/publications/board-development-workbooks/)

Other workbooks in the *Legal and Ethical Duties of Directors of Incorporated Non-profit Organizations* series include:

- *Organizing Your Corporate Documents*
- *Understanding Your Corporate Documents*

Additional board materials published or co-published by the Muttart Foundation can also be found at the same url. These include:

- *Drafting and Revising Bylaws for Not-for-Profit Organizations in Alberta* (revised 2004);
- *Financial Responsibilities for Not-for-Profit Boards* (1997);
- *Developing Job Descriptions for Board Members of Nonprofit Organizations* (revised 1997);
- *Board Building: Recruiting and Developing Effective Board Members for Not-for-Profit Organizations* (revised 1997); and
- *Hiring and Performance Appraisal of the Executive Director* (1998).