



## **Good Governance for Canadian non-profits and charities**

What is good governance?

Good governance is how you run your organization to ensure accountability and that the interests of the stakeholders are given proper consideration. There is no one size fits all. For an organization which has professional staff members and a board of directors, it is important that there is a separation between the policy and oversight functions of the board and the management function of the executive director. This arrangement provides checks and balances in the non-profit world. Good governance can also exist in an organization where everyone involved is a volunteer.

Good governance is often discussed in light of the major corporate scandals in the US and Canada. There have been numerous articles written, especially in the Toronto Star recently, on charities gone bad. One should not confuse good governance with effectiveness or success. However, more often than not effective and successful organizations also have good governance.

There are complicated models such as the Carver policy governance model. Many charities have had tremendous trouble implementing some of the more rigid models and generally boards use a mix of different models.

Good governance is a process that takes time. You don't just have good governance by tweaking your by-laws and having a strategic planning session. It is often an incremental path to better governance and prioritizing is essential because there is more to running a successful organization than good governance. What works for an organization with 400 employees may not be relevant to a charity with 20 members and one part time staff member. The size, the number of professional staff versus volunteers, the budget, the jurisdiction and the history of the organization can all affect the choices that are made. Organizations should be careful to avoid uncritically bringing in concepts from the business world and applying them to non-profit governance. They should also be careful with one size fits all governance ideas.

Good governance starts with a properly incorporated organization that has formal rules for how the organization will operate – usually in the form of by-laws. The

by-laws set out who will have ultimate authority within the organization (usually the members) and who will manage the organization. They also set out how board members are to be selected, for what period, how large the board must be, what quorum is required and whether meetings can be held by electronic means such as teleconference or video conference. The by-laws also regulate membership, officers and many other matters.

The board of directors should meet regularly. That could be once a month or three weekend meetings per year. The dates of meetings should be circulated in advance for the upcoming year. An agenda should also be circulated prior to each board meeting. Reports and reading material should be provided prior to each meeting. The meeting should deal with important policy and oversight issues for the organization and the board should avoid getting involved with minor operational matters. Minutes of all board meetings should be kept - at a minimum, those who attended and all decisions taken should be recorded. If there is no quorum there can be a discussion but no board meeting. Board members should realize that unless delegated differently by the board or by-laws and allowed by corporate statute that the board member as an individual has no authority and the board's powers are only when meeting at a properly constituted board meeting. Important decisions should be discussed. People should feel free to express their opinion without retribution. When a decision is made there should be board solidarity in implementing the decision.

When selecting board members one is looking for a variety of skills that compliment each other. Board members should understand the expectations prior to joining the board and ideally they will have a "job description" which outlines their responsibilities. The board should have a conflict of interest policy to avoid conflicts of interests. Every new board member should receive an orientation and a board binder with important documents of and background material on the organization.

The board should think about big picture items such as:

- whether the organization is carrying out activities within the objects/mission of the organization;
- what the vision of the organization is and how that vision will be implemented;
- whether the charity is accomplishing its mission in an effective way;
- whether the executive director is performing well and what improvements should be expected;
- whether the resources of the organization are adequate to meet its need and, if not, how to expand such resources;
- if the organization has one donor who provides 80% of its funding, whether the organization needs to diversify?
- what routes for diversification would be best;
- whether the organization is acting in a legal and ethical manner; and

- whether in some cases the involvement of members of the board in fundraising or in a particular program is it at the expense of the board's important role to guide the organization.

The board should also ensure that basic financial matters are being attended to. In terms of finance – is there a budget? Is the budget being followed and if not why? Is there sufficient cash on hand to pay for upcoming expenses, especially salary, leases etc. Is the reserve being adequately maintained or is it being dipped into? Are the financial controls and fraud prevention mechanisms in place and working? There is nothing like being a victim of fraud to ensure media coverage and to make donors wonder whether an organization is deserving of support.

In terms of ensuring that the basic legal matters are being taken care of, I would suggest a review of my checklist for Canadian charities at [http://www.blumbergs.ca/articles\\_more.php?id=96\\_0\\_2\\_0](http://www.blumbergs.ca/articles_more.php?id=96_0_2_0)

Board members should understand their legal obligations including those under common law and statute and the potential liabilities for non-compliance. Some of the obligations are similar for non-profit and for-profit corporations such as remitting withholding taxes, paying salaries and prevention of environmental contamination. Other obligations are either in addition to or at a higher standard than for a director of a for-profit corporation, because board members of a charity are also fiduciaries of the charity. Although I think it is still rare that directors of non-profits ever are sued, unless they are personally involved in malfeasance, Board members should understand their legal obligations including those under common law and statute and the potential liabilities for non-compliance in order to avoid problems for themselves and, just as importantly, to prevent their organization from facing lawsuits, investigations or other unpleasant circumstances.

The board should avoid conflicts of interest. The board should not have staff members of the organization serve as directors. If the executive director is to be on the board – such ED should be a non-voting member of the board. Board members of non-profits and charities should not be compensated for being on the board. The by-laws typically provide for reimbursement of reasonable out-of-pocket expenses and that is the most that board members should typically receive. This also applies to their families. Real and perceived conflicts of interests should be avoided and it should be clear to donors that board members are serving on the board for reasons of an altruistic nature and not for personal gain. Although it may be useful to have the skills and analytical abilities of a lawyer or accountant on the board, the lawyer probably should not be giving legal advice to the board and certainly should not be charging the charity for his or her time. Similarly, the accountant on the board should not be auditing the books of the organization. The organization should retain outside lawyers and accountants to provide objective advice and services.

Board members should be more focused on what they can give to the organization than what they can receive from the organization. The board members should be encouraged to donate a personally meaningful amount to the organization and to be involved in some aspect of fundraising. It is difficult to make the case for supporting an organization if its own board members do not financially support the organization. Board members do not have to be involved with “making the ask” but can be involved with meeting potential donors along with staff, could suggest resource development opportunities for the organization, could write an article or deliver a speech on the cause. The ED should make it as easy as possible for board members to contribute to fundraising and resource development.

The board should have a chairperson who is responsible for convening board meetings, preparing the agendas, moderating the board meetings, overseeing the evaluation of the ED, evaluating the board, etc. The chairperson should not micromanage every aspect of the organization and should work well with the executive director to ensure that the organization operates effectively. It is the ED that is responsible for hiring and firing staff, for ensuring that board resolutions are properly carried out, managing the activities of the organization, supporting the board, carrying out the detailed planning and proposing ideas for the organization. If there is confusion between the role of the board and the ED then it is difficult to evaluate who is responsible for successes and failures. The ED should be encouraged to improve his or her performance. The ED should be given proper credit for his or her successes. There should be a candid evaluation of the ED, preferably every year. Input should be received from stakeholders, board members and others. However, if the ED cannot carry out his or her job description, then perhaps the best thing for the organization is to hire a new ED who can. It is exhausting for board members to take on the role of doing the ED's job and it is short sighted for the organization. Replacing the ED is the most difficult decision that a board ever has to face, especially if the board members like the ED or are afraid of the ED who has a temper.

Boards should be constantly thinking of succession planning. What new board members can be recruited to the organization? What skills should board members possess? Sometimes looking far and wide can pay off handsomely. Who will replace the chairperson? What will happen if the ED gets hit by a bus? Or more realistically, what if the indispensable ED decides to jump ship or leaves the city?

Communication is an essential component of good governance. There should be adequate information provided to stakeholders and members. The board needs to ensure that communication is effective. With technology communication can be more efficient, frequent and less costly.

## **Governance Problems**

The website of the Institute on Governance (IOG) lists some governance “Gremlins” creating problems:

- Lack of consensus about the mission of the organization
- Lack of consensus about its vision
- High Board/CEO turnover
- Lack of consensus on Board role
- Board members do not fully understand their duties and liabilities
- Board members have difficulty reading financial statements
- Unresolved conflicts on the Board or between the Board and the CEO
- Lack of understanding on roles of Officers, or how one gets to become an Officer
- Current board practice or structure does not match by-laws
- Confusion over conflict of interest
- Too many committees
- Committees that are not engaged in important work
- CEO-run Board
- Rubber-stamping by the Board
- Board micro-management
- Decision paralysis
- Lack of strategic direction and clear priorities for the Board
- The Board runs well but focuses on the wrong issues
- Board members do not speak as a united front once they leave the Board room
- Poor attendance at Board or committee meetings
- Poorly chaired meetings
- The Board is not getting the right information in the right format
- Lack of clarity on role of Board vis-à-vis staff
- Poor relationships with stakeholders
- Members of the organization are not involved or consulted
- Volunteer fatigue or staff burnout

The IOG has particularly good material on governance in the international development context at its website under “International Programming Publications” (<http://www.iog.ca>).

### **An Example of “Bad” Governance in a Canadian Charity**

You are a board member and attend a board meeting. Most of the attendees were not at the last few board meetings. This meeting was postponed twice. There have been about 20 e-mails leading up to this meeting – all about timing and location of the board meeting, none about substance. The meeting starts 45 minutes late at 8:45 PM on a weeknight. You are all exhausted as you have been at work all day. There is an agenda but it is not being followed. The first

item, the Executive Director's report, which is supposed to take 10 minutes, takes an hour. Lots of side tracking of discussions. There are some important and interesting items on the agenda, but they are at the end and rushed through in a couple of minutes. There is one government agency that provides 80% of the funding for the charity. That government agency has been quite critical of the charity recently, but there just has not been time to deal with this issue. There was a half hour discussion of whether the executive director should order a new printer and another half hour discussion of a conflict between two staff members relating to who will take vacation at a certain time. There was no time to deal with the important issue of the government agency's concerns and the organization's response, so the chair will send out an e-mail resolution with his idea of how to deal with the issue and the board will vote by e-mail. There was a brief mention of the recent agreement concluded between the ED and the spouse of the Chair who runs a successful fundraising company and the terms, including that 80% of funds raised go to the fundraiser and only 20% to the charity. The ED has been with the organization for 4 years. There has not been an evaluation of her performance. A number of staff members sit on the board. The staff members have strong opinions on issues such as pay. The ED is a wonderful person, but there are many things she is not capable of doing. The board fills in by each taking on a different part of her job description. The organization has been around for ten years and many of the "founders" were there from the beginning. The Board has 24 members, about 10 regularly attend. The quorum of 10 is usually met. Board members gossip about board matters outside of board meetings with other board, non-board and staff members in the organization. One board member has a habit of ordering around staff members by emphasizing his position of being a board member. The organization's annual meeting is well attended. There are 100 people there. Lots of good food. No quorum because it is set at  $\frac{1}{4}$  of the membership, which now runs at 1000. The financial statements are not provided at the annual meeting but the treasurer thinks there is only a small deficit. The ED does not remember if the T3010 was filed for the end of the last fiscal year which was 9 months ago. The chairperson has just submitted receipts for his recent trip to Tahiti – ostensibly because he met another member of the charity there and they had meetings related to strategic planning.

Bad governance – although we don't want to admit it – happens more often than it should.

## **Conclusion**

Good governance does not insure anything. However, there is a strong correlation between successful charities and good governance. To put it more simply – it is easier to be successful when you have good governance. Good governance helps avoid problems and embarrassing fiascos. A charity's name

can have tremendous goodwill and a single scandal can cause huge damage to the charity's ability to fundraise and implement programs.

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