

How to Get the Board You Need —

The Recruitment and Nominating Process

by Margaret Genovese

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While much has changed in the world of not-for-profits in the last ten years, the challenges of managing an effective board process remain. We are grateful to Orchestras Canada and its Executive Director, Katherine Carleton, as well as to our colleagues Eric Ojala and Patricia Bylok.

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I. INTRODUCTION

Today we can no longer discuss the boards of cultural organizations and ignore the correlation between a strong, committed board of trustees and successful institutional fund-raising.¹

Experienced cultural managers would agree that a good board is necessary for an artistically healthy and fiscally viable organization:

... hundreds of leaders in thriving community organizations [were asked] what makes their group succeed. "Strong board of directors" was on every list.²

As government funding continues to decline in Canada, the ever-increasing pressure to raise money has dramatically changed the nature of board recruitment and board composition, especially as more and more competitive not-for-profit organizations gear up their fund-raising infrastructures:

As the number of arts organizations increases in the marketplace, the competition for the best volunteers becomes heated. Those organizations with the best and most active Board recruitment programs will be the most successful competitors and ultimately the best fund-raisers.³

The key to successful recruitment is the nominating committee, the human resources function of a board. The unsung hero of all board committees, the nominating committee is rarely given the respect that it deserves. Yet, without an on-going, well-organized nominating process in place, a board cannot change to meet the new challenges of the marketplace and the ever increasing demands of fund-raising.

In the not-for-profit sector, there is currently an epidemic of "FOF Disease" [Fear of Fund-raising]. Potential board members are said to run away at the very notion that fund-raising might be part of their volunteer responsibilities. In part this is because fund-raising can be a tough job and no one, but no one, likes to be told "no."

Another reason is that expectations of the role of board members have been changing. In the halcyon days of higher government funding, not-for-profit board members focused on financial stewardship.

Because money to sustain the work of the agency came from public sources [of many organizations that came into being in the 1960's and 1970's], these boards thought their work was limited to insuring that the funds which had been provided were well spent and that quality service was provided.

Little thought was given to what would happen if these funds stopped and to how the long-term financial security of the organization would be brought about.

The minute public funds ceased to be so readily available, the essentially limited and vulnerable nature of this conception of a board became patently obvious. Thus boards must return to a more traditional pattern of behavior. Rather than simply overseeing the resources which are otherwise provided, all board members must realize that their job is both to raise and superintend resources.⁴

Persons joining a board with one set of expectations are sometimes told that the "rules" of board membership have suddenly changed. This is a source of frustration to both board members and management, and a cause of friction. This type of negative situation should never happen if the **process** of developing and maintaining a strong board is managed properly.

Board recruitment and development are as important a management function as marketing, fund-raising, fiscal control, staff training, and artistic production.

Parenthetically, it should be noted that volunteer responsibilities were once separated essentially by gender. The "real" board of trustees, primarily men, deal with financial stewardship issues; the women's committee or guild was responsible for fund-raising, primarily through special events such as balls, strawberry teas, or raffles. As more and more women entered the corporate world, and professional fund-raising departments came into being, the composition of the "real" board changed.

This explains in part why many arts organizations sometimes have volunteer groups without much sense of purpose or mission. The board of trustees is the powerhouse with high-level decision-making capability; the volunteer groups (now largely co-ed) are charged with only minor tasks: ushering, envelope-stuffing, tour guides, their role not well-defined within the larger institutional fund-raising context.

This book focuses on the **management of the nominating process**: the composition, procedures and tasks of a nominating committee, the identification of new prospective board members, and their recruitment, orientation, development, recognition, and evaluation.

In addition, we will review the obligations of board members, the issue of board size, the role of honorary and advisory boards, and the desire for cultural diversity in board selection. A bibliography is provided for additional reading.

Board structures tend to grow and develop as organizations grow in size and professionalism and more pressure is placed on increasing fund-raising goals. More committees are needed and more people to serve on these committees.

The board may be an influential or a powerless body, an agent for control of the management or a tool that can be used by management, or simply a facade. To the extent that an organization is autonomous, relatively independent of its environment, it can perhaps afford the board as a facade. But to the extent that it is dependent on its environment, the composition of its board must be designed accordingly.⁵

We will focus on the human resources management techniques necessary for creating a strong board, the backbone of any successful fund-raising organization.

II. PASSION AND PROCESS: Philosophy of Board/Management Partnership

A. Why Do We Even Have Boards?

A recent book on boards erroneously reported that:

...orchestra governing boards developed as a means to finance the difference between the cost of presenting concerts and the revenues derived from ticket sales for those concerts.⁶

This statement epitomizes the rather short-sighted view many have of boards, that a board is merely a group of wealthy people whose job it is to close the operational income gap every season.

Rather, the idea behind our governing boards of today relates to the notion of the "corporation" first developed in the Middle Ages, as "an instrument for self-governance for groups carrying on a common activity,"⁷ such as religious orders.

The corporate form was created as an entity that could outlive any of its members, to assure that the accomplishment of tasks beyond the capacity of individuals. And its board was established as the vehicle to ensure continuity.⁸

Many of these boards were formed for organizations undertaking service to their communities: tending the sick, burying plague victims, providing food and shelter to the indigent or to pilgrims, caring for orphans or the elderly. It was important that these philanthropic activities be carried on into the future.

In the New World settlers soon formed organizations for charitable and cultural purposes, mirroring the corporate structures of Europe. The formation of these institutions are reflective of democratic societies where citizens have the right to free assembly and can organize themselves for worthy purposes.

Prerequisites to the fertile field in which voluntary associations developed were a free press and the right to organize without government restriction.⁹
...[the] mix of responsibility for patronage of art, puritanical Christian calling, and the individual's responsibility for community influenced the way the arts developed in America based upon the private association for public trust type.¹⁰

The nineteenth century in Canada and the United States saw the development of local arts activity including touring lecturers and performers, and the influential Chautauqua movement. Arts activities were also encouraged by Junior Leagues, by settlement houses and social workers, by the YMCA and YWCA, the Women's Christian Temperance Union, and by other groups working to improve their communities.

Many charitable and cultural organizations were formed in the interests of civic duty, religious

obligation, or concern for the underprivileged. But many institutions--from galleries to little theatres or community concert series--were created from a very real passion for the arts, combined with a community's desire to develop beyond its pioneer roots into a more sophisticated place.

The community arts organization is the most prevalent populist model of cultural activity in the United States. It sprang from the desire of town leaders to bring the best educational and cultural activity to their towns.¹¹

The primary management model was "a board composed of very few artists and a majority of leading citizens."¹² Boards were formed, not just as a necessary legal requirement for incorporation, but to provide communities and artists with stability and continuity of artistic expression and accessibility. Not-for-profit organizations exist to provide service to the community.

B. The Importance of PASSION:

Most discussions of boards begin with the importance of supporting an organization's mission and objectives. In the introduction to his most cogent and valuable book, On Board, Robert W. Crawford writes:

Of one thing I am absolutely convinced. There is not, nor should there be, any mystery about trusteeship or the governance of not-for-profit corporations. The basic purpose of board, other volunteers, and staff is to work toward the **best possible implementation of the institution's purpose or mission**. Healthy and constructive relationships among boards and staffs can be achieved and maintained if they are based on the exercise of common sense and courtesy.¹³

We concur with this, but would also add that **one must develop a PASSION for the art produced by the institution**. **Without a deep respect and concern for the creative purpose of the organization, it is difficult to sustain a long-term volunteer relationship.**

This point is **key** to an effective nominating process: how can someone be a committed board member of a symphony orchestra if he or she doesn't care for classical music and has never been to a concert? A person may have many worthy attributes and skills. But how can someone commit to "the best possible implementation of the institution's purpose or vision" if the person does not really understand it?

It is this **lack of core understanding** of an art form and its particular challenges that in our view causes the most difficulties in board/management relations:

...if the artistic enterprise is...an attempt to build a new intellectual home for man, a new order more suitable to his growing capacities, it must break with

the past and shape new forms. To do so, it demands trust and time, two things that today are in short supply. Vision is the currency of great art and of great leadership.¹⁴

It is small wonder that many board members, knowing little or nothing about the art form and its demands, focus their attention on areas they feel more comfortable with, such as nitpicking about budgeting and expense control, instead of strategizing ways and means to achieve new heights of artistic excellence and excitement.

C. A Managed Process:

Much of the literature on boards fails to mention that CULTURAL MANAGERS have a vital role to play in the creation of an excellent board and that **the development of a great board is a MANAGED process.**

It has been fashionable in the past for many arts managers to complain about their Boards, whining about the ineffectiveness of volunteers who have given freely of their time and efforts to help cultural organizations. We frankly have little time for this sort of nonsense; our view would be that an inadequate Board reflects managerial ineptitude: **if your board is no damned good, it's your own damned fault.**

A blunt statement? Yes, a very harsh judgment. We believe that **managers should learn more about the processes that are needed to development an excellent board and acquire the skills necessary to manage the board process.** Please note: we suggest that it is important for managers to manage the board process, NOT manage/"control" the board.

D. Boardphobia:

Many cultural managers approach their boards with fear and loathing, not a particularly constructive way to approach board/management partnering. Yes, there are realistic grounds for management fear; bitter experiences. Many arts managers chafe at being considered innumerate children by board members from the corporate world who deem artists and cultural administrators to be impractical dreamers.

One management study noted that in cultural organizations, board members "seemed to become more involved in what, by business standards, might be considered 'picayune matters'," and commented "Everyone is an expert in these matters!"¹⁵

Stories of terrible boards are legion in show business: disputes over long-term artistic planning; personality conflicts between senior managers and board members; hiring and firing staff, and spending monies with a full board's knowledge or consensus; inappropriate behaviour with or comments about staff (sexual harassment, homophobia, sexism, racism); and elected board presidents who decide they are really the chief operating officers of an arts organization, moving themselves into the company's offices and essentially ousting the senior staff people.

The fear level is so high in the cultural sector that many organizations have tried to embrace trendy new alternative models for board governance that purposely take boards out of the information loop for operational issues into realms of policy development. Boards love these structures since the responsibility to raise funds is also removed. Managers are attracted because the models seem to promise boards will not interfere in daily operations.

In our experience the best fund-raisers on a board are those with the most in-depth knowledge of the company's operations who can assign all the tough questions from potential funders. The more knowledge about the organization, the art form and the wider arts industry shared between management and board, the better.

E. Board/Management Partnership:

A true board/management partnership assumes that both sides of the equation have a thorough knowledge of what is expected of them and where the decision-making lines are drawn, and are committed to work together in an atmosphere of mutual trust.

Nonetheless, we reiterate that managers have an important role to play in maintaining good board process; ensuring that the human resources needed to carry out the mandate of the cultural institution are courted, recruited, oriented, and recognized for their important contribution.

An organization which is "organized" is much better able to influence society for the better than one in which the biggest problems lie inside the agency. An effective organization also helps board members devote their energies to the cause instead of wasting them on the problems of the agency.¹⁶

In theory, a board is an asset to an organization, an opportunity to interact with representatives of the marketplace, and a testing one's notions and ideas in a supportive mutually respectful environment.

The board is the one place where different influencers of the organization meet regularly, on a face-to-face basis with each other and with the managers, to discuss the actions of the organization.¹⁷

For contemporary arts boards their major decisions and responsibilities are: (1) hiring and evaluating the organization's chief executive officer and possibly the senior artistic person; and (2) approving strategic directions, goals, organizational policies, and operating budgets. Paid

management is responsible for tactical development and daily operational decision-making, as well as the management of the board process.

Boards that are successful in fund-raising are those of organizations that are successful in managing the board process. No one can improve fund-raising efforts without a committed, knowledgeable, well-informed board which completely understands why funds are needed. Only a well-managed nominating process can ensure a high calibre of volunteer resources.

III. THE NOMINATING COMMITTEE

A. The KEY Board Committee:

All writing on boards agrees that the Nominating Committee is THE key board committee; however, typically little specific information is given as to the composition as a committee or the ways and means of accomplishing the committee's tasks.

Many committees meet erratically, forced into action just before the Annual General Meeting. Faced now with a deadline, the committee is galvanized, having to produce a slate of officers and board members for presentation.

The members of the committee think of names of friends or names of prominent individuals in the community who presumably would be good to have as board members. Some think those being discussed might be too busy to accept. Some wonder if they really are approachable. Usually, it is decided to ask all members of the board to submit names of potential board candidates to the committee. Few on the board actually do this.¹⁸

Scrambling to find enough people willing to serve on the board, the committee ends up re-nominating current board members (some of whom the management had hoped would be retired gracefully) and adding new board people (*some of whom may actually be unaware that they are up for election!*):

If this happens, the newly elected board member is approached by the president or chairman of the board, by the artistic or management leadership or by a person on the board who knows him or her best, and is then asked to accept election. For some reason, many people do not reject such an offer even though they have not been sounded out in advance in regard to their interest, and even though they have no idea in any detail of what is expected of them once they become trustees.¹⁹

Little attention has been paid to a board member's past performance as a volunteer or to the needs of the institution, especially in the area of fund-raising. *Factors such as regular attendance at the company's performances or past donation history are often not taken into consideration as new people are nominated for board membership.*

Creating an excellent board is a serious human resource management issue: identification, introduction, recruitment, orientation, skills development, evaluation, and recognition are all elements of a good nominating process. The first steps are the creation of the nominating committee and the definition of the steps of the nominating process.

B. Composition of a Nominating Committee:

Given its importance to the continuity of an institution, it is amazing that the Nominating Committee and its chairmanship is so often a "throw away" committee appointment. One authority on volunteerism has commented:

Every organization I know that's in trouble has had a nominating committee or board development committee that has included some of the weaker people on the board. They tend to reinforce their own weakness in choosing prospective members. A strong nominating committee wants to have its peers on the board and will look for the very highest calibre person or the highest clout ration they think they have any chance of getting onto that board. That is often the difference between an organization that continues in business and one that goes out of business.²⁰

I. The Chair:

The traditional model used to be that the Chair of a Nominating Committee was the past President or Chair of the Board. This practice was written into many by-laws as standard operating procedure.

We feel that this is now an inappropriate choice. By the time a volunteer has been so involved in an organization that he or she has risen to the challenge of being its president and has now semi-retired to the role of past president, it can be presumed that the volunteer has exhausted every contact and every acquaintance (and even every relative) in efforts to further the causes of the institution.

There are also instances in which the past president does not agree with a new goal or direction in which the company is heading. Stacking the decks with the past president's allies and cronies may not be the most constructive activity. The new board president and the senior management need **a working team committed to the future of the company**, not a group clinging to the past.

A more suitable chairperson for the nominating chair would be someone who might in fact become president in the near future. This way the person can put together the volunteer team that will be in place when he or she assumes the presidency. Knowing that one day the nominating chair will ascend to the president's position, and that current board nominees will be that person's future working group of volunteers, puts a different emphasis on the importance of selecting excellent people.²¹

In most instances the Board president would appoint the Nominating Chair. It is suggested by some authorities that this appointment of both the chair and members of the nominating committee be ratified by the full board to avoid the charge that the current president is having undue influence over new board appointments.²²

Because board presidents sometimes assume too much authority, enabling committee chairs to appoint committee members can help preclude a board president from really taking full control of an organization. Leadership from and by a board president is vital to the health of the organization, but dominance can be detrimental.²³

2. Who Else Should Serve on the Nominating Committee?

Depending on an institution's by-laws, there would be usually two or three other board members serving on the nominating committee. A board member with a background in human resource management is invaluable.

Traditionally the artistic or managing director has often served on the committee, but today we see more and more participation by senior members of the Development staff, who seek certain types of individuals to serve on fund-raising committees.

We believe that the Development Director should also serve on the committee as a key resource to the process:

The success of an arts organization's fund-raising effort is dependent, to a large extent, on the quality and effort of Board... The relationship between the success of the campaign and the Board is so critical that the norm is now that the Director of Development is considered an active participant in the nominating process, expected to attend all committee meetings and to provide prospective Board profiles and recommendations.²⁴

It could be said that the Nominating Committee is the most important of all "fund-raising" or "development" committees since it is the Nominating Committee's responsibility to provide the leadership for all campaigns.

With more sophisticated donor research being undertaken by organizations, development departments can provide valuable leads to the nominating committee. Management should be an informed and able partner to the Nominating Committee in the identification, cultivation, recruiting, and assessment processes the committee undertakes.

As is good practice with all committees, the members serving on the nominating committee should be on a rotation schedule, with one third rotating off every year.

While many by-laws allow committees to include non-board members, *the Nominating Committee should be comprised ONLY of current board members plus management. The discussions taking place within the committee need to be in-depth, highly candid, and certainly confidential.*

C. What Does the Nominating Committee Do?

The basic job of the Nominating Committee is to ensure a high quality of human resources to serve the organization and serve its mandate. Doing a good job will provide the company with a continuity of volunteer leadership and institutional stability.²⁵

As with any personnel function, the nominating function must take into consideration the basic “hiring” tasks of identification, recruitment, orientation, and evaluation just as if board members were paid staff.

The committee’s **major responsibilities** are:

1. To develop, maintain, and bring forward to the board *annually* for approval an inventory of the skills, expertise, networks, contacts, community reach, wealth, and so forth needed to accomplish the board's work. This inventory will result in a series of prospective board members profiles or job descriptions.
2. To assess *annually* the current board's strengths and weaknesses in relation to the desired inventory and to develop a recruitment priorities list based on the assessment. Every board member should fulfill at least one specific identified need.
3. To develop, maintain, and bring forward *annually* to the board for approval the board's Obligations of Board Membership statement.
4. To assess *annually* all current board members’ fulfillment of the obligations of board membership, including their contribution of any special skill requirement identified in the inventory and profiling process.
5. To recommend specific action to be taken with current board members coming out of the annual assessment process:
 - a. in the case of members whose terms are expiring, whether to renominate them or not;
 - b. for members in the middle of their terms, to take any special action needed to assist them in fulfilling their obligations, to discuss their current contribution, to reinvigorate, or to ask them to resign.
6. To identify, cultivate, and recruit individuals for nomination for election to the board.

7. To welcome and orient new board members.
8. To assess the quality of all board committees' work and take appropriate action to strengthen weak committees.
9. To identify, cultivate, and recruit officers and committee chairs, and provide succession plans for officers and committee chairs.

Nominating is a future-oriented process designed to push the organization towards its next goals.
The Nominating Committee needs to be:

... actively aware of the decisions or recommendations of the planning committee, the plans and strengths of the finance committee, and those of the fund-raising committee.

Considering where the institution is in its present development and the direction in which the institution should head, the nominating committee then identifies quite specifically what particular talents or areas of expertise are necessary to have on the board in order to assist in moving the institution more directly toward where it wants to go.²⁶

Nominating committees are standing committees which should meet regularly and report their progress to the rest of the Board. Some authorities suggest that the committee needs to meet ten times a year; we believe that the number of meetings should reflect the scope of the job that needs to be done.²⁷ **What should NOT happen, however, is that the nominating committee meets only once a year, shortly before the annual general meeting.**

IV. WHAT ARE BOARDS MEMBERS SUPPOSED TO DO? The Obligations and Responsibilities of Board Membership

A. What IS Expected of Board Members?

Boards has over the years, translated [their] mandate with as much variety as husbands and wives interpret the vows to love, honor, and obey.²⁸

I like to think of trustees as "guardians of the 'constitution'" (or mission)... There is a dynamism here, despite the romantic overtones, that places the trustee directly at the nexus of the organization's vision and its realization for society. This characterization also implies the value one associates with mission – i.e., its power to bind the endeavour together philosophically. The actual mission of the organization is its treasure, its constitutional hermeneutic, something worth volunteering for.²⁹

Studies... suggest that many boards typically favor one of three postures – they see their primary function as exercising a certain control over the management, as serving the organization, or as neither of these.³⁰

When my trustees come to a board meeting, they seem to check all their business expertise at the door.³¹

Your role as a trustee has two aspects: fiduciary and supportive. As a representative of the public at large you have a fiduciary obligation to watch out for the public interest. Your supportive role is to help make the organization work, to assist it in achieving its mission.³²

There is no doubt that many of the conflicts that occur between managers and boards stem from *a lack of clear definition of roles and responsibilities*. New board members are often recruited without a frank conversation about what might be expected of them; current board members sometimes find that the "rules" have changed even during their own tenure.

B. Defining Board Obligations:

A nominating committee cannot do its job without clarifying the obligations of board membership. Where does this definition of board obligations come from? Management cannot impose a list onto a board, nor can one solitary board member with good intentions.

The process must be a partnered one, led by the senior manager and the board chair, working with the full board to come to a consensus. An outside facilitator is often helpful if the discussion is contentious. The definitions should be codified in written form, and used as a standard for the evaluation of current board members' performance and as the criteria for new board member recruitment.

It [the formal statement of board obligations]... should be a formal board action, included in the minutes of the meeting where it is enacted. Further, upon recommendations of the nominating committee, it should be reconsidered once each year and revoted. This list of expectations has two important uses. First, it serves as a tool for use during the recruitment process of new board members. Individuals will know in some detail what is expected of them before they agree to nomination and presumed election. ... Another use of such a list of expectations is in connection with the measuring of the service of each board member to see how well he or she has lived up to the agreed upon expectations.³³

C. The Obligations and Responsibilities of Board Membership: An Overview

The basic obligations of board membership were presented in the seminal book on arts boards, In Art We Trust, edited by Robert W. Crawford, in a table format. We present this to you (with a few additions) as a general overview of the subject and then will discuss some of the potentially divisive issues.

Expected Trustee Performance

1) Annual financial donation

2) Meeting attendance

Management Actions Required

Set minimum donation amount.
Collect contribution before
first meeting of fiscal year.

Provide annual schedule of
board meetings, committee
meetings, and special functions.

Indicate meeting purposes and
which ones are mandatory.

- | | |
|------------------------------------|---|
| 3) Advice on financial operations | Present sufficiently detailed financial reports and projections prior to board appointment and at all subsequent board meetings. Be frank about the organization's financial prospectus. |
| 4) Contribution solicitation | Interview prospective board member and make sure he or she knows this responsibility. With fund-raising chair, staff and new trustee, draft a list of projected target donors or goods or services. |
| 5) Ticket purchase | Set aside sufficient prime seats and make them available for purchase prior to general sales. |
| 6) Advice on projects | Provide sufficient historical background, clear purpose statements, and detailed information on the organization's philosophies and resources. |
| 7) Committee service | Place new trustee on one or more committees before election. Discuss new trustee's interests and organization's needs in selecting appropriate Committee assignment. ³⁴ |
| And to this table, we would add: | |
| 8) Belief in mission | Articulate mission of company. Manage a planning process to achieve this mission. Help trustee learn as much as possible about the company and its activities. |
| 9) Ethical behavior and discretion | Create a conflicts of interest policy. Be clear as to how sensitive information should be discussed in public. |

D. Management's Role:

Management has a key role in the board process: providing information, getting to know the trustees well, insuring that the new board member receives a thorough orientation to the organization. Managers need to clearly articulate future goals and ideas for the company, and in general manage effectively: leading a well-run organization with an artistic product of high quality. Board members are quick to see holes in an administration and will attempt to “solve” perceived problems as best they can. Many a marketing committee exists because a marketing director was viewed as inadequate; a better solution would have been for the senior manager of the company to identify the issue and deal with it by providing training for the staff member or finding a more qualified replacement.

For the chief executive of the arts organization, his or her role with the board requires consummate leadership and personal skills. While he or she is employed at the will of the board, the chief executive must also manage the board process to insure that the partnership between management and board is a healthy and fruitful one. *Most arts managers do not spend nearly enough time with their boards but constantly complain about "them" and what "they" are not doing.*

All human relationships require time and communication in order to function properly. For a senior manager, it is always be worthwhile to download some of the workload in order to devote more attention to the “care and feeding” of the board. The board offers access to the wider community and with it, the opportunity for more revenues, more public awareness, more visibility, and even better volunteers for the future.

The board is not just some necessary evil for legal purposes, it is a potentially dynamic group of people ready and willing to help the arts organization achieve its long-term goals. *If it's not, management bears heavy responsibility for its board's lack of success.*

E. Discussion of the Obligations of Board Membership in Detail:

I) Annual Financial Contribution

The single most contentious issue seems to be the issue of whether or not board members should be expected to make an annual personal financial contribution to the arts organization on whose board they serve.

One expert baldly stated:

It bears repeating that each member of the board must give a direct financial contribution to the organization each year. Members who do not do so are delinquent. Chairmen who do not solicit members are failing in their responsibility. Consultants who do not advise such contributions and solicitations are behaving unprofessionally. Moreover, board members must participate directly in the solicitation of other gifts.³⁵

These direct, unequivocal statements may come as something of a shock to those individuals who (rather blithely) feel that their presence at board meetings and well-meaning advice are sufficient to warrant their continuing membership. They aren't. Boards are not rest homes for the illuminati.³⁶

Yet another book, primarily written for the social services sector, warned:

For human service organizations, the idea [of an enforced financial contribution] dangerously reduces the attraction to serve on a board. Client populations or lower paid human service professionals may be tempted to forego serving on a board if they feel they cannot raise or donate the money.³⁷

As fund-raising consultants, we know from experience that **a board's level of personal giving is the single biggest indicator of how much money the total organization will be able to raise from its community.** A board populated with poor givers will serve as a "birth control" to the growth of the institution's fund-raising.

If an organization receives a large proportion of its funds from government and the board needs to be a "congress," representing many separate interest groups such as clients, stakeholders, school boards, elected officials, and the like, then the financial contributions that can be expected from such a board are nil. This type of board is meant to be a sounding board, a community watch dog, and a fiscal steward, not a fund-raising body. In Canada many museums and social service agencies have boards of this type: in some cases the boards are actually appointed by government.

Woe betide the organization, however, should the rules change and the funding sources dry up. This situation is seen in many organizations in Canada today, suddenly cut adrift from a guaranteed supply of funds.

Now expected to professionalize their fund-raising efforts, such institutions have board members with no track records in either contributing personally or soliciting others. Such boards are fumbling in the face of changing expectations and institutional needs.

Some board members resist the notion that a financial contribution should be a requirement of board membership; after all, aren't they giving of their time?

If these board members do not believe strongly enough in the institution's case for support that they are willing to write a personal check, they will not be effective as fund-raisers. An annual contribution of a thousand dollars is only a commitment of \$83.33 a month, hardly a princely sum of money today.

A maxim of fund-raisers is that **"if you don't give, you can't ask."**

Only those who are giving themselves can make a good case for institutional support since they have put their money where their mouth is. United Way requires one hundred percent participation of all its campaign workers; it's not the size of the gift that counts, it's the principle of total commitment. Funders are impressed by a board that is all giving personally.³⁸

Setting a Minimum Donation Level: The setting of a minimum gift level has become very popular: requiring a board donation at \$1,000, for example. While this stated amount may get some board members to increase their contribution level, the stated amount may actually become a ceiling for giving.³⁹

We prefer the statement: **"each according to his means**, with a minimum contribution at the patrons level." Normally, a patrons giving level for a company will start in the \$1,000 - 2,500 range with many higher giving levels.

If this range seems extremely high for one's community, one should look to the local charity with the best annual giving campaign and model one's contributions levels to mirror that colleague's.

A useful rule of thumb is that the contributions from the board should collectively be ten to fifteen percent of the organization's annual fund-raising goal.

Another way of stating this obligation would be:

Each trustee should be expected to make an annual contribution to each annual operating budget which is a meaningful personal stretch for him or her. In this way, all trustees will be giving equally in terms of their personal resources.⁴⁰

Clearly, the amount expected from each trustee will increase with the size of the organization's budget and the pressures of the fund-raising needs. This was documented by the American Symphony Orchestra League (now League of American Orchestras):

More than half the orchestras in the survey have a policy requiring board members to make a personal contribution to the orchestra's annual operation. Among orchestras with expenses of \$100,000 or more, 50-80% typically have such a policy. Among orchestras with less than \$100,000 of expenses only 30% have a policy that requires board members to make a financial contribution. ...72% have policies that are stated in writing.

The average minimum gift amount required from board members is \$1,054. The average among 10 orchestras with expenses less than \$100,000 is \$205. The average among five orchestras with expenses of \$9.9 million or more is \$4,060.⁴¹

Setting a Target for the Trustees' Campaign Goal: We believe that the setting of a range of expectation is a partnered task between the fund-raising committees and management. Trustee contributions can be expressed to prospective board members in terms of both minimum gift and average contribution.

The goal of the Trustees' Campaign should be an expressed percentage of the total campaign and incorporated into the fund-raising goals as a separate line item.

Solicitation of the Trustees' Gifts: It is the board chair's responsibility to solicit his or her fellow board members for their gifts at the beginning of each fiscal year (payable at any time throughout the year). As the leaders of the institution and the primary volunteer group responsible for fund-raising, it is important that the Trustees take a visible leadership role in the annual campaign.

The amounts pledged should be shown in the operating budget as a separate line item ("Board contributions") and the progress of the campaign (actual cash received) reported at board meetings and development committee meetings.

In-Kind or Company Gifts: Sometimes the question is asked: do in-kind contributions from the board members count (such as goods and services)? Donations of such items as dinners, paper, fabric and so forth are welcome contributions, but in our view do not replace a personal cash gift. There are also important issues of liability that will be addressed later. Nor does a corporate contribution from the company where the board member is employed substitute for a personal gift. (A corporate gift from a firm owned by a board member would be an exception to this.)

2) Attendance at Meetings:

Some boards are plagued by absenteeism at meetings and can never achieve a quorum. The reasons for this may include:

- (a) lack of proper notice as to when a meeting is scheduled;
- (b) lack of consistency in when meetings take place;
- (c) poorly run meetings that take up too much time and reach no consensus in discussions;
- (d) a highly troubled organization with enormous problems and no solutions in sight;
- (e) personality conflicts among board members that make meetings unpleasant;
- (f) unrealistic expectations about a board member's personal availability;
- (g) lack of clear delineation of attendance at a minimum number of meetings as a requirement of board membership;
- (h) no advance information about what the meeting's agenda will be and no accompanying background materials.

Some of these issues are managerial in nature and could be easily resolved. Others are thornier and might require outside intervention.

It would be appropriate to clock the time commitment expected of a board member before attempting to recruit new people, not just the time needed to attend meetings, but ALL of the events associated with board membership: special events, committee activities, receptions, performances, and so forth.

Many people are exceptionally busy – they travel a great deal on business, they have more than one house, they have elderly parents to care for or small children at home as well as full-time jobs.⁴² Perhaps the prospect you are courting would be better able to serve on a committee as a full board member.

The time of day the meeting is held needs to be communicated to a prospective board member during the recruitment process. An evening commitment is different than a luncheon or breakfast meeting. School teachers are often unavailable at lunch time; very busy people often prefer early mornings; many corporate people are ONLY free at lunch time.

Length of meeting is an issue: if monthly meetings normally run for more than two hours, this might be a clue to a poorly managed committee process or a poorly constructed agenda: not every committee needs to report at every monthly meeting. If a very complicated issue needs to be addressed, a special meeting should be called to focus on that particular matter.

Sometimes a board meeting needs to be fun: not just the obligatory holiday party in December but perhaps an occasional change of venue? A tour of the scene shop, a short video presentation, even a guest speaker.

Many cultural organizations make the mistake of insisting that ALL board meetings take place at the arts group's office no matter how drab, ill-equipped or out-of-the-way it might be. Such meetings may suit the staff's convenience but likely not the board members' needs.

Centrally located meeting space with all the amenities (restrooms, accessible parking, audio-visual equipment, and so forth) will enhance attendance and make the arts organization seem more professional and businesslike.

As consultants we remember well meeting once in winter with a board in a damp basement of a historic theatre shivering in our winter coats. The then-manager INSISTED on the meeting place to “remind people that the theatre needs work.” It seemed a cruel and unusual punishment for perfectly nice volunteers trying to do something wonderful for their community by transforming the old building into a performing arts center. The choice of meeting space made the project seem amateurishly managed.

Should the organization have an opportunity to meet in an especially prestigious board room of a major corporation or law firm, we would suggest accepting that invitation as the allure of the space will reflect well on the arts institution.

Penalties for Non-Attendance:

In an effort to legislate attendance, some by-laws allow for the removal of a board member who fails to attend a specified number of board meetings. While this might be seen as a powerful tool to encourage responsible board behavior, the lack of flexibility makes such a by-law clause a problem.

One would have to mete out the punishment equally and in doing so might lose potentially wonderful person who suddenly has been out of town a lot on business or is dealing with a family emergency.

A better solution is to have a rotation in tenure; then, instead of the traumatic action of dismissal, non-attending members can simply not be reelected.⁴³

Celebrity Board Members: What about highly visible board members, even celebrities, who have been enticed to join your board because you are located in their home town? Do you sacrifice the glamour of having such a name on your roster of board members just because the person is mostly in Hollywood and only comes to town once a year to see his or her parents?

It is a good idea to have a frank discussion with them about what your expectations of them are--is it merely signing fund-raising letters or would you like them perform at your annual fund-raising gala? Or would you like a financial contribution? Celebrities shouldn't be totally exempt from any of the obligations of board membership.

3) Financial Stewardship

Board members do have an obligation for the financial stewardship of a not-for-profit organization. There are three major components to this responsibility:

Approving the annual **budget** and overseeing adherence to it

Contracting for an independent **audit**

Controlling the **investment** policies and management of capital or reserve funds.⁴⁴

When the annual budget is presented for board approval, management needs to make **a clear presentation of the relationship of that budget to the proposed fund-raising goal and the implications of the increases needed in trustee personal giving levels in order to be successful in the proposed campaign**. Approval of the budget will then tacitly mean the board's commitment to achieving the overall fund-raising target.

4) Contribution Solicitation

"Give, get or get off" has long been preached to boards, a line memorable by its alliteration and simple-mindedness.

We would prefer Robert W. Crawford's view on this subject:

This manual... heartily recommends the give **and** get approach. Under the give or get system, a specific dollar figure is usually established as the responsibility of each trustee. If the trustee is able to contribute the amount personally, he or she is not obligated to participate in other fund raising activities. However, if the trustee cannot afford to make such a personal contribution or does not have a family business or foundation to write the check, then he or she must make up the difference in what is personally affordable through other fund raising activities. It is fairer to the trustees, and healthier for the organization for each trustee to be expected to make a personal contribution and to assist in the raising of the other contributed income.⁴⁵

However, we would like to add the notion of a "buy-out" clause: if a board member's annual contribution is a really mind-boggling amount, then we would happily make that person the exception to most of the rules of board engagement and see membership on the board as part of the on-going cultivation and stewardship of such a generous donor. In practice we have usually found that such a supportive individual will want to participate in many of the normal board activities and functions, as possible, even if frail and elderly.

5) Ticket Purchase

Most organizations require their board members to purchase a pair of season tickets and to attend ancillary performances such as special concerts. It is difficult to be an advocate for a cultural organization when a person does not see or understand the artistic product.

If one solicits new board members from within one's existing audience base, this becomes a very easy requirement for most board members to fulfill since they already have tickets. Some misguided board members may feel they are owed FREE tickets to events, an erroneous assumption that the chair of the board mustn't perpetuate.

6) Advice on Projects

Boards are often asked to pass comment on certain activities being undertaken by a company. Expecting a board simply to rubber stamp its approval of new ventures is ludicrous--at some point even a very passive board may suddenly reveal it has teeth.

A more productive approach would be to share information in a more inter-active manner with management asking specific board members for help in certain areas. It is better to present plans and budgets, invite people into the process in a focused manner, and give updates and progress reports.

The manner in which many arts managers present new projects may actually invite interference or negativity; sketchy ideas with no background research presented in an unprofessional manner ask for criticism.

Perhaps an idea should be tried out first on a committee chair, researched thoroughly, and then presented at a committee meeting, (perhaps even several committee meetings) and only then brought forward for approval. Yes, this takes time but all good planning takes time, research, communication, and reflection.

Every year we see arts companies that have plugged their operating budget with some mysterious revenue line item that is supposed to balance that year's operations. Very often the item is termed "board's special project" or "additional fund-raising project" or the like. It is small wonder that very few of these financial goals are met.

Management complains that the board added this mysterious item and has come up with no bright ideas as to how to raise the money. The board is annoyed because the budget didn't balance in the first place and wonders if management is not controlling its expenses properly.

We believe that both management and board are at fault in these instances: the budget should have been ready much earlier so that the budget gap would have been apparent. Plans should have been developed by management to deal with the situation, in partnership with the board, and presented for approval. The "board's special project" is really just a plugged number to make a late budget balance. If the board feels that the fund-raising target is too ambitious or that the box office revenue goal is too optimistic, then management needs to be more conservative and trim the operation. Management needs to solve the problem, not the board.

It is unfair to expect a group of volunteers out of the blue to come up with a new strategy for fund-raising. Plenty of expertise is available in the field and management should have responded much more quickly to close the projected budget gap, presenting a series of options for the board to discuss. That's what "management" means.

7) Committee Service

One manual on board development states:

...each trustee will become a working member of the board if he or she serves actively on at least one of the board's standing committees. The key words are 'actively' and 'at least one.' This is the minimal acceptable requirement. It is the least that should be expected of one who has accepted the responsibility of trusteeship. If a schedule of meetings of each of the standing committees is prepared a year in advance, based on what is the time commitment of the trustee is more clearly really needed by the institution from that committee, then defined and can more reasonably be integrated into his or her schedule.⁴⁶

The above seems a reasonable statement to make about committee work. However, managers and committee chairs can work together to make each committee a more effective working unit. A job description for each committee, an outline of the tasks ahead for the coming season, an expectation of what each committee member is supposed to do, and a description of the skills desirable in committee members will help everyone do their job better.

Many committees are much too large, suggesting that perhaps either the board itself is too big or that no one has taken the time to delineate what each committee is supposed to do.

The single most difficult committee chair to identify is the development chair. Our suggestion would be to not create an amorphous development committee in which all fund-raising tasks are centered. It might be more expeditious and effective to divide the campaign into components: corporate canvass, patrons group, planned giving, and so forth, and have a committee focused on each component. Instead of one special events committee, perhaps one committee should focus on the wine auction and another on the ball. If there is to then be a development committee as well, it would be comprised of all the chairs of the smaller fund-raising committees.

If board members are being asked to serve on too many committees every year, it might be a sign that the board is too small to get the job done. OR it could be that there are so many unproductive people on the board that the "good" people get asked to do too much and eventually get burned out. A good rule of thumb is that each board member serves on one fund-raising committee (like corporate canvass) and one policy committee (finance, audit, planning).

There is no magic formula that applies to all instances but remember that it is a human resources issue: the right people need to be working on the right job, a job suited to their expertise, skills, and interests.

8) Belief in Mission

Board members are expected to be advocates for the organization and its activities. One opera company's board approved an advertising strategy for the institution whose headlines proclaimed, "Opera Is Boring!" While the campaign was meant to be tongue-in-cheek (small type under the headlines said "not really!"), the negative banners would leave the uninitiated with the impression that yes, opera was boring, and even our local opera company has finally realized it. One couldn't help but wonder if the board members who approved such a campaign might not themselves believe in their heart-of-hearts that the product was indeed a snore.

Nothing is more disheartening for potential supporters, or damaging to the credibility of a non-profit, than hearing board members themselves question the purpose or effectiveness of the organization. If the non-profit organization is not effective, whose fault is it other than the board's?⁴⁷

An arts organization's mission should be exciting to people, inspiring, enlivening, interesting, messianic, as should be its artistic product. Excellence inspires excellence, mediocrity breeds mediocrity. Good managers can attract good boards, weak managers attract weak boards or, sometimes, dictatorial boards. Great art, great management, and a great board: a Triple Crown winner.

9) Discretion and Declaration of Conflicts of Interest

Each board member is expected to exercise discretion in conversations with others and to honor confidentiality.⁴⁸

In some troubled situations that we have seen, board members have had direct pipelines to the press, giving out verbal statements and written documents that have clouded union negotiations, contract disputes, wrongful dismissal suits, and other delicate situations.

Some samples of conflict of interest policies are included in the Appendices.

10) Other Board Obligations

These other obligations may or may not need to be stated in writing, but would include:

Board members ... are expected to get to know members of the company.⁴⁹

[There is a responsibility] to approve the selection, compensation, and, if necessary, dismissal of the chief executive and assure regular evaluation of the executive's performance.⁵⁰

[a board member must] "assure the board fulfills [its] governance responsibilities and maintains effective organization, procedures, and recruitment."⁵¹

Many boards adopt policies that highlight the organization's commitment to cultural diversity, to ethical behaviour, to education and outreach, and to being a responsible community citizen. All such policies are appropriate.

V. DEFINING WHOM WE NEED ON OUR BOARD: Whom Should We Ask to Serve?

A. Whom Do We Have Now? Taking an Inventory

First, one needs to look carefully at the current roster of board members. How many will be rotating off? Which committee chair positions will need filling? Which committees will need more personnel? Who is currently holding a board place and is not contributing? How many members do the by-laws permit? Who will be the upcoming president or chair? This inventory process will help delineate the task ahead.

For example, this type of analysis might tell us that six people are rotating off the board, including the chair of the special events committee, and that the chair of the finance committee has only one year left to serve. The first vice-president is going to become president in another year but the second vice-president has already indicated that she will not be able to become first vice-president and ultimately president because she is planning to take early retirement and move away. The parameters of the task ahead have started to be defined.

B. Where Is the Organization Trying to Go? Future Plans

What are the company's future plans and goals? What types of financial pressures are ahead? Do some of these activities require specialized knowledge, such as real estate law or annuity planning? The hope that annual fund-raising will increase dramatically in the next few seasons does clearly indicate that future board members will be able to make larger and larger personal contributions. A desire to have a larger institutional presence in the community might indicate the need for board members with public relations backgrounds, and so forth.

C. Are We To Be a Board or a "Congress"?

Does your institution want a board, or a "congress: a group of volunteers chosen to undertake very specific tasks and challenges or a group chosen merely to reflect different facets of one's community: a religious leader, a union representative, a school teacher, someone from the tourism authority, an elected official, persons of varying income levels, and so forth?"⁵²

A "congress" might seem very fair and equitable but such an approach is unlikely to produce the very specific types of personnel needed to work on certain committees and tasks. This is especially true if the company has very serious fund-raising objectives and needs board volunteers who can open certain types of doors within the community and assist in making solicitations for large gifts.

Another potential problem with the "congress" model is that there is a need for all board members to "pull at the oars" in support of the institution.⁵³

Nonprofit organizations are not democracies where interests and constituents are represented in a parliamentary sense and decisions are made by votes or by people speaking on behalf of special interests. Rather, in public service organizations, board members are trustees of a public interest; they have a responsibility to make decisions in the interest of the organization as a whole, not as representatives of any sector. Although members are, and should be, drawn from different regions, backgrounds, and interests, it is wrong to think of the board as a representational body composed of delegates.⁵⁴

D. What Are Our Fund-Raising Priorities as an Institution?

The fund-raising strategy of the institution certainly dictates the choice of certain types of board members. Senior representatives of the major industries or employers in the community might be very helpful for achieving corporate campaign goals, as are people with good track records in special event planning. *Perhaps these very people are already in your audience.*

This approach may be viewed as elitist or exclusionary but it is pragmatic. The bank robber Jesse James was once asked why he only robbed banks, why didn't he rob farms as well? He replied succinctly: "Banks have money!"

It is difficult to raise ever increasingly larger amounts of funds annually unless the board is recruited carefully to provide access to potential contributors. *The level of a board's personal giving to a cause is a prime indicator of the organization's fund-raising potential. A board with a low level of giving acts as a deterrent to the whole fund-raising effort. Boards that are not capable or willing to maximize their own giving will not be successful at fund-raising.*

E. Delineating Board and Management's Areas of Responsibilities

As consultants we are very familiar with this scenario: Managers complain that their authority is being questioned; while well-meaning board members--who are only trying to be helpful--get their hands slapped for crossing over some ill-defined line between management's "job" and the board's "job." How does one clarify the situation?

All authorities on the subject agree that it is a difficult call.

The board looks to its chief executive to select, direct, and evaluate the performance of all subordinate staff. That much is clear. But the concept of board governance implies the exercise of authority over the actions of the organization. Executive management, on the other hand, refers to the execution, the implementation, the conduct of the affairs of the organization in pursuit of the mission under the board's policy direction. These definitions present a dangerously unclear line.⁵⁵

What are the respective tasks of the board and the executive officer? The conventional answer is that the board makes policy and the executive officer executes it. The trouble with this elegant answer is that no one knows (or has ever known) what policy is, let alone where its boundaries lie. As a result, there is constant wrangling, constant turf wars, constant friction.⁵⁶

In the dynamic of nonprofit operations, simple, realistic, viable lines of demarcation between the executive's management role and the board's governance role are hard to draw, as you will repeatedly find.⁵⁷

A board that insists on having a hand in virtually every decision will impede progress rather than enhance it.⁵⁸

The successful manager will negotiate this line by devoting enough time to the management of the board process and through his or her own track record. *Unsuccessful strategies would include being defensive, hiding information from the board, being personally unavailable to board members, losing one's temper, grandstanding ("I'll quit if you pass that motion"), not allowing due process, being publicly critical of one's board, and generally behaving in negative, confrontational ways.*

Peter Drucker, that supreme expert on management, once wrote:

Boards should meddle. To begin with, there is no way to stop them, and if you can't lick them, you had better join them! Board members of nonprofit organizations should be committed to the cause. They should be deeply interested and involved in it, they should know the programs and the people who work on them and they should **care**. But also, nonprofit boards are usually organized in such a way that "meddling" is part of their job. They work in committees, each with a specific mandate, such as fund raising, or physical facilities, or youth activities. This forces them to work directly – that is, without going through the executive officer – with people working in the particular area of the committee's concern. It thus forces them to "meddle." They had better be organized to meddle constructively.⁵⁹

F. Creating Profiles of the Types of New Board Members Needed

From the inventory process and committee discussion should come the creation of a very specific set of profiles for the type of new people needed for the board: the skills and backgrounds, the requisite passion and love for the art, the ability to fulfill the minimum obligations of board membership.

As in any "hiring" process, an organization normally describes the job for which candidates are sought. For not-for-profit arts organizations this job description might normally include a list of the responsibilities of board membership. We cannot over-emphasize keeping this list front and center in the dealing with board procedures.

What is typically missing, however, is any detailed discussion of the board committee tasks that require specific skills or background. For example, the current chair of the Finance Committee may be soon due to be rotated off the board at the next annual general meeting. Who will be the next chair? Clearly, the finance chair should have hard financial credentials. But it would be helpful to the organization to have a new finance chair already familiar with the company's financial situation because he or she had already served a year or two on the finance committee. In other words, there has already been a plan in place to cultivate a new finance chair.

Without a succession plan in place, boards are often tempted to disregard their own by-laws and ask the current Finance chair to please stay for another term.

This wreaks havoc on the Nominating Committee's other plans to use the by-laws as a diplomatic means to retire several board members who are non-contributors to the board process. Instead, people should have been sought to be the assistant chairs of the key committees, learning the ropes for one year from the more seasoned volunteer before taking over those board portfolios.

A job description could have been written that includes the overall responsibilities and obligations of board membership, as well as the specific job duties of being a committee co-chair or assistant chair and the skills necessary for that task (such as a strong background in accounting, possibly in the public or not-for-profit sector).

G. Tinker, Tailor, Soldier, Spy: Expecting In-Kind Services

Manuals on board development used to give cookie-cutter models of the types of people a board needed, a recipe approach that included: a lawyer, an accountant, a marketing whiz, a banker, a high-powered corporate person, ex-officio members representing the school board, the chamber of commerce, the women's committee, and so forth.

Part of this approach was the assumption that pro bono services would be forthcoming from these professionals, services that would serve the arts organization a lot of money.

Times have changed and *the expectation of free professional advice from board members is no longer practicable. In part the decline in the availability of such services is because of stricter attention paid to conflicts of interest, of increased legal liability, of corporate downsizing, and in some cases institutional dissatisfaction with the quality of these free services ("you get what you pay for" sometimes).*

The conflict of interest issue has become very contentious.

Boards and individual board members at their peril overlook their legal obligations to avoid such conflicts of interest. Regulations on the subject should be incorporated in the bylaws, and procedures established to assure compliance by both board members and staff.

At a minimum, trustees and staff should be called on to disclose, preferably in writing and annually, if they, or any person to whom they are related or affiliated, now transact or are planning to transact business with the institution. For some people such full disclosure satisfies the conflict problem, especially if the board asks for disclosure, including the value to the recipient, each time a contract or assignment is entered into.

Other experts, however, believe a more stringent stand should be taken to avoid conflicts of interest. They would question whether any trustee who is a professional – lawyer, accountant, real estate or insurance agent, banker, stockbroker, consultant, or other--should ever perform professional service for the organization. And they believe this is true regardless of whether the trustee in question works at a regular or reduced fee, is compensated indirectly in something other than cash, or even works pro bono. ...Be clear on the distinction here: it is altogether fitting for professionals who are board members to give expert advice to help set policy and make decisions; being retained to provide professional service is what is questionable, some would say with a strong presumption against.⁶⁰

VI. ROUND UP THE USUAL SUSPECTS!: WHERE DO YOU FIND PROSPECTIVE BOARD MEMBERS?

A. Introduction: Looking in One's Own Backyard

Many organizations show a distinct lack of imagination in the selection of major gifts prospects or candidates for board membership: going after that same hundred visibly wealthy people in a community that everyone else is also courting. "Rounding up the 'usual suspects'" is not really the best way of identifying fabulous new people for a board.

Experienced arts fund-raisers know that the absolutely best place to look for major individual gifts is within the group of subscribers currently sitting in the top priced seats in one's theatre or concert hall. This group has already indicated its interest in the art form and the organization. These individuals have the means to afford good seats on a regular basis (as well as the cost of parking, babysitting, dinner, and so forth). They have shown some commitment to the artistic vision of the institution. They are also easily accessible. Yet sometimes our own audience seems to be the last place we look for new board members.

We cast a wide net, hoping to find someone with the requisite skills to perform some specific board task (like the job of treasurer) and then hope we will "turn them onto" our art form. The development director of a major ballet company once said that she had become convinced that the major criteria being used to select new board members included not only never having seen the company perform, but never having seen a live performance of any kind!

It takes years to develop an in-depth knowledge of a complex art form like opera or ballet and its vast repertoire. It is no wonder that managements and boards get into conflict when one side of the table may have little appreciation for the art and its specific requirements. Stories are legion in the cultural field of volunteers suggesting that an intermission should be added to Richard Strauss's SALOME [a one-act opera] in order to increase sales at the lobby boutique, or that synthesizers could replace symphony players who were vocal in their demands for a better employment contract.

We suggest that one's audience is the best place to begin to seek new board members, using if possible the resources of a prospect researcher.

Formal research is only useful, however, if the preliminary definition of types of board members has been undertaken.

B. Who Manages the Process?

A properly administered nominating process is extremely labor intensive. Depending on the size and term of the board the annual workload can be overwhelming which is, perhaps, why so many organizations chose to ignore due process and are content with the nomination of committee members' friends and acquaintances. The benefit of following due process--a strong and effective board--is worth the extra time and effort. In fact, the success of an organization can often be correlated to the quality of the effort put into the management of the nominating process.

Ideally, in organizations with a professionally administered Development program, the Nominating Chair will be partnered with the Director of Development for support and administrative back-up.

The Director of Development, as the staff member most connected to the community, is usually ideally positioned to assist in the Nominating process. The quality of the board as determined by the Nominating process will also have the greatest effect on the quality of the Development Program. Therefore it truly is enlightened self interest that motivates the Development Director to give his or her all to the process by assisting the Nominating Chair.

The partnering of a member of the organization's professional staff to the nominating process--in addition to providing the needed administrative support--facilitates the introduction of the valuable perspective the management can bring to the table. Organizations that exclude professional management from the nominating process often develop dysfunctional board-management relationships that result in either the board's or management's inability to get the job done.

In smaller organizations that lack a Development Director, the organization's Chief Executive Officer (Managing Director, Executive Director or General Director) must provide support to the Nominating Committee.

C. The Process:

Once the committee has been established, the process of facilitating the committee's work requires some preparation. In our experience, the quality and volume of work done in advance by the person managing the process determines the overall quality of the committee's work.

Outline of Committee Work to be Covered: The Committee Agenda

The critical path of committee activity is easily established by developing a series of meeting agendas that lay out the entire year's discussions and objectives. While extra meetings may have to be added to accommodate a talkative committee, the benefit of long-term agenda planning enables both the chair and the process manager to stay on top of the work load.

An example of two years' worth of committee agendas is contained in the appendices.

Preparatory Tasks: Although committee members are always welcome to speak their mind, open ended nominating questions, such as "Who should we put on the board?" can lead to either blank stares or wild tangents about friends and the "usual suspects."

We have found that prepared draft documents, lists, matrices and profiles help to focus the committee. A suggested list of preparatory tasks and examples of documents, matrices, and profiles are included in the appendices.

Committee Member Tasks: In a fashion similar to a fund-raising committee, nominating committee members leave the meeting with cultivation and recruitment assignments.

The staff person managing the process, in partnership with the Nominating Chair, needs to work this committee in the same way as a fund-raising solicitation team, with occasional telephone nudges and progress reports.

D. The Research Function:

Technological advances have had a profound impact on the way contemporary fund-raisers determine **which** prospects should be asked, how much they should be requested to give, and who should do the asking in a particular fund-raising campaign.

Research functions within development departments were once almost non-existent. Today, however, most major institutions would not attempt a capital campaign or even a major gifts initiative without an efficient and effective research capability in place.

There is not reason why the research function cannot be employed as an effective background tool for the Nominating Committee.

The tasks of a formal research function are many:

1. To identify prospective donors and volunteers;
2. To estimate the prospective donor's ability and desire to contribute;
3. To track the institution's contacts and relationship with the prospective donor/volunteer;
4. To assist the professional fund-raising staff in determining the proper sequence of cultivation activities required to prepare the prospective donor for solicitation or the appropriate courtship process to lead to board membership;

5. To determine which solicitation method should be used by which volunteer/group of volunteers/professional staff member/or combination thereof should solicit the contribution or conduct the interview for board membership.

A major focus of the research process is the estimation of **Wealth** and **Affinity**.

"Wealth" is measured both in absolute and liquid terms; the primary question being the magnitude of the potential contribution the donor or volunteer is capable of making.

"Affinity" is a measure of the prospective donor's likelihood of contribution based on his/her attitude toward, and relationship with the institution.

Measurement of the ability and propensity to contribute used to be a random process. Volunteer and professional fund-raisers would gather together to "rate" potential donors as to the amount that would be appropriate to request. The amount might have been determined by past giving records and the individual volunteer's or professional fund-raiser's perceptions about the prospect's wealth and interest in the cause. Discussions would then turn to which volunteer would have the best "in" to make the actual request.

Formal prospect research has been an enormous help in planning a fund-raising campaign strategy. Today, using publicly available sources and an institution's own in-house data base of buyers and donors, a trained prospect researcher can pinpoint much more precisely those people who would be excellent targets for contributions and provide much more specific information about them.

While some might feel that these techniques might represent some invasion of privacy, we would only point out that all the research is done from public sources and that campaigns are being run much more effectively and efficiently because of this increased knowledge base. All major capital campaigns today use this type of research.

These research techniques can be helpful to a nominating committee which has identified the types of people the board needs to get its job done. Researchers can prepare and maintain profiles on board prospects from the company's audience data base.

This information is extremely useful for determining what type of cultivation might be necessary to entice new prospects to the board and which current board members would be the best suited for the courtship process.

Where to Begin the Research Process:

The following activities performed by a research function will lead to the identification of some prospective board members:

- * profile full-series subscribers in the top-priced seats
- * profile major individual contributors (\$500 or more)
- * electronically scan all individual contributors of \$100 - 499.

If one's data base does not bring forth enough prospects, one could enlarge one's research to include:

- * donors of \$1,000+ to other arts groups in the community
- * suggestions made by board members and staff
- * prominent citizens who appear to have an interest in your art form (although if they are not already in the data base as ticket buyers, one might well wonder about their "real" interest)
- * corporate executives who are new to your community with no current board commitments.

A note about an in-house data base: Some organizations do not maintain good computerized data bases that provide basic information about their audiences: names, addresses, telephone numbers, purchase patterns, and contributions history. This is the **key** tool for creating revenue strategies for improved ticket sales, increased fund-raising, and, of course, better board recruitment. There are many excellent software packages available today that can help any company begin to maximize its income from all sources. No major gains in either earned or unearned revenues can be accomplished without this basic administrative tool.

E. Again: Passion

One of the reasons we so strongly advocate looking first within one's existing audience for board prospects is that a key ingredient in a good board volunteer is a **PASSION** for the arts institution, a belief that it is important that this particular symphony orchestra, theatre, opera or ballet company, or whatever, exists in this community for the shared participation and enjoyment of many people.

There is no reason why this passion cannot be coupled with other skills and background necessary to achieve the board's stated tasks and objectives, such as the propensity to give and the personal means to do so. *Belief in the power of the art is imperative for a good board member.* One author, writing on the management structure of for-profit corporations, stated:

I believe that passion, caring about something, **increases** our ability to see clearly. If we care, we look more **carefully**. We are more, not less, "scientific."⁶¹

An orchestra manager has written:

...due to how much we are a mission-driven organization, our board members must be wildly enthusiastic about our organization and its mission. This drives all our other requirements.⁶²

However, **passion alone is not enough**. We have seen many boards which have added members *solely* because of their in-depth knowledge of opera, ballet or music and not because they bring any other vital skills to the table. The other board members are somewhat cowed by their colleagues' superior command of the art form and will bow to their supposed expertise.

The danger is that these board members may be more avid fans with lots of opinions (and some pet project they wish to see undertaken) than hard-working volunteers carrying out vital tasks. The passion must be coupled with the ability to be a real contributor to the organization.

G. Balance of Personalities:

This is a grey area within board recruitment, one requiring much intuition and experience in human relations.

The point is simply that while a range of skills and backgrounds are needed for an effective board, it is also necessary to have some balance in the personalities sitting around the board table.

Different boards often take on popular images within a community: one board is viewed as the most prestigious one on which to serve, another has a reputation of being composed of great fund-raisers, still another group are thought to be "micro-managers," meddling in the day to day operation of their agency. Communities will speak of the "A Boards" and the "B Boards."

Boards can and do take on "personality traits--open or secretive, confident or hesitant, detached or deeply involved"⁶³ in part because of the mixture of people involved and the corporate culture that evolves from the interplay of these personalities.

Patricia Pitcher in an interesting book on corporate management, Artists, Craftsmen and Technocrats (1995), hypothesizes that there are three types of personalities in leadership positions: Artists, Craftsmen, and Technocrats.

She defines a Technocrat as "someone who emphasizes the technical conceptions of a problem to the detriment of their social and human consequences," a person who is highly "attached to rules, written or unwritten."⁶⁴

A Craftsman has these characteristics: "steady, solid, reasonable, wise"⁶⁵ and, very importantly, "is proud his accumulated skills produce a high-quality product."⁶⁶

Adjectives used to describe the Artist include (as one might imagine): "visionary, intuitive, emotional, entrepreneurial, daring, unpredictable, volatile, bold, exciting."⁶⁷

Pitcher studied companies that had been founded by Artists, corporations that had been strikingly successful because of the boldness of vision behind their conception. The second generation of leadership, however, often floundered. She theorizes that it was a shifting of the balance of personalities that were responsible for leading the company, the reins of power often going to Technocrats.

The Technocrat despises the Artist. The Artist tolerates, even appreciates, the Technocrat. ... When the Artist looks at the Technocrat he doesn't hate him. He sees "brilliant." He sees "methodical." He sees his qualities and his virtues. He finds the Technocrat sort of stiff, but he's tolerant of it. He wants the "brilliant," for he wants to be challenged. He wants to be stimulated. ... But when the Technocrat looks at the Artist, he is not open-minded. He sees only faults.⁶⁸

Better suited to carry forth the vision of the Artist is the straightforward, reasonable, stable, responsible Craftsman:

...the Craftsman respects the Artist. Oh, he thinks he sometimes goes too far and too fast, but he thinks Artists are indispensable; one told me, 'The analytic boys are a dime a dozen, but you can't buy dreams.' Yet the Craftsman normally open-minded, shuts down when it comes to Technocrats... This is essentially because the Craftsman has his feet most firmly planted on the ground; he doesn't mind being lifted off occasionally by the Artist, by a dream, but he resists with all his might getting carried away by a theory. He finds the Technocrat, and his managerial theories, his maxims, totally unrealistic.⁶⁹

Pitcher observed that the original purpose and success of many entrepreneurial organizations were ultimately distorted and destroyed by a preponderance of "Technocrats" in leadership position, the focus turning away from the very essence that made the companies unique and powerful to a concentration of nuts and bolts issues, cost-cutting, downsizing, and efficiencies of scale.

Many arts organizations mirror Pitcher's observations with a board full of bean counters ("Technocrats") and an artistic product that is constantly being cut. Better that the board (and senior managers) should consist primarily of those steady Craftsmen who appreciate the value of the Artist and have the personal skills to effect change and make things happen.

Managing organizations and managing people is a craft. ... the craft of managing people takes wisdom, patience, experience, authority, conviction, realism.⁷⁰

A consultant on not-for-profit boards, Karl Mathiasen, has defined a number of personality types most of us would prefer NOT to have on our boards:

The "Johnny-one-note," obsessed with a single issue.

The devil's advocate, who persists in taking the contrary view just for show.

The authority figure, accustomed to commanding and uncomfortable with group decisions.

The "off-the-wall-artist," a self-centered individual who raises problems in order to give speeches on them, who has an opinion on everything but seldom has done his homework.

The "board hopper," who sits on many boards but serves on none.⁷¹

Personal qualities in board members do make a difference. One author delineated the essential personality traits as: integrity, an open mind, competence, a sense of humor, and enthusiasm.⁷²

How does one deduce these admirable qualities (or lack thereof) in a prospective new board member? That is one of the challenges of the recruitment process. *But if the process is run in an orderly, considered manner, much like a job search, the chances of successfully finding the right new people improve.*

VII. MANAGING THE BOARD PROCESS: A HUMAN RESOURCES FUNCTION

A. Recruitment of New Board Members

It is standard management practice to address the question of personnel by using a system of job descriptions that describes the type of skilled people needed to fulfill the functions necessary to operate a business. Unfortunately this is not a standard practice among boards of trustees.

As a process, board regeneration should work backward from mission, to long- and short-term objectives, to skills needed to fulfill those objectives, to trustee job descriptions, to people in the community who are likely to identify strongly with the organization's mission and are able to fulfill those descriptions.⁷³

Recruitment is the courtship process, the wooing and winning of new board members from the list of prospects that has been developed by the nominating committee and discussed with the full board.

No board member should be permitted to approach any individual about joining the board without committee approval. This restriction should apply to the board president as well.⁷⁴

The first step would obviously be to set up an interview with the person. Who should make this initial telephone call should be discussed by the nominating committee: does someone on the committee actually know this person? If so, that person should make the first call, explain the purpose of meeting, and, if the prospect agrees, set up the time and place. If no one knows the prospect on a personal basis, the call might come from the board chair or possibly the chief executive.⁷⁵

It should be absolutely clear that the purpose of the meeting is to discuss the possibility of the prospect's seeking election as a board member. The interview is not a guarantee of election, but an initial conversation about the organization and its needs in terms of board resources.

Depending on one's organization, the initial meeting should include one board member and a partnered staff person. The combination could be the chair of the nominating committee and the development director, the chair of the board and the artistic director, etc.

The Recruitment Process:

Here are some tips for a successful recruitment process:

1. Carefully match the prospect with the volunteer and staff member who are making the initial call.

Some board members will be better sales people than others. Their own enthusiasm for the arts organization and their own commitment of time and money will be conveyed to the prospective new board trustee. One prospect will be more impressed with meeting the artistic director, another with the corporate CEO who is also the board chair. As in any type of face to face solicitation, the initial meeting has to be carefully planned.

...every organization has a fluffhead, a chatterbox or a grouch. He or she may have a heart of gold and could be among the agency's most loyal board members. ...Treasure and respect them for what they have to offer, but don't make (or let) them be the ones to recruit other board members.⁷⁶

2. "Take the fear and mystery out of the phrase 'board of directors' for those people who have never belonged to a board before."⁷⁷

Not every prospect has a track record in board membership, especially younger prospects or people new to the community. They might assume that all of the other board members will be richer or older or wiser than they are and that they will not be able to make a contribution to the organization.

The face to face meeting is a first step in assuring the prospect that he or she would be welcomed into the group and could indeed be of enormous help.

3. Be explicit in discussing the responsibilities of board membership. Have the obligations in writing.

So much board/management friction is generated by the failure to outline clearly the expectations of new board members.

There is a tendency to “pussy foot” around these obligations for fear of alienating a prospective new trustee at the very first meeting. And it is true: upon hearing what would be expected of them, some prospects will immediately declare themselves to be unable (or unwilling) to serve as a board member under those terms. But it is MUCH better to have a refusal at this stage, than to sugar coat the level of commitment sought and have an unproductive new board member elected to office. Remember that this initial meeting was set up to discuss *the possibility of being asked to serve*, not to invite them to serve.

4. "Give them alternate ways to make a contribution."⁷⁸

The prospect being interviewed might be unable or unwilling to take on the responsibility of being a board member at this particular point in time. However, he or she could potentially serve on a committee or make some other tangible contribution. The interviewers should be prepared to offer alternative ways that the prospect could help.

5. Don't twist a prospect's arm and insist they join the board.

A prospect is likely to be flattered by the invitation to be considered for board membership and is equally likely to modestly protest that they are not important enough or aggressive enough or knowledgeable enough to join such an august board. The interviewers need to be able to decide if this response is really a gracious no or a call for reinforcement. Talking a person into standing for election against his or her will accomplishes nothing, neither guilt trips nor strong-arm tactics are appropriate.⁷⁹

It is entirely appropriate for a prospect to ask for more information or time to consider the request. A time should be arranged for the person to tour the company's facilities or meet the chair of the board. A single meeting is not enough to deduce a prospect's real interest and capacity to contribute to the organization.

6. Create an information package to take with you on the initial meeting.

A prospect might wish to see financial statements, a list of board members, a mission statement, a brief history of the company, and a written statement of the responsibilities of board membership. Don't overload the prospect, just give them some basic factual information about the organization. If they are interested in further discussion, more materials can be provided.

7. Follow up the meeting with a thank you letter and any additional material that was requested.

If the prospect has expressed interest in serving on the board (or at least considering the possibility), arrange for a second discussion, tour, luncheon, etc.

8. Check references of the prospects.

Every community has a handful of very visible volunteers whom everyone believes to be fabulous trustees. Frankly, sometimes the emperor has no clothes!

If possible, it is helpful if the general manager could call his or her counterpart at another arts group on whose board a prospect has served and ask for an off-the-record "reference." Sometimes the volunteer has indeed done a bang-up job but occasionally one learns that there were difficulties.

One might, for example, learn that a prospect whom everyone believes has the possibility of being a good development chair doesn't work very well with women, calling them "dearie" and "sweetie," and in general treating female staff as clerical underlings. This might be a huge problem for your particular company which has a very strong, very tough female director of development and a mostly female fund-raising department, not one of whom perceive themselves to be secretaries. Courting this man to join the board could create huge internal difficulties for the institution in the future.

B. Orientation of New Board Members

I. Introduction:

Organizations often have enormous expectations of new board members; a person has been touted as a terrific fund-raiser, a super guy or gal, a passionate lover of classical music, someone who can really roll up their sleeves and get the job done. They join the board and then nothing much happens. Why?

One reason might be that the organization did not recruit them properly, discussing thoroughly what was expected of them. But the other reason simply might be that the company didn't do a good enough job was done to welcome them with a thorough orientation to the organization and an introduction to the current personnel.

Oh, replies the organization: we sent every new board member a huge binder chockfull of materials on our company: its history, its current budgets, press clippings, brochures, even a staff and board list. Why, there were nearly one hundred pages of stuff in that notebook! *In other words the organization has dealt with the orientation issue in the most passive manner possible: in writing.*

The new board member is about to attend his or her first meeting, having only met a few people from the nominating committee and possibly the development director, and is now expected to charge immediately into action. It will take a number of board meetings, possibly six or seven, before the new person will feel comfortable at the board table or even have learned all of the names of his or her new colleagues.

2. An Orientation Strategy:

The nominating committee needs a campaign plan to welcome new board members into the fold.

One handbook suggests "three well-focused meetings":

First, the trustee meets with the chief executive of the organization, chairman of the [nominating] committee..., the board president, and the artistic director... At this session the trustee is given a general background and briefing of the organization's history, directions, and needs.

Next the trustee is given a tour of the facilities during rehearsal activity to get a feel for the artistic process at work and to catch the spirit of the organization as a whole.

Finally, the trustee attends a social gathering for new members hosted by management and the [nominating] committee. New members meet one another and raise questions that may remain among them before actual board service begins.⁸⁰

This structured approach to orientation allows new people to enter the fold gracefully and in an informed manner. The small group approach enables a person to ask questions he or she might consider "dumb" without risk of embarrassment.

One of the reasons it takes so long to integrate oneself into a group process is that one needs time to feel comfortable with a new group of people, all of whom have a lot of history with the organization. A sensitive newcomer doesn't wish to tread on any toes or be viewed as that obnoxious new person.

Some manuals on boards use the word "training," which to us smacks of dealing with dogs or possibly small children. The nominating committee has brought forward a wonderful slate of fabulous human beings with skills and talent and ideas--we prefer to welcome them and provide them with useful information, not make them roll over and play dead.

3. Formally Welcoming New Board Members:

At their first board meeting it is important to introduce the new people formally and to introduce everyone else at the table to them. Many boards use *table tent name tags* for every meeting which helps everyone learn each other's names; these are much better than name badges which cannot be read at a distance and give everyone the appearance of desk clerks at a major hotel.

If the new board member is expected to go on a particular committee, it would be wise if the current committee chair and possibly the staff member charged with liaising with that committee, would spend some time with the new person on an individual basis to discuss the tasks ahead.

One of the most stimulating aspects of being a board member of an arts organization is the opportunity to learn about the art form. We encourage management to make as many such occasions available to new board members as possible: accompanying the education director to see a lunchtime school show, riding the bus with the company to a run out performance in the area, and visiting the scene shop, the shoe department or the telemarketing room. Everyone in the company can help make new board members more comfortable and informed.

If these types of orientation sessions have not existed in the past, current board members should be included in some of these activities as well as brand new ones.

The board manual, those hundred pages of background material, can still be a useful reference tool for all board members, but a slimmer book is preferable. Both new and old board members will benefit from having short biographies or resumes of the board and the senior management team, a copy of the current approved budget, the by-laws, a board/staff address and phone list, past annual reports, a season schedule, and a mission statement.⁸¹ But much more is just overkill. Management can better use its time meeting new board members face to face and getting acquainted than collating a hundred pages of stuff and sticking that stuff in thirty or more binders.

New board members will get “on side” much earlier if attention is taken with them at the beginning of the relationship. Old board members will flourish if the board process is lively and productive and the organization moves forward. As one writer observed, “the most important thing you can give a ...[board] member is the chance to participate in an organization that gets results.”⁸²

C. Evaluation

The Nominating Committee carries out a planned performance evaluation of trustees on an annual basis using written criteria which have been communicated to all trustees.⁸³

The Nominating Committee needs to take a hard look at non-contributing or inactive board members. It is well worth the time to undertake one-on-one interviews with these trustees to discuss why the obligations of board membership they agreed to undertake have not been fulfilled. A person might be encountering an unexpectedly busy time at work or have health concerns; perhaps some pressing family business has intervened such as a teen-aged daughter with an eating disorder. Or there are some personality conflicts with a committee chair. Or they were simply a wrong fit with the board and they would be happy to resign.

The evaluation process should not focus solely on recalcitrant board members and ways to enliven and refocus them, it is also an opportunity to recognize the achievements of excellent board members who are making substantive contributions to the organization.⁸⁴

D. Recognition of Board Service

The literature on volunteerism is full of nifty suggestions about how to keep one's corps of volunteers cheerful and motivated. One is advised to undertake many recognition strategies--from personalized coffee mugs to name tags to annual thank you events--to keep the rank and file of one's volunteers happy.

Almost no attention is paid to the care and feeding of one's board of trustees who contribute so much time and money to the organization. Although many board members do care deeply about the company and its artistic endeavours, as well as their communities, and gain satisfaction from a job well done, one assumes that everyone would like some expression of gratitude for their hard work.

One authority attributes a tone of religious self-sacrifice to the volunteer role:

The challenge of becoming an ultimate lies in nurturing an artistic ideal with authority, discipline, and the kind of caring that make love tangible in public works. Though the human condition frequently demands recognition for what one does, there is still the counsel of scripture that reinforces the wellspring of voluntary trusteeship: "How poor those who work for a reward."⁸⁵

While we are sure that a job worth doing is worth doing well, patience is its own reward, and a penny saved is a penny earned, we are also positive that most board members welcome recognition.

Having one's name listed in the program and being thanked publicly at the annual general meeting and at board meetings are nice, but the real thrill is meeting artists, working with management and other volunteers on meaningful and interesting projects, and feeling involved with the organization.

Opportunities to be more involved with the artists and staff, and to be more "in the know" are always welcomed as are simple courtesies: hand-written thank you notes, birthday cards, flowers, and small gifts. Organizations invent elaborate ways to recognize their corporate sponsors and their volunteer usher corps but tend to forget the really key group of volunteers: the board. At least once a year it is wise to do something nice for and with the board, in appreciation for all of their efforts.

E. Firing or Retiring Board Members

The conventional wisdom is that "you can't fire volunteers." This is not true, but – as one can imagine – situations so out of hand that an organization contemplates firing a board member require the utmost diplomacy and tact.

There are normally three reasons why an organization wants to fire a board member.

The first is that the person in question isn't making any contribution at all: not attending meetings, giving money, or fulfilling any of the obligations of board membership. As discussed previously, this may be the result of poor recruitment and orientation, personal or business pressures, or the failure of the organization to match the new person with an appropriate task. In this situation the board chair and/or the chair of the Nominating Committee and possibly the chief executive officer needs to speak directly with this person and assess the situation dispassionately. One might allow the person to resign gracefully.

The second reason is that the board member has turned out to be a real wild card, causing dissension and havoc, and going off in all directions without the board or management's knowledge. Again, this requires a direct approach to rein the person in.

These types of situations are exacerbated sometimes with sloppy board procedures. Some boards become very careless about due process, Roberts Rules of Order, financial approval of new projects and the like, opening up ever more possibilities for volunteers running amuck. Both volunteers and managers should clean up their procedural act with well-delineated meeting schedules, budget approval guidelines, good minutes of proceedings, and the like.

A third scenario is a personality conflict between a board member and a staff member. The senior manager needs to intervene in these situations to help clarify roles and responsibilities of staff and volunteer, keeping the board and nominating chairs informed of the situation.

Stories about board/management conflicts in the cultural sector abound. The root cause is the failure of the nominating process, possibly inflamed by lack of patience, mutual trust, or miscommunication. No one ever said that human resources management was easy, but much can be achieved through dialogue and information-sharing.

Such a situation is obviously thorny and fraught with political ramifications. An effective and strong Nominating Committee and committee Chair which undertake such a task as firing successfully may find that the action galvanizes the other board members into increased activity: these guys really mean it about the responsibilities of being a board member for this outfit!

The *retirement of board members*--after serving out their terms with honor – is another area in which many organizations show a basic lack of courtesy.

After a person has made a contribution (be it great or modest) to an organization and is stepping down from the board, it is appropriate to recognize this person at the annual general meeting, making a short speech about his/her achievements and giving them a souvenir from the company: a framed poster or photograph with a small plaque or a work of art.

It is also appropriate to mention the person in the annual report, the company newsletter, or some similar publication. In some communities the local paper will gladly write a small article. People should leave the organization's board feeling proud of their association with the company.

VIII. COMMON CONCERNS ABOUT BOARDS OF TRUSTEES

It is difficult to discuss boards of trustees without questions coming up about the appropriate size of a board, rotation schedules, and the like. This section addresses some of those often-asked questions.

A. Changing the "Rules"

Many boards find themselves in the awkward position of trying to change the "rules" of board membership in mid-stream. Board members who were recruited with the promise that they wouldn't have to raise funds can hardly be expected to suddenly change overnight into a top-notch fund-raising team. They can hardly be blamed for being resentful when managers criticize them for their non-performance as fund-raisers, a role they did not expect to play.

Some will immediately resign if pressure is brought to bear on them to raise money (any kind of crisis will result in a rash of resignations). Others will remain but will be angry and ineffective. Still others may develop unforeseen talents as fund-raisers because of their belief in the company and its activities.

If future budget planning shows that more funds will need to be raised, it is important to begin addressing the ways and means as soon as possible. Lack of time is the great enemy of revenue generation. A special board meeting--possibly a weekend retreat or an all-day session--might be needed to focus on the future and its financial implications. Government cut-backs, downturns in the economy, the value of the dollar against international money markets, increased competition for corporate sponsorships, and the like will have very real impact on a company's future budgets.

Assuming that the organization does not wish to retrench and cut back its activity level (although that is always one option but perhaps not a very stimulating one, artistically speaking), then a serious look would have to be taken at the company's realistic expectations of growth in fund-raising. Growth in this area may require different requirements of its board and an upgrading of the current fund-raising infrastructure: size and calibre of the development staff, quality and sophistication of software, and more aggressive campaigns.

The best route to take in changing the rules is to have frank and open discussions between management and board of the issues and the strategies and changes necessary to face the challenges. The nominating committee will be a key player in seeking new board members able to meet more stringent levels of expectation and obligation to deal with the company's future challenges.

All human beings seem to resist change. Some volunteers will be extremely unhappy as new board members join the process and bring new ideas and new energies to the table. But a board must ultimately transform itself from time to time to face new situations and expectations or the organization will die.

B. Size of Boards

You will find rather quickly that the size and composition of the board can be a controversial subject. Nonprofit boards tends for several reasons to be fairly large. Numbers will assure that the views and needs of various constituencies are understood and properly served. Numbers will allow for diversity in age, race, and ...⁸⁶

... most prefer about **eleven** members.⁸⁷

There is no absolutely no right or wrong size for a board of trustees of a not-for-profit organization.⁸⁸

A board of trustees of five members may be too large if each one has not been selected for specific capabilities, leadership strengths, interest in the institution, and a willingness to commit meaningful time and support. A board of eighty will be too small if each member brings to it some singular expertise, the ability to provide special access, or significant resources.⁸⁹

Yet another writer on arts management concluded from her research that fifteen to twenty-five was an optimal size for a board.⁹⁰ Clearly, there are many opinions!

We have worked with boards of more than 250 arts organizations and have accumulated our share of horror stories, including an opera company with a full-time staff of two, a board of eighty, and little office computerization: it literally took a week of staff time to send out the board minutes. On the other hand, another opera company with a multi-million dollar budget handles its board of eighty-odd with an effective executive committee structure and receives major annual support from the total group.

Six factors seem to be important in the determination of board size: (1) the size of the organization's annual budget (2) the maturity of the organization (life cycle)(3) community or industry practice (4) the size of the fund-raising goal, but most importantly (5) the volunteer human resources necessary to achieve institutional goals. The sixth factor is the by-laws of the organization which define the existing parameters for board size.

(1) Budget Size:

An American Symphony Orchestra League study on boards reported:

The maximum number of voting members allowed on a board, with 261 orchestras reporting the number specified in their by-laws, is directly related to the orchestra's annual expenses.

Orchestras with expenses less than \$100,000 average a maximum of 24 voting members; half have bylaws that specify 25 or fewer voting members. As annual expenses increase to \$1 million, the average maximum number of voting members allowed by the bylaws rapidly increases to 50 members. As annual expenses increase to \$10 million from \$1 million, the average maximum number of voting members slowly increases to 60 members from 50 members.⁹¹

Since a larger budget size would indicate a more complicated organization, it would make sense that board sizes might increase proportionately to the growth of annual budget. However, this is not a hard and fast rule: some very large organizations have very tiny boards. Either model might be appropriate depending on the mission and objectives of the institution.

(2) Life Cycle – Institutional Maturity:

One experienced theatre manager wrote:

For a developing institution, these numbers [15 to 25] are probably appropriate. With maturity it is entirely reasonable that a board might expand to a considerably larger number. If there is purposeful growth to fifty or even one hundred members, the leadership must recognize that such size presents specific problems of meaningful individual involvement and management. Such a large board may be totally appropriate for a very complex and big institution or one with wide geographical interests. In such an institution, a sophisticated and broad-based committee structure would be imperative. Meetings would need to be carefully planned and executed. A thorough analysis must have been made of the specific strengths of each member and the use to be made of them.⁹²

The life cycle stage of an arts organization is clearly part of the determinant of size; an emerging organization will have a board just large enough to satisfy legal requirements for incorporation and the members are likely to be friends or relatives of the company's founders.

A study on the growth of organizations identified three stages:

1. **Startup**, characterized by a small group of volunteers, or a single highly motivated individual, responding to a cause or problem. Goals tend to be subjective, and a "can-do" spirit pervades. The major challenges are in formalizing the structure and raising funds.
2. **Growth**, characterized by some stability and probably a full-time executive director and staff. The principal challenges are keeping up the momentum, maintaining the funding base, and diversifying the board.

3. **Maturity**, where the organization has reached a degree of stability and self-sufficiency, and has developed a credible track record.⁹³

The basic obligations of board membership outlined earlier are the same for organizations at any stage of development. The pressures and the need for professionalization increase as groups grow and mature.

As organizations grow and develop, the demands on board members will change. By-laws may have to be revised to accommodate the company's new needs.

(3) Community or Industry Practice:

Within the cultural industry – in general terms – larger performing arts organizations, be they orchestras or opera companies tend to have larger boards. In some cases board membership is given to high-end donors as part of on-going cultivation and stewardship strategies. Such boards often become so large that the full board will only meet a few times a year and the meeting will have a social aspect such as luncheon at a country club.

The social cachet of belonging to an arts board is so strong in some communities that any discussion of a smaller board size threatens board members' community status, or, at least, their perceived status. We have seen by-laws that grant life-time membership to anyone who has served as board president (and the president's term of office was one-year non-renewal). This meant that the board had something like thirty-five former presidents still serving in a life-time capacity, as well as a group of newer, more active volunteers.

Some arts groups which are in effect government agencies or line items in governmental budgets (performing arts centers or museums owned and operated by a municipality, for example) have appointed boards. These bodies are subject to changes in political tides; being appointed to such a board is usually considered prestigious and highly desirable. There can be no expectation of fund-raising assistance from such a group, but some of the board members will provide access to wider communities.

In some cases a board is created to help get a major cultural activity started—such as studying the possibility of building a new performing arts center. A group of prominent citizens and community opinion-leaders will be asked to serve as a board during the start-up phase of the project. The role of this type of board is to provide credibility to the case and build public awareness.

Similarly, when an arts group is declaring bankruptcy or there is enormous internal strife—such as the firing of a well-loved music director—a local government may step in to fire the existing board of directors. A temporary board, again comprised of community leaders, will be put into place to try to ameliorate the situation.

(4) High Fund-Raising Expectations:

Boards that are expected to do a lot of serious fund-raising need to be bigger boards.

It is a simple matter of human resources: a lot of people are needed to chair the various campaigns within the total fund-raising program and each campaign needs a co-chair or vice-chair, as well as workers. For an arts organization raising millions of dollars a year with volunteer help, a board must be able to supply the leadership for the critical campaign components.

A much bigger board will require more staff support to manage the board process, keeping track of meeting schedules, sending out minutes, helping the nominating committee carry out its function, and so forth. The larger size of the board means that the entire board may not meet as often as a full group, which indicates that the committee work must become meaningful and lively.

If the board numbers more than eighteen to twenty-three, it tends to become a bit unwieldy and for the sake of efficiency, an executive committee (empowered to act on behalf of the board between board meetings) assumes increasing responsibility for the affairs of the organization.

When this happens, board members who are not members of the executive committee may feel frozen out of the real decision-making process. Many individuals who do not feel part of that basic process lose considerable interest in working for the organization as they perceive their role as being of little real value.⁹⁴

(5) Getting the Job Done:

The real point is that the board must be large enough to provide the leadership and human resources for the tasks it must accomplish.

The size is dictated by the job that must be done, not by any intuitive feeling that a smaller board is intrinsically better than a larger one or a sense from management that a smaller board is easier to "control." And we know from experience and research that boards tend to increase in size as the pressure mounts to maximize fund-raising efforts.

There is no magic number for board size; the determining factor is what the board is supposed to do and how many people are needed to accomplish its goals.

(6) By-Laws:

Board expert Robert W. Crawford suggests that by-laws be worded in a manner that provide both the legal number of board members needed (depending on where one's company is located) and also the flexibility for a board to modify its size to fit its current operational needs:

...it would seem more logical and constructive to state in the by-laws something similar to the following: the board of trustees shall number no fewer than five, the exact number to be determined from time to time by the trustees than serving in office.⁹⁵

Some by-laws provide for a range of board size ("no fewer than x, no more than y"). There is a tendency to believe that there are "vacancies" on the board if the higher figure has not been achieved, regardless of whether or not more people are actually necessary.

C. Terms of Office

If you have ever seen...a board where board membership is tantamount to a life sentence, you will know why rotation is so necessary.⁹⁶

It is almost inevitable that if there are no limits, no system of board member rotation in place, the nominating committee will take the line of least resistance and simply repeat all of those board members for yet another, and another, term until the board becomes a social club bereft of the vigor that can only come by way of regular infusion of some fresh blood.⁹⁷

It is highly sensible to limit the number of consecutive terms that a board member may serve, normally either three consecutive two-year terms or two consecutive three-year terms, followed by a "year off." The board is divided into a series of classes with either one third or one half of the current board up every year for either renewal or retirement.

If a current member has fulfilled his or her obligations of board membership and wishes to serve another term, presumably that person will be asked to continue on the board. A person whose performance has not been good can be gracefully retired at the annual meeting.⁹⁸

Two concerns are often expressed about the adoption of a rotation model. The first is that a wonderful board member "forced" to rotate off for a year will lose interest in the organization and the institution will be bereft without this person's particular skills and talents.

The second is, after six years of service, a particular person would now be a highly suitable candidate for president or chair, but would be prevented from assuming that position because of the rotation requirement.

Here are some suggested solutions for these concerns:

Obligatory “Year Off”: Keeping Up Interest in the Organization:

Board expert Andrew Swanson suggests three strategies for keeping an excellent volunteer involved during that “year off”:

1. Make this outstanding person the chair of a committee (presuming, of course, that this person's skills and the committee's needs match) in which case he or she ought to attend board meetings as the committee chair.
2. Have the chair of an important committee be appointed by the president, approved by the board, and have the office of committee chair carry full board membership by virtue of the office.⁹⁹
3. Ask the person to serve on a committee, although this service would not allow the person to attend board meetings.¹⁰⁰

Note: These strategies assume that your by-laws allow for non-board members to work on committees or serve as committee chairs.

Separate Election of Officers

Swanson offers another solution to the board hiatus issue: “electing officers separately and not from among the already elected board.”¹⁰¹

Although some might fear that an officer will be parachuted into an organization with no prior experience, one imagines that this would not in fact happen very often. Officers are much more likely to come from the ranks of experienced board volunteers already committed to the organization.

Another means of dealing with this issue would be to have wording in the by-laws to the effect that officers, once elected, are able to fill out their terms of office, regardless of where they are in the rotation process.

Again, a provision for rotation of officers is important, limiting service to a number of two or three year terms, and providing for a year out of office.

Summary:

Regardless of how one's organization chooses to define its terms of board service and tenure of its officers, it is extremely important to have a rotation system in place. Otherwise, a board will become stale, lacking the infusion of new ideas, of new skills, and of new viewpoints.

D. The Place of the Chief Executive Officer on the Board

What is the role of the organization's chief executive officer in terms of working with the board?

Before answering this question, a look at the organization's by-laws might be in order. A surprising number of cultural organizations do not clarify who is the chief executive officer. It is quite common to find that the board chair or president is actually the CEO, not the senior staff person. We feel that this is an old and obsolete structure: the person hired to be the senior manager should be identified as the CEO, not the volunteer.

The chief executive officer of a not for profit organization normally serves as an ex-officio member of the board; *the ability to be a voting member seems the issue.*

In some places a paid employee of an organization cannot legally be a voting member of the board. It is wise to find out the legal implications of this issue in the place where the organization is located.

Fisher Howe, a wise gentleman with vast experience in serving on boards, reviewed the pro's and con's and concluded that "ex officio" status was likely the best solution:

The case for the affirmative asserts that full voting board membership gives executives a more collegial, peer relationship with the other board members that may help them to be more effective. [He cites examples of large national organizations, universities and colleges, and major hospitals.]

...This advantage, especially in smaller organizations, is probably more perceived than real. Some, for instance, think it is helpful in fundraising.

...The case for the negative points to the responsibility of boards to hire, pay, evaluate performance of, and if necessary dismiss the executives. In this respect the executive, as the servant of the board, is in an ambiguous position and should not participate as a voting member.¹⁰²

E. Artists on Boards

In an attempt to increase dialogue with artists who work for an arts organization, it has become fashionable to appoint a number of artists to board membership. *This may or may not be a good idea.*

In some cases the practice may in fact be illegal since the artist is an employee of the organization and, like the artistic or managing director, may only be able to serve in an ex-officio capacity according to the dictates of local law.

In the world of symphony and opera, the reasonable desire for musicians to expand or maintain an expanded level of activity and income is often out of sync with the market's demand and management's inability to increase earned or contributed revenue. Throughout the 1980's and early 1990's these imbalances lead orchestras and opera companies with orchestra contracts into conflict between musicians, managements, and boards. The conflict usually tends to develop between the management's and the musicians' estimate of the market's ability to support the orchestra.

Ignoring the realities of the marketplace, all bargaining groups--musicians, managers and members of the board--appear to agree that the ideal orchestra should have a core of musicians who continually play together to develop an ensemble sound and esprit. They also agree that orchestral musicians deserve to earn a large enough income to enable them to reside in the orchestra's base community without having to focus continually on finding extra income from teaching and pick-up gigs to survive.

When conflict arises in the form of protracted negotiations, lock-outs, and strikes, a common tactic used by the resident musicians is to plead their case directly to members of the board of trustees around the negotiating process. Given the sympathetic and volunteer nature of a board (i.e., feeling ultimately not responsible for the bottom line), combined with an emotional musicians' plea and the difficult and often ugly public relations situation developing out of a strike, many managers have experienced a board's caving in above them and forcing a settlement.

Time has demonstrated that in most of these instances the market demand for increased performances did not rise beyond management's initial estimates and the orchestra is forced into fiscal difficulties.

Proponents of artist representation on the board of trustees and board committees argue that through involvement the contracted musicians will gain a more realistic understanding and appreciation of the fiscal situation facing the institution. There is, however, an issue of conflict that develops when the contractee sits on the board of the contractor.

I am opposed... to having members of the orchestra on the symphony board. The board has to deal with contract issues that would put the orchestra members in direct conflict of interest and create a problem with confidentiality. I am very much in favor, however, of including members of the orchestra on every committee they care to join.¹⁰³

Opening up the board committee that reviews the operating budgets and budget deviations of the organization to artist representation could help to better develop an understanding of the fiscal realities.

Unfortunately, in our experience, there is a tendency of artists whose livelihood is directly affected by the effectiveness and efficiency of the organization's fund-raising and marketing efforts to assume organizational incompetence when tickets don't sell and fund-raising revenues don't materialize. This phenomenon is similar to that of board members who lack the ability to raise funds who attack the organization's marketing prowess, rather than admit their own shortfalls.

On the other hand, we believe it is better to be inclusive rather than exclusive. The committee process is often educational and it is better to confront difficult issues in committee discussion, rather than in the heat of the negotiating table.

One solution might be to recruit artists to the board who are not directly employed by the organization, yet mindful of the artist's point of view. This would avoid any conflict of interest.

F. Ex-Officio and Honorary Board Members

Ex-officio and Honorary board members can be extremely useful to an organization. However, the role of Ex-officio and Honorary board members is often confusing and loosely defined.

Ex-officio literally means "by virtue of the office"; in other words, one holds the board position by virtue of one's job such as superintendent of schools or president of the women's committee. Organizations that have direct and indirect ties to other constituted bodies such as government, theatre facilities, training schools, and so forth often save places on the Board for representatives of the related organizations to facilitate inter-organizational communication.

Honorary (or sometimes "life") board members are elected or appointed for a variety of reasons relating to recognition, assistance or largesse. Problems arise when the role of these particular board members is ill-defined and expectations from both sides are unclear.

There has been a lot of discussion about the responsibilities of these representatives to fulfil the obligations of board membership. Ideally, all board members including ex-officio and honorary would fulfil the same obligations. However, ex-officio or honorary members are appointed to fulfil a specific purpose that is defined by the organization (such as improving communication). To fulfil the appointed purpose is usually the only reasonable expectation the organization can have of these individuals, although their contribution and participation may increase through involvement with the organization.

Difficulties occur when the ex-officio or honorary member takes the space of a regular board member needed for other leadership purposes. For this reason we *recommend that the positions of ex-officio and honorary board members are clearly defined, including the reason for such an appointment, and that the number and method of election is separate from the number and method of election of regular board members.*

G. Advisory Boards, Committees, and Councils

Advisory boards or committees often begin as a means of attracting the names of influential persons to one's letterhead with the hope that this roster will add lustre and prestige to one's organization. In some cases the so-called "board" is simply a collection of names with no formal responsibilities or obligations. Many arts managers naively believe that this honorary group represent some long-term fund-raising potential for their organization. This is a false hope:

Individuals are pressed into duty on these committees with illusory promises about not having to attend meetings and only to lend their names. This has little to do with fund-raising. However, if members did take their duties seriously the result would be worse: it is inconceivable that responsible committee members would help raise money only to turn it over to a board that oversees its distribution but allows the Advisory Committee no direct role in its disbursement.¹⁰⁴

Other advisory committees are formed to help an organization address a particular sector of the community or solve a particular type of problem.

An example of this would be an educational advisory board composed by school principals, arts teachers, representatives of parent-teacher associations, and so forth. The purpose is to meet with the organization and discuss ways and means to have more arts activities in the schools. This might be a very successful use of an advisory board structure but when all is said and done, an advisory group lacks clout:

An Advisory Committee has functions which are purely informal and hortatory. It may urge but it cannot command, unlike a board which has full legal powers. This function is entirely appropriate when suggesting to an agency and its board which direction it should take in relation to critical program issues. It does not work as well when undertaking to provide the critical assistance which ought to be present on the board.

This is because the chairman of an Advisory Committee lacks the sticks and carrots which are necessary to insure that assigned tasks are carried out, not to mention the moral suasion which comes as the trustee of a public organization. Advisors cannot be made to work, directors can.¹⁰⁵

A better model might be to constitute the advisory committee as an actual ad hoc committee of the board with either a current board member serving as chair or appointing the committee chair to the board as an ex-officio member.

The make-up of the committee can then be the members of the larger community needed to address the issues thoroughly and professionally and the findings and suggestions of the committee can go directly to the board for information and implementation.

In Canada we sometimes see more formally structured advisory boards which are groups appointed by some external body:

These are Boards of organizations which are incorporated under a host organization (such as a government). They receive their authority to exist from the host organization. The host organization defines the limit of authority and responsibility for tasks that an advisory Board may undertake.¹⁰⁶

A common example of this type of group is the advisory committees connected with many community college programs such as arts administration. Providing a linkage between the profession and the curriculum, the committee members are expected to suggest curriculum changes, find placements for students, help advertise the program, and so forth.¹⁰⁷ As the head of a journalism department wrote about such committees: "Who better to tell us how we are doing, instructionally, than people who already are employed out there every working day?"¹⁰⁸

H. Appointed Boards: What To Do If You Have No Choice

But in some cases the externally appointed board is in fact the "real" board of the organization. These are also found in the United States, especially in the social services sector:

...many nonprofits are bound by laws, regulations or guidelines that [define]...the agency's board members. For example, one type of agency is required by federal law to have elected officials or their designees sit on their boards. These agencies have absolutely no choice in who is elected or, if the official chooses not to serve on the board, whom he or she designates to sit on the board in his or her stead.¹⁰⁹

These types of boards are typically populated with government appointees and to some degree reflect the congress model of organization.

In terms of making policy, these appointments may not always be a bad thing:

...this outside input keeps an agency from becoming self-contained. Often agencies with boards having complete and total discretion over the selection of all of the members become stale, or, even worse, self-serving. The community served by the agency is left out in the cold.¹¹⁰

A government-mandated citizen advisory group or the like could potentially be a powerful public relations tool for an organization if dealt with positively and pro-actively:

Advisory councils can... take the organization's message back to the community or consumer. Advisory councils are usually better than governing boards at interpreting the organization's work to the public or to potential users of the organization's services. They also can be useful in holding public hearings. Advisory councils often make the best advocates because they can be perceived as less self-interested than staff and more independent than the governing board of directors.¹¹

Implications for Fund-Raising:

In fund-raising terms, however, such appointed boards are a DISASTER. There is no expectation whatsoever that these board appointees will either donate money personally or will work to solicit funds from others. Since professional management has little or no control or influence in the appointment of board members to these types of boards, the obstacles to successful institutional fund-raising are enormous.

In these cases the issue of orientation of new board members becomes one of vital concern for an organization, trying to involve new people who perhaps have never shown any interest whatsoever in the visual arts or music up to this point in time.

One solution to this revenue generation dilemma would be to investigate the possibility of creating *a separate foundation for the organization whose board is recruited specifically for fund-raising*. The difficulty is that the "other" board has the implicit authority over policy-making decisions for the institution and the board group charged with fund-raising is excluded from any real source of power within the organization.

A second solution for fund-raising is to develop an excellent patron-level giving program (individuals giving annual gifts in excess of \$5,000) with a strong patrons committee and good staff support. This is relationship-based fund-raising closely associated with the organization's artists and product. Such a group lays the groundwork for future major gifts and capital campaigns by developing a group of donors committed to the organization.

A third solution is to try to encourage each of these appointed board members to become a positive ambassador for the organization, if not a donor or a fund-raiser. Sit down with each individual and find out more about them. Everyone has a personal network of friends and colleagues; perhaps together one can dream up some ways of getting information about the organization to a new group of people. Good public relations are an asset to any organization.

I. Emeritus Boards

The positive experience of participating in a strong successful board can lead to a lifelong commitment to that organization. While it has always been useful for organizations to continue their relationship with past board members, the increased emphasis on the development of endowments and the rise of planned giving as a major source of institutional support adds a fiscal imperative to institutional good manners.

The creation of an Emeritus Board or a Council of former board members is a useful way to continue the organization's relationship and to continue to recognize those generous volunteers for their service to the institution. An Emeritus Board also serves as a useful and graceful means of retiring long-term board members who no longer can be as active as they were the past.

The most successful Emeritus Boards exist to continue to build a positive relationship with former board members. They list the members in the program, occasionally seek their counsel, and continue to communicate to them through newsletter, minutes and an annual social event. Certain obligations of membership such as continued performance attendance through the retention of their subscription and continued patron level contributions help to cement the on-going relationship and continued dialogue with Emeritus Members.

J. Sitting on More Than One Arts Board

Is it a good idea to recruit board members who sit on a lot of other boards? In some small cities where we have worked, one occasionally meets a volunteer who sits simultaneously on the boards of the symphony, the art museum, and the opera company.

In some instances the multiple board positions reflect a recognition of the person's very large financial contributions and his or her long-term service to the community. The person is retired and likes to keep busy, attending meetings and making suggestions. For this type of individual, working with a variety of cultural organizations is a great pleasure, reflecting his or her personal passion for the arts.

On the other hand, it is difficult to fulfill the obligations of board membership for one arts organization if one sits on a number of other boards. Issues of conflict of interest, privacy and confidentiality arise. In general one should concentrate on only one arts board at a time.

K. Definition of "Members"

There are many different ways in which the word is commonly defined within the cultural industry. Two of these definitions which have some pertinence to the board process are:

1. The by-laws of a not-for-profit organization will spell out what constitutes a "member" of the corporation and the privileges thereof (usually voting at the annual general meeting).
2. Individual donors are often deemed "members," but this nomenclature may or may not be equivalent to the constitutional definition (or only at certain giving levels.¹¹²

Some arts organizations have by-laws that provide for a membership structure, defining some broad-based group as the "members": donors of \$25 or more or even subscribers. This group is empowered to elect the board and its officers. This type of constitutional structure is fraught with danger:

It is perfectly possible, if and when differences of opinion evolve, that a relatively small group of determined members can throw out a board of trustees and replace it with one that reflects the then current dissident view. As a part of such a coup, it also is possible to get rid of the artistic director and/or top management. Usually it is the responsibility of the board of trustees to hire and fire those two or three leaders.¹¹³

Sounds unlikely that such a coup d'état would be staged in your organization? It happened to Canada's largest performing arts organization, the Stratford Festival, within memory.

Board guru Robert Crawford in writing about this issue urged

any institution that is based legally on membership to reassess its position and act to change it. Confusion of fund raising needs with legal structure is potentially dangerous to the integrity of the institution.¹¹⁴

Should your organization be incorporated in a place that requires not-for-profits to be membership organizations, one can declare quite legally that "the board of trustees of the institution constitutes the membership of the corporation."¹¹⁵

L. Beyond Tokenism: The Issue of Diversity

During the process of writing this work, one of the authors sat in on a discussion by cultural marketing people on the subject of broadening audiences. One couldn't help but note that the conversation kept focusing on some mysterious group called "them." If even relatively enlightened arts people can refer to those different from themselves as "them," one realizes how carefully one must proceed on this topical issue.

The basic issue at hand is that we have a desire, and *a moral obligation*, to have our boards more closely reflect the make-up of our communities we serve, to be more inclusive than exclusive, to be welcoming. In our rush to do so, however, **we have sometimes selected new board members simply on the basis of their perceived differences from our other board members, rather than in the same rational context that we seek other trustees.**

To our mind this type of recruitment is **tokenism at its worst**, selecting people who are visibly different but incapable of contributing to the board in the same manner expected of everyone else. How must that new board recruit feel when he or she finds out that they are falling short of all expectations for board service except for their skin color or sexual preference or physical disability or ethnic background?

there is nothing wrong with [the process of] careful and objective analysis and recruitment... However, you must never treat anyone you recruit to sit on your board as ... the person you point to when you need to demonstrate your compliance [with funders' requirements], open-mindedness, competency or ethics.¹¹⁶

You must be sincere and honest in your recruitment efforts. We hope you genuinely want people on your board of different ethnic backgrounds and skills... They will make the best contributions of all if you have recruited them for the right reasons.¹¹⁷

Some might feel there is an inherent injustice in recruiting solely on the basis of "**accidental**" **qualifications**, that is, race, ethnic background, sex, or age. But it is not necessary to recruit someone solely on that basis. It is in the best interests of everyone to recruit members of minority groups.¹¹⁸

It IS important to pay attention to this issue. Our society has changed dramatically from a demographic point of view and our boards are not always reflective of the world we live in today.

Many arts boards appear to be composed largely of wealthy, older white men, mirroring neither the audience for which the arts organization performs nor the marketplace in which the company is located.

The American Symphony Orchestra League (now the League of American Orchestras) study on boards reported:

...males of all ethnic backgrounds account for an average of 75% of the board members of the largest orchestras and 53% of the board members of the smallest orchestras.

The larger the orchestra, the greater the number of board members who are ages 50 to 70... Among all 315 orchestras reporting, an average of 49% of board members are ages 50-70.

...there are almost equal numbers of males and females on the boards of orchestras with less than \$150,000 of expenses, and relatively few board members (1%-2%) from minority ethnic groups. As expenses increase, the proportion of both males and minorities on the board increases.

Among orchestras with expenses of \$3 million or more, boards average approximately 70% white males, 25% white females, and 5%-6% minority male and female members.¹¹⁹

These statistics could be viewed as a reflection of who in our society is perceived to have power, wealth, and clout; they could also be seen as a failure of nominating committees to do an adequate job of profiling, prospecting, and recruiting new board members.

(We are happy to report that more recent ASOL statistics report more equitable percentages of male/female and minority membership.)

A more diverse board would not merely be defined in terms of race or ethnicity and gender; a broader definition would include age, political views, occupation, "sexual orientation, religion, physical ability, native language, and many other cultural and social identifiers."¹²⁰

Even if the nominating committee takes on the responsibility of recruiting a more diverse set of board members, they often fail:

When boards are beginning efforts to become more diverse, they often look for the most highly visible community leaders. This can work well if a very active community leader can commit time to the board, or is willing to make financial contributions instead. But it can also result in a negative experience if this new board member is unable to commit either time or resources, or has no real interest in supporting symphonic music.¹²¹

Remember that ALL board members must share a belief in the mission of the arts organization and be passionate about the artistic product. Again:

One of the most realistic places to look for new board members is right under the organization's nose: in the audience. Have staff inform the board about people of minority populations who regularly attend performances, and check their seats against the subscriber lists. You know from their attendance that they care about the music. Seek out people who may not possess a high public profile but who have demonstrated some interest in the performance.¹²²

ALL new board members need to have the benefit of orientation and welcoming into the fold. It is important for management and board leadership to be watchful of subtle exclusions or hints of xenophobia, homophobia, or sexism.

Like many other groups, boards are often closed societies. People in power may withhold information or fail to reveal important expectations. Sometimes ongoing social relationships among current board members contribute to a feeling of isolation in newcomers.

One of the most daunting and isolating occurrences for board members from minority groups is to state an opinion or offer a suggestion and to have others rephrase or ignore what has been said. Situations like this often occur when that board member offers an opinion or suggestion that has not been made before and may be outside of the norm of the organization.¹²³

Board recruitment is not the same process as audience development. Too often, arts group feel that because someone from a minority population has been recruited to the board, that that person will provide some magic key to bringing in new audiences.

No, the person is an individual, sharing his or her skills, network, and contacts with the organization, as any other board member would; he or she is not responsible for bringing in hordes of new ticket buyers.

Like any other trustee, he or she might be able to introduce business colleagues, neighbours, friends, and relatives to the art form for the first time, or bring even the occasional scout troop or community center youth group. But no person is emblematic of an entire minority group; he or she is merely an individual.

It is a worthy effort for all arts organizations to try to serve their communities better by building boards that are more representative of the wider market. A solid nominating committee process is key to developing such boards.

Younger Board Members: This is currently a hot topic at conferences. Organizations fear that their audiences are getting older and dying off although actual market research does not necessarily confirm this paranoia.

The conventional wisdom is also saying that younger generations are not interested in becoming volunteers or being supportive of cultural organizations. Again, it is difficult to quantify whether or not this is true.

Arts managers tend to forget that in the past many arts organizations (and other not for profit groups such as churches) had very active volunteer groups for those under 40; for women, in particular, but also for men (the junior women's committee, the junior men's study group).

Participation in these age-specific groups was part of audience development efforts but was also seen as training for future board leadership, presumably with the view that a board should be comprised of more senior and experienced volunteers who would have more to contribute.

We would caution nominating committees that the same obligations of board membership need to be applied equitably to all new board members, regardless of age. Up-and-comers who are younger, with high-powered jobs and family pressures in two-career households, might be better tapped for committee service than expected to take on the full weight of board responsibilities.

IX. IN CONCLUSION

Why would anyone want to serve on your board?

Why? Because your organization is a well-managed and stimulating place to be; hard-working, creative individuals come together to create fantastic artistic activities for the community to experience.

Board members can be proud of having brought this work to an audience through their collective efforts at fund-raising and audience development and fiscal stewardship. They are part of the team that makes all this wonderful activity happen.

Being on a dynamic, hard working board is a great experience. Being stuck on a weak, inactive and whiny board made [author Dodson] wonder if, in a previous life, she had pulled the wings off helpless insects to deserve such punishment.¹²⁴

It is management's job to manage the process that makes the board/management partnership possible. Each board member brings a unique set of skills to the table; it is management's responsibility to identify the areas in which an individual will be most successful and work with him or her to be effective at those assignments.

It is also management's imperative to develop a strong Nominating Committee in order to have the human resources necessary for the organization to carry out its current mission and objectives and secure its future.

Being a board member of an arts organization should be a wonderful experience for a volunteer, combining one's personal interest in, and passion for the arts, with the opportunity to contribute one's own skills, expertise, and networks to making artistic dreams possible. A well-orchestrated, **managed** process can provide this level of participation and satisfaction.

ENDNOTES:

1. Boards are variously termed "Boards of Trustees," "Boards of Governors," "Boards of Directors," or sometimes "Boards of Regents." Differing nomenclature may be related to the type of institution in question, the date of its founding, or may reflect some philosophical bent (as in "trustee," versus "director"). The more contemporary usage in the management literature is "Board of Trustees."
2. Joan Flanagan, The Successful Volunteer Organization (Chicago: Contemporary Books, 1981) 118, quoted in Mathew S. Kuefler, Get on Board! A Working Guide to Better Board Development (Edmonton: Edmonton Social Planning Council, 1992).
3. Dory Vanderhoof in Gordon L. Goldie, Paying for the Piper (Toronto: Ontario Federation of Symphony Orchestras, 1991), 41.
4. Jeffrey Lant, Development Today: A Fund Raising Guide for Nonprofit Organizations (Cambridge: JLA Publications, 1986), 45.
5. Henry Mintzberg, Power In and Around Organizations (Englewood Cliffs, NJ: Prentice-Hall, 1983): 94.
6. American Symphony Orchestra League, "Board Giving: How Much?", Progressions 7, no. 1 (Late Winter 1996): 5.
7. D. Bell, "The Corporation and Society in the 1970s," The Public Interest, 1971:29, quoted in Mintzberg, 68.
8. M.N. Zald, "The Powers and Functions of Boards of Directors: A Theoretical Synthesis," American Journal of Sociology, 1969, cited in Mintzberg, 68.
9. Joan Kuyper, "Cultural Volunteer Program History in the United States: Where Does Your Organization Fit?," The Journal of Arts Management and Law 17, no.2 (Summer 1987): 16.
10. Ibid., 14-15.
11. Ibid., 27.
12. Ibid., 16.
13. Robert W. Crawford, On Board: Guiding Principles for Trustees of Not-for-Profit Organizations (Santa Fe: Western States Arts Federation, 1991), x.
14. Patricia Pitcher, Artists, Craftsmen and Technocrats: The Dreams, Realities, and Illusions of Leadership (Toronto: Stoddard, 1995), 17-18.
15. W. M. Sukel, "Third Sector Organizations" A Needed Look at the Artistic-Cultural Organization," Academy of Management Review, 1978: 348-54, quoted in Mintzberg, 94.
16. Mathew S. Kuefler, Get on Board! A Working Guide to Better Board Development (Edmonton: Edmonton Social Planning Council, 1992), 2.
17. Mintzberg, 67.
18. Barbara Hauptman, "Types of Individuals as Board Members," in Robert W. Crawford, ed., In Art We Trust (New York: Foundation for the Extension and Development of the American Professional Theatre, 1981), 35.

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19. Robert W. Crawford, ed., In Art We Trust (New York: Foundation for the Extension and Development of the American Professional Theatre, 1981), 36-37.
20. Minette Cooper, quoted in Winifred J. Brown, Minette Cooper, Betty Jane Garber, Phyllis Mills, and Milton Rhodes, "Roundtable: Perspectives on Volunteers," The Journal of Arts Management and Law 17, no. 2 (Summer 1987): 99.
21. The recent American Symphony Orchestra League survey on boards reported that of the orchestras who participated in the study, fully 70 percent has nominating chairs appointed by the chief elected officer, only 11 percent were nominated by election by the full board.
22. Crawford, On Board, 27.
23. *Ibid.*, 27.
24. Vanderhoof in Goldie, 41.
25. Marion Paquet, Rory Ralston, and Donna Cardinal, A Handbook for Cultural Trustees (Waterloo: University of Waterloo Press, 1987), 35.
26. David R. Patterson, "The Magic of a Working Board" in Crawford, In Art We Trust, 38.
27. Lant, 45.
28. Walter W. Power, ed., The Nonprofit Sector: A Research Handbook (New Haven, CT: Yale University Press 1987), 141-153.
29. Brann J. Wry, "The Trustee: The Ultimate Volunteer," The Journal of Arts Management and Law 17, no. 2 (Summer 1987): 39.
30. Mintzberg. 81.
31. Paul B. Firstenberg, Managing for Profit in the Nonprofit World (New York: The Foundation Center, 1986): 205.
32. Fisher Howe, Welcome to the Board: Your Guide to Effective Participation (San Francisco: Jossey-Bass Publishers, 1995), 95.
33. Crawford, On Board, 8-9.
34. Chart is from Ann S. Smith, "Board Orientation" in In Art We Trust, edited by Robert W. Crawford, pages 42-43. The last point is the authors' addition.
35. Lant, 41.
36. *Ibid.*, 36.
37. Kuefler, 60.
38. Crawford, On Board, 7.
39. Howe, 61.

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40. Crawford, On Board, 7.
41. Lorri Ward, Policies and Procedures of Orchestra Governing Boards (Washington, D.C.: American Symphony Orchestra League, 1991), 39.
42. Dorian Dodson, How To Recruit Great Board Members: A Guide for Nonprofit Agencies (Santa Fe: Adolfo Street Publications, 1993), 39.
43. Howe, 28.
44. Howe, 24.
45. Crawford, On Board, 8.
46. Crawford, In Art We Trust, 32.
47. Kuefler, 62.
48. Crawford, On Board, 8.
- 49 Ibid., 8.
50. Howe, 24.
51. Ibid., 24.
52. Lant, 42.
53. George W. Overton, ed., Guidebook for Directors of Nonprofit Corporations (Chicago: American Bar Association, 1993), quoted by Howe. 63.
54. Howe, 63.
55. Ibid., 48.
56. Peter F. Drucker, "Lessons for Successful Nonprofit Governance," Nonprofit Management and Leadership (Fall 1990), quoted by Howe, 49.
57. Howe, 47.
58. Council of Better Business Bureaus, Responsibilities of a Charity's Volunteer Board, (Arlington, VA: Council of Better Business Bureaus, 1986), quoted by Howe, 49.
59. Drucker, quoted in Howe, 49-50.
60. Howe, 79.
61. Pitcher, 6.
62. Miriam Abrams, "The Community Dimension" in Nello McDaniel and George Thorn, Arts Boards: Creating a New Community Equation (New York: ARTS Action Issues, 1994), 94.
63. Howe, 26.

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64. Pitcher, 60.
65. Ibid., 46.
66. Ibid., 48.
67. Ibid., 31-32.
68. Ibid., 80.
69. Ibid., 81.
70. Ibid., 185.
71. Karl Mathiasen, "Board Membering," (Washington, D.C.: Management Assistance Group, 1986), quoted by Howe. 6.
72. Howe, 5-6.
73. Wry, 40.
74. Crawford, On Board, 17.
75. Crawford, In Art We Trust, 38.
76. Dodson, 56.
77. Ibid., 59.
78. Ibid., 59.
79. Ibid., 58.
80. Ann S. Smith, in Crawford, In Art We Trust, 43.
81. Kuefler, 30.
82. Joan Flanagan, 1981:110, quoted in Kuefler, 31.
83. Paquet, 4.
84. Ibid., 51.
85. Wry, 46. The scriptural quotation is from the Bhagavad-Gita.
86. Howe, 69.
87. Kuefler, 21.
88. Crawford, On Board, 13.
89. William Stewart, "The Size of the Board," in Crawford, In Art We Trust, 29.

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90. Ichak Adizes, California Management Review (Winter 1972), cited by William Stewart in Crawford, In Art We Trust. 29.
91. Ward, 4.
92. William Stewart, quoted in Crawford, In Art We Trust, 30.
93. E. B. Knauft, R. A. Berger, and S. T. Gray, Profiles of Excellence: Achieving Success in the Nonprofit Sector, (San Francisco: Jossey-Bass, 1994), quoted by Howe, 25.
94. Crawford, On Board, 13.
95. *Ibid.*, 14.
96. Andrew Swanson, "From Whence Come the Officers?", Board Sense: Common Sense for Non-Profit Board Members: OPERA America Newsline (January 1996), 9.
97. Andrew Swanson, "Has Your Board Become a Club?", Board Sense: Common Sense for Non-Profit Board Members, No. 35, OPERA America Newsline: 18.
98. Crawford, In Art We Trust, 45.
99. Swanson, "Has Your Board Become a Club?", 19.
100. *Ibid.*, 19.
101. Swanson, "From Whence Come the Officers?", 9.
102. Howe, 38-39.
103. Minette Cooper, The Journal of Arts Management and Law: 102.
104. Lant, 46.
105. Lant, 46.
106. Paquet, 9.
107. John Carstairs, "A Few Golden Rules for Advisors and Advised," College Canada 10, no.4 (1 December 1985): 2.
108. Walter Nagal, "Ask for Their Help, and Most People Give It Willingly," College Canada 10, no. 4 (1 December 1985): 4.
109. Dodson, 63.
110. Dodson, 63.
111. Andrew Swanson, "Advisory Councils: An Underutilized Resource," Nonprofit World 7, no.2:18.
112. Margaret Genovese, The Art of the Volunteer (Toronto: The Council for Business and the Arts in Canada, 1992), 40-41.

113. Crawford, In Art We Trust, 40.

114. Ibid., 40.

115. Ibid., 40.

116. Dodson, 31.

117. Ibid., 31.

118. Kuefler, 27.

119. Ward, 15-17.

120. Lester P. Schoene, Jr. and Marcelle E. DuPraw, Facing Racial and Cultural Conflict: Tools for Rebuilding Community (Washington D.C.:Program for Community Problem-Solving,1994), 1.

121. Gwendolyn Cochran Hadden, "Director Diversity: Guidelines for a Broader Board," Symphony (July/August 1994): 32.

122. Ibid., 32.

123. Ibid., 33.

124. Dodson, 9.

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APPENDICES

USEFUL TOOLS FOR MANAGING THE NOMINATING PROCESS

The following appendices are intended as a guide to manage the Board governance process and for the staff who are managing the committee.

The Governance/Nominating committee functions as the Human Resources committee and should be meeting throughout the year to manage a multitude of tasks and ensure the effective functioning of the Board. Outlined below are the principal responsibilities of the committee:

- 1) Assess the quality of participation of current Board members and to recommend members for renewal or removal.
- 2) Identify and recruit new Board members based on a review of current board strengths and weaknesses.
- 3) Assess the quality of operation of other Board committees and determine what requirements they may have in terms of members' skills and expertise. This involves assessing all Officers and Committee Chairs and ensuring that succession planning is built in to serve in all functions.
- 4) Develop and recommend a slate of Officers and Chairs and ensure the existence of individuals capable of fulfilling the role of Officers and Chairs behind the incumbents.
- 5) Develop and propose to the Board for approval the Obligations of Board Membership, which outlines the Board's roles and responsibilities.

APPENDICES

- 1: Board Personnel Skills Inventory**
- 2: Obligations of Board Membership Statement**
- 3: Leadership Descriptions**
- 4: Recruitment Priorities List**
- 5: Profiles of Prospective Board Candidates**
- 6: Matrix to Assess Board's Fulfilment of Obligations**
- 7: Governance/Nominating Committee Agendas**
- 8: Changing By-laws**
“BY-LAWS of the LEAGUE OF HISTORIC AMERICAN THEATRES, INC.”
- 9: Tips for a New Board Chair or President**
“So, you’ve just been elected Chair/President of the Board. Now What?”
by Twink Lynch, Ph.D.
- 10: Conflicts with the Chief Executive Officer**
“Can This Marriage Be Saved?” by Twink Lynch, Ph.D.
- 11: Legal Requirements for Meeting Minutes**
“Legal Requirements for Meeting Minutes” by Jed R. Mandel
- 12: Assessing Financial Viability**
“Staying Financially Sound: Knowing which questions to ask can help you ensure your association’s financial viability” by Andrew S. Lang
- 13: Meeting One’s Fiduciary Responsibilities as a Board Member**
“Meeting Your Fiduciary Responsibilities: What directors need to understand about the law of corporations” by George D. Webster
- 14: Liability Issues for Boards**
“Directors’ Liability: A Discussion Paper on Legal Liability, Risk Management and the Role of Directors in Non-Profit Organizations” by Volunteer Canada
- 15: Conflict of Interest Policies**
 - 15-A: “Board Conflicts of Interest” by George D. Webster**
 - 15-B: LHAT Conflict of Interest Policy**
- 16: Letter of Understanding for New Board Member**
 - 16-A: "Sign on the Dotted Line" (a contract with volunteer board members) by Twink Lynch, Ph.D.**
 - 16-B: LHAT Board Member Letter of Understanding**

APPENDIX I: Board Personnel: Skills Inventory

National Opera Association Board of Trustees – Personnel Inventory

COMMITTEES							
	Planning	Finance	Nominating	Corporate	Patron	Major Gifts	Special Events
Term Expires Next Year							
1 Attabumbi, Rachel	Chair		XX		XX		
2 Cann, Ralph				XX			
3 Evaneski, Ortuslav		XX		Chair			
4 Fiala, Magdalena	XX						Chair
5 Kintabu, Mohammed		XX	XX			XX	
6 Manchester, George				XX			
7 Seivert, Rita	XX				XX		XX
8 Vacant							
Term Expires in Two Years							
1 Branson, Honey							
2 Darcon, Hugh		XX		XX			
3 Franklin, Terrance	XX						XX
4 Gonzalez, Nancy			XX	XX	Chair		
5 Norman, Kenneth		Chair		XX			
6 Patel, Sati	XX				XX		XX
7 Stewart, Randolph							
8 Vanderhoof, Goline	XX						XX
Term Expires in Three Years							
1 Bill, Jeffrey					XX		
2 Corbett, Jane				XX			
3 Daniel, Jack							
4 Everson, Janet			XX				
5 Genovese, Margaret	XX	XX	Chair				
6 Tamawitz, Sheila					XX		
7 Webster, Elizabeth				XX		XX	
8 Zukerman, Ephriam			XX		XX		
Floater (ONE YEAR TERM)							
1 Davies, Ruth	XX		XX				
2 Fisher, Alvin					Chair		
3 Ojala, Eric	XX				XX		
4 Vacant							
TOTAL PARTICIPATING	8	6	6	9	8	3	5
QUALITY OF							
COMMITTEE WORK	A	B	A	B	C	B	D
TOTAL NEEDED	8	8	6	10	10	5	8
# NEEDED TO RECRUIT	0	2	0	1+	2+	2	3+

APPENDIX 2: Obligations of Board Membership Statement

NATIONAL OPERA ASSOCIATION OBLIGATIONS OF BOARD MEMBERSHIP

Members of the National Opera Association Board of Trustees are obliged to fulfill the following minimum obligations of Board membership:

1. Attend the Annual General Meeting.
2. Attend all regular and special meetings of the Board of Trustees. (Cannot miss more than three consecutive meetings)
3. Serve on a Committee of the Board.
4. Attend performances of the National Opera Association (hold 2 subscription tickets to the Main Season).
5. Make an annual leadership gift to the Board of Trustees. (Each member according to his/her means.)
6. Assist in the annual fund-raising campaign through participation in one or more of the following activities:
 - a) Make a substantial personal contribution, \$50,000 or more.
 - b) Solicit corporate sponsorships through the Corporate Leaders Committee or serve on the Corporate Canvass.
 - c) Solicit Patron contributions through the Patrons Council Committee.
 - d) Serve on the Board of Trustee's Special Events Committee.
7. Act as an ambassador for the NOA by hosting special guests and prospects either at company functions or at a location of your choice from time to time, when requested by Board Committee Chairs.

APPENDIX 3: Leadership Descriptions

Board Chair

A strong leader, personally philanthropic though not necessarily wealthy, passionate about the organization, willing to solicit, leads by example.

- Personal commitment to the obligations of Board Membership and a willingness to enforce them.
- Believes in and is committed to the Board's leadership role in Fund-Raising as demonstrated through personal gift and participation in Fund-Raising campaigns.
- Willing to and does personally solicit every Board member for their annual contribution. A rated gifts campaign, each according to his/her means, with a minimum gift at the Patron level.
- Supports the role of the Nominating Committee as the Human Resources Committee of the Board and charges the Committee with the role as outlined in:
III. C. “What Does the Nominating Committee Do?”

Nominating Chair

- Understands that they are charged with the Personnel function of the Board and that the quality and success of the Board is achieved through the work of the Nominating Committee
- Is interested in the continual improvement of the organization through the nominating process.
- Embraces the responsibilities of the Nominating Committee and personally takes responsibility to lead the committee through its annual process of fulfilling the 9 responsibilities.

APPENDIX 4: Recruitment Priorities List

Developed from the National Opera Association's Board Personnel Skills Inventory, this list states the types of special skills required of new Board recruits to strengthen the committee work of the Board.

NATIONAL OPERA ASSOCIATION

Recruitment Priorities

1. Ability to Chair Board Special Fund-Raising Events and sell tables and/or tickets to Special Events. Serve on Special Events Committee. 3 or more new members needed

2. Ability to solicit new Patron contributions and request increases from renewing members. Serve on the Patron Committee. 2 or more new members needed.

3. Ability to contribute and solicit at the major gifts level (\$25,000+). Serve on the Major Gifts Committee. 2 new members needed.

4. Accounting, Finance or General Business expertise and a willingness to spend time learning about the intricacies of the National Opera Associations operations, economics and finances. Serve on the Finance Committee. 2 new members needed.

5. Ability to solicit corporate sponsorships and corporate donations. Ability to commit their own firm to sponsor. Serve on the Corporate Committee. One new member needed.

APPENDIX 5: Profiles of Prospective Board Candidates

These mini-profiles of prospective Board nominations are used to compare and contrast recommended nominees. Organizations with professional prospect research usually produce much more extensive profiles than these examples. However, the mini-profile is relatively easy to assemble and will suffice to stimulate Nominating Committee discussion and provide a basis for candidate comparison.

PROSPECT: MARY FRANCES REID

Married to John Winslow Reid; born Oct 28, 1941;
3 Children; University of Canberra, MBA, Wharton School of Business, University of Pennsylvania, Vice-President Marketing, International Big Inc.; dir of: Westbridge Computer, Canadian Energy Research, Bank Two, Assiniboia Club, Toronto Club, Women's Hospital.

Address: 3456 Sawmill Parkway, Toronto, ON, M52 1A7

SPECIAL SKILLS: Corporate Sponsorship Solicitation, Corporate Committee (Recommended by Ortuslav Ivaniski, Chair Corporate Committee and Development Department)

NATIONAL OPERA ACTIVITIES:

Subscriber: Since 1994, 2 Tickets, Front Orchestra, Series A

Single Ticket History: Purchased 2 or more operas since 1984.

Donation History: Donor since 1985.

Current level of support: \$7500 Member of the Patrons of the Opera

Corporate Donation History: International Big Inc. has sponsored the opera since 1994 at the \$15,000 level.

Volunteer Service: None

OTHER ARTS OR COMMUNITY INVOLVEMENT: Retiring Chair of Finance Committee, Women's Hospital

SAMPLE PROFILE

PROSPECT: KENNETH FREDERICK

Married to Joan Roberts Wade, Born: June 3, 1958
Ontario School of Art, Senior Partner: Frederick and Aschenbach Interiors.

Address: 427 Church Street, Toronto, ON, M4K 2P8

SPECIAL SKILLS: Recommended by Honey Branson for Special Events

NATIONAL OPERA ACTIVITIES:

Subscriber: No history

Single Ticket History: No purchases on file.

Donation History: No contributions on file.

Corporate Donation History: No contributions on file.

Volunteer Service: None

OTHER ARTS OR COMMUNITY INVOLVEMENT: Worked on Designers' Showcase for Symphony

SPECIAL NOTE: His firm recently redecorated Honey Branson's home.

SAMPLE PROFILE

PROSPECT: GEORGE STRUTHERS

Married to Sheila Caruthers Struthers, born March 24, 1932, B Comm. Queen's University, CA,
Managing Partner: Deloitte, Ross & Company, dir of: North East Mining, Central Resources,
Southern Minerals, National Club, Canadian Institute for the Blind.

Address: 147 Hillside Drive, Oakville, ON L3T E9R

SPECIAL SKILLS: Recommended for the Finance Committee & Patron Committee.
(Recommended by Ruth Davies)

NATIONAL OPERA ACTIVITIES:

Subscriber: No subscriber history.

Single Ticket History: 3 or more opera purchases annually since 1988. Wagner, Strauss &
Britten operas. No Italian repertoire.

Donation History: \$1000 Donor since 1990. Solicited by Sati Patel

Corporate Donation History: Deloitte sponsors every 3 years.

Volunteer Service: Worked on our corporate campaign in 1990
and 1991. Good record. Lost contact when transferred to New
York in 1992 for one year.

OTHER ARTS OR COMMUNITY INVOLVEMENT:

Contributions to: Samaritan Hospital \$2,500; National Symphony \$500; CNIB \$5,000.

SAMPLE PROFILE

PROSPECT: RUTH ANN POOLE

Born January 23, 1949, BA University of London, LL.D, Laurentian University, Q.C., President and CEO International American Canada, dir of: Bank of America, Texaco, SONY Corp., Toys R Us, University of Toronto, International Relations Society.

Address: 587 Old Yonge Street, Toronto, ON, M6Y 2T4

SPECIAL SKILLS: Major Donor Recommended by Alvin Fisher to serve on the Major Gifts Committee.

NATIONAL OPERA ACTIVITIES:

Subscriber: Since 1985, 4 seats Series J. Row A

Single Ticket History: no single ticket history.

Donation History: Personally sponsored new Placido Domingo production of TOSCA (\$500,000)

Corporate Donation History: International American Canada has supported the opera annually since 1978. Most recent sponsor of a performance of LA BOHEME (\$15,000)

Volunteer Service: Ms. Poole has hosted parties at her home for the Patrons Council.

OTHER ARTS OR COMMUNITY INVOLVEMENT:

Chair: United Way Campaign 1994, Trustee: University of Toronto, Former Member, Metropolitan Opera National Council.

Extensive contribution history throughout the community.

SAMPLE PROFILE

PROSPECT: ROBERT GOLDMAN

Born: September 14, 1948, BA Stanford University, Vice-President The Robert Dunk Fund, dir of The Royal Botanical Society.

Address: Suite 321, 100 Avenue Street, Toronto, ON M4K 2T4

SPECIAL SKILLS: Possible Patron Committee Member

NATIONAL OPERA ACTIVITIES:

Subscriber: Since 1989, 4 tickets series B, Front Orchestra

Single Ticket History: Placido Domingo Gala 1992

Donation History: No contribution history.

Corporate Donation History: No contribution history.

Volunteer Service: No volunteer history.

OTHER ARTS OR COMMUNITY INVOLVEMENT:

No other activity.

APPENDIX 6: Matrix to Assess Board's Fulfilment of Obligations

This chart is discussed by the Nominating Committee annually as part of their assessment process of individual Board members' effectiveness. It is useful in determining which Board members should be re-nominated for a second term. It is also useful for determining if any action should be taken with Board members that are not yet due for re-nomination.

National Opera Association Board of Trustees – Personnel Assessment

	Personal Donation	Fundraising Effort	Ambassador Effort	Does Company Sponsor?	Special Contribution
Term Expires Next Year					
1 Attabumbi, Rachel VP Corporate Banking, Bank of N.A.	\$7,500	A	A	Yes	Government contacts
2 Cann, Ralph Partner, Xento Marketing	\$1,000	C	C	Yes	
3 Evaneski, Ortuslav Owner, Evaneski Clinic	\$10,000	A	B	Yes	
4 Fiala, Magdalena Owner, Auberge du Aix	\$1,000	A	A	Yes	Generous use of her restaurant
5 Kintabu, Mohammed Managing Partner, Smith, Smith & Kintabu	\$25,000	B	A	Yes	
6 Manchester, George Investor	\$2,500	C	B	NA	
7 Seivert, Rita Chair, Seivert Foundation	\$1,200	D	C	NA	
8 VACANT					
Term Expires in Two Years					
1 Branson, Honey	\$100,000	D	D	Yes	\$2 million Endowment Gift
2 Darcon, Hugh	\$8,000	A	B	Yes	His company is \$50,000 sponsor
3 Franklin, Terrance	\$25,000	C	C	No	
4 Gonzalez, Nancy	\$25,000	A	B	NA	
5 Norman, Kenneth	\$10,000	A	A	Yes	
6 Patel, Sati	\$25,000	B	A	NA	
7 Stewart, Randolph	\$1,000	D	D	No	Administers Honey Branson Fdn.
8 Vanderhoof, Goline	\$10,000	B	A	Yes	Chairs \$200,000 Win Auction
Term Expires in Three Years					
1 Bill, Jeffrey	\$10,000	B	B	Yes	
2 Corbett, Jane	\$5,000	A	B	Yes	
3 Daniel, Jack	\$1,000	D	D	No	
4 Everson, Janet	\$0	D	A	No	
5 Genovese, Margaret	\$12,500	B	A	Yes	
6 Tamawitz, Sheila	\$35,000	B	B	NA	
7 Webster, Elizabeth	\$10,000	A	A	Yes	
8 Zukerman, Ephriam	\$5,000	A	A	Yes	\$150,000 in-kind billboard advertising
Floater (ONE YEAR TERM)					
1 Davies, Ruth	\$2,500	B	B	No	
2 Fisher, Alvin	\$250,000	A	B	Yes	Family Fdn. also gives \$250,000
3 Ojala, Eric	\$10,000	B	B	Yes	
4 Vacant					

Participation Key

- A - High degree of participation and success
- B - Moderate degree of participation and success
- C - Token participation
- D - non-participating

National Opera Association – Obligations of Board Membership

	Years Mbr	# of Sub Tix	Attend AGM	Board Mtg Attendance	Committee Membership & Attendance				Major Gifts	Special Events
					Planning	Finance	Nominating	Corporate Patron		
Term Expires Next Year										
1 Attabumbi, Rachel VP Corporate Banking, Bank of N.A.	10	4	Yes	6 of 8	Chair 4 of 4	Member 4 of 4		Member 3 of 5		
2 Cann, Ralph Partner, Xento Marketing	2	2	No	7 of 8				Member 2 of 7		
3 Evaneski, Ortuslav Owner, Evaneski Clinic	2	2	Yes	8 of 8		Member 8 of 10		Chair 7 of 7		
4 Fiala, Magdalena Owner, Auberge du Aix	2	4	Yes	4 of 8	Member 3 of 4					Chair 8 of 8
5 Kintabu, Mohammed Managing Partner, Smith, Smith & Kintabu	5	8	Yes	6 of 8		Member 7 of 10	Member 4 of 4		Member 4 of 5	
6 Manchester, George Investor	5	2	No	8 of 8				Member 7 of 7		
7 Seivert, Rita Chair, Seivert Foundation	2	2	No	5 of 8	Member 2 of 4				Member 4 of 5	Member 6 of 8
8 VACANT										
Term Expires in Two Years										
1 Branson, Honey	7	8	No	1 of 8						
2 Darcon, Hugh	1	4	No	4 of 8		Member		Member		
3 Franklin, Terrance	4	4	Yes	7 of 8	Member					Member
4 Gonzalez, Nancy	4	4	Yes	8 of 8			Member	Member	Chair	
5 Norman, Kenneth	1	4	No	8 of 8		Chair		Member		
6 Patel, Sati	1	2	Yes	6 of 8	Member				Member	Member
7 Stewart, Randolph	4	0	Yes	2 of 8						
8 Vanderhoof, Goline	4	4	No	3 of 8	Member					Member
Term Expires in Three Years										
1 Bill, Jeffrey	0	4	Yes	4 of 4					Member	
2 Corbett, Jane	0	4	Yes	4 of 4				Member		
3 Daniel, Jack	0	0	Yes	1 of 4						
4 Everson, Janet	3	2	Yes	7 of 8			Member			
5 Genovese, Margaret	6	4	Yes	8 of 8	Member	Member	Chair			
6 Tamawitz, Sheila	0	2	Yes	3 of 4					Member	
7 Webster, Elizabeth	3	4	Yes	4 of 4				Member		Member
8 Zukerman, Ephriam	6	6	Yes	6 of 8			Member		Member	
Floater (ONE YEAR TERM)										
1 Davies, Ruth	0	2	Yes	2 of 4		Member		Member		
2 Fisher, Alvin	0	4	Yes	4 of 4						Chair
3 Ojala, Eric	0	2	No	3 of 4	Member				Member	
4 Vacant										

Participation Key

- A - High degree of participation and success
- B - Moderate degree of participation and success
- C - Token participation
- D - non-participating

APPENDIX 7: Nominating (Governance) Committee Agendas Suggested Committee Agendas

The following Nominating (Governance) Committee agendas demonstrate the amount of work needed to be accomplished in both an introductory and normal year.

INTRODUCTORY YEAR:

First Meeting (Set just after Annual General Meeting)
<ul style="list-style-type: none"> ▪ Develop board Personnel Skills Inventory. ▪ Develop Obligations of Board Membership.
Bring Inventory and Obligations forward to the Board for discussion and approval.

Second meeting
<ul style="list-style-type: none"> ▪ Assess current board against Personnel Inventory. ▪ Develop a Recruitment Priorities List.
Assess Current Board fulfillment of Obligations of Board Membership .

Third meeting
<ul style="list-style-type: none"> ▪ Assess current functioning of board committees. ▪ Add special skills needed for committee improvement to Recruitment Priorities List. ▪ Establish Potential Candidates List in consideration of the Recruitment Priority List & assign committee members with prospect cultivation and recruitment.

Fourth Meeting and as Many Meetings as necessary to Identify & Recruit Needed Nominees
<ul style="list-style-type: none"> ▪ Review committee progress on Potential Candidates List. ▪ Add newly identified candidates to list. ▪ Review potential candidates' profiles.

Final Meeting Before Annual General Meeting
<ul style="list-style-type: none"> ▪ Review committee progress on Potential Candidates List. ▪ Add newly identified candidates to list. ▪ Review potential candidates' profiles.
Bring forward to the Annual General Meeting recommended nominees for election to the board and recommended nominees for officers and committee chairs.

SUBSEQUENT YEARS' AGENDAS:

First Meeting
▪ Review board Personnel Inventory (Strengths & Weaknesses Review).
▪ Review committee progress on Potential Candidates List.
▪ Add newly identified candidates to list.
▪ Review potential candidates' profiles.
Bring Inventory forward to board for discussion and approval.

Second Meeting
▪ Review Obligations of Board Membership .
▪ Review committee progress on Potential Candidates List .
▪ Add newly identified potential candidates to list.
▪ Review potential candidates' profiles.
Bring Obligations forward to board for discussion and approval.

Third Meeting
▪ Assess current board against Personnel Inventory .
▪ Assess & revise Recruitment Priorities List .
▪ Review committee progress on Potential Candidates List .
▪ Add newly identified potential candidates to list.
▪ Review potential candidates' profiles.

Fourth Meeting
▪ Assess current board' fulfillment of Obligations .
▪ Review committee progress on Potential Candidates List .
▪ Add newly identified potential candidates to list.
▪ Review potential candidates' profiles.

Fifth Meeting
▪ Assess current functioning of board committees.
▪ Add special skills needed for committee improvement to Recruitment Priorities List .
▪ Review committee progress on Potential Candidates List .
▪ Add newly identified potential candidates to list.
▪ Review potential candidates' profiles.

Sixth Meeting and As Many Meetings as Necessary to Identify & Recruit Needed Nominees
▪ Review committee progress on Potential Candidates List .
▪ Add newly identified candidates to list.
▪ Review potential candidates' profiles.

Final Meeting Before Annual General Meeting
▪ Prepare slate of nominees for board membership for Annual General Meeting.
▪ Prepare slate of officers and committee chairs for Annual General Meeting.
▪ Review committee progress on Potential Candidates List .
▪ Review potential candidates' profiles.

Bring forward to the Annual General Meeting recommended nominees for election to the board and recommended nominees for officers and committee chairs.
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Nominating Process Management Tasks

An individual managing the process of the Nominating Committee (usually the Director of Development or Executive Director) would need to execute the following tasks in order to facilitate the smooth functioning of a committee following the above agendas:

AGENDA ITEM	<ul style="list-style-type: none"> ▪ DEVELOP BOARD PERSONNEL INVENTORY
Related Task	<ul style="list-style-type: none"> ▪ To develop (with input from the C.E.O. and other senior managers) the first draft of board Personnel Inventory for committee discussion.

AGENDA ITEM	<ul style="list-style-type: none"> ▪ DEVELOP OBLIGATIONS OF BOARD MEMBERSHIP
Related Task	<ul style="list-style-type: none"> ▪ To develop (with input from the C.E.O. and other senior managers) the Obligations of Board Membership for committee discussion.

AGENDA ITEM	<ul style="list-style-type: none"> ▪ ASSESS CURRENT BOARD AGAINST PERSONNEL INVENTORY
Related Task	<ul style="list-style-type: none"> ▪ To develop (with input from the C.E.O. and other senior managers) the initial matrix of current board qualifications against the Personnel Inventory for committee discussion.

AGENDA ITEM	<ul style="list-style-type: none"> ▪ DEVELOP A RECRUITMENT PRIORITIES LIST
Related Task	<ul style="list-style-type: none"> ▪ To maintain the Recruitment Priorities List as established through the committee discussion.

AGENDA ITEM	<ul style="list-style-type: none"> ▪ ASSESS CURRENT BOARD FULFILLMENT OF OBLIGATIONS
Related Task	<ul style="list-style-type: none"> ▪ To prepare a matrix of the Obligations of Board Membership and the individual board members' participation for nominating committee review.

AGENDA ITEM	<ul style="list-style-type: none"> ▪ ASSESS CURRENT FUNCTIONING OF BOARD COMMITTEES
Related Tasks	<ul style="list-style-type: none"> ▪ To develop (with input from the C.E.O. and other senior managers) an initial review of current board committee proficiency. ▪ To meet with the C.E.O., Board Chair and Nominating Chair to discuss committee functioning.

AGENDA ITEM	<ul style="list-style-type: none"> ▪ ADD SPECIAL SKILLS NEEDED FOR COMMITTEE IMPROVEMENT TO RECRUITMENT PRIORITIES LIST
Related Task	<ul style="list-style-type: none"> ▪ To maintain nominating committee recommended course of action for board committee improvement through additions to Recruitment Priorities List.

AGENDA ITEM	<ul style="list-style-type: none"> ▪ ESTABLISH POTENTIAL CANDIDATES LIST IN CONSIDERATION OF THE RECRUITMENT PRIORITIES LIST & ASSIGN COMMITTEE MEMBERS WITH PROSPECT CULTIVATION & RECRUITMENT
Related Tasks	<ul style="list-style-type: none"> ▪ To develop (with input from the C.E.O., other senior managers and other Members of the Development Department, including the Prospect Researcher) the first draft of the Potential Candidates List in consideration of the Recruitment Priorities List for committee discussion. ▪ To profile all individuals brought forward for consideration as Potential Candidates for committee review

STANDARD AGENDA ITEMS	<ul style="list-style-type: none"> ▪ REVIEW COMMITTEE PROGRESS ON POTENTIAL CANDIDATES LIST ▪ ADD NEWLY IDENTIFIED CANDIDATES TO LIST ▪ REVIEW POTENTIAL CANDIDATES' PROFILES
Standard Related Tasks	<ul style="list-style-type: none"> ▪ To maintain the Potential Candidates List, including all committee member cultivation and recruitment assignments. ▪ To profile and bring forward any newly identified internal prospects. ▪ To profile any candidates brought forward from the previous meeting by committee members.

STANDARD TASKS FOR EVERY MEETING (Not related to agenda)	<ul style="list-style-type: none"> ▪ To be the administrative assistant to the committee (could be delegated to an assistant) responsible for the maintenance of all committee lists and documents. ▪ To meet with the nominating chair prior to each meeting to review agenda and materials.
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APPENDIX 8: Changing By-laws

Many organizations change their by-laws from time to time. We have noticed that many groups present the changes in formats that are hard to read, difficult to understand, and obtuse about the impact of the new wording.

We therefore present to you a few pages from a presentation to the Board and membership of the League of Historic American Theatres. Laurence Capo, the League's President at the time of these changes, created a format that we found particularly clear and informative. The total document was sixteen pages long so we are including only the first three pages of this material.

“BY-LAWS of the LEAGUE OF HISTORIC AMERICAN THEATRES, INC. ARTICLE I – Purposes”

Reprinted with the permission of the League of Historic American Theatres, Baltimore, MD.
(Note that the League no longer uses these documents, since it no longer functions as an all volunteer-run organization.)

**BY-LAWS
of the
LEAGUE OF HISTORIC AMERICAN THEATRES, INC.**

**ARTICLE I
Purposes**

Original Language	Suggested Language	Commentary
<p>The League of Historic American Theatres, Inc. hereafter referred to as The League, exists to encourage the preservation and use of historic American theatres.</p>	<p>The League of Historic American Theatres, Inc. shall be referred to as The League. The League is a network of people who appreciate the cultural and architectural heritage of historic Theatres and who work locally to rehabilitate them to serve communities throughout North America. Members of The League collaborate with one another, share their experience and expertise, and provide inspiration, information and a broad perspective to those working in the field of historic theatre rehabilitation.</p>	<p>This addition includes the revised mission statement.</p>
<p>In support of this mission, The League shall be organized and operated exclusively for charitable and educational purposes within the meaning of Section 501 (c)3 of the Internal Revenue Code of 1954, to promote, develop and encourage involvement, participation and leadership in the preservation, restoration and use of historic American theatres. The League generally defines a historic theatre as one built fifty years or more ago which is an architecturally significant structure and worthy of preservation, and/or has played a prominent role in the history of the community where located or in the history of the American theatre, and can be used as a performing arts or movie facility.</p>	<p>In support of this mission, The League shall be organized and operated exclusively for charitable and educational purposes within the meaning of Section 501 (c)3 of the Internal Revenue Code of 1954, to promote, develop and encourage involvement, participation and leadership in the preservation, restoration and use of historic American theatres. The League generally defines a historic theatre as one built fifty years or more ago which is an architecturally significant structure and worthy of preservation, and/or has played a prominent role in the history of the community where located or in the history of the American theatre, and can be used as a performing arts or movie facility.</p>	<p>Minor change to eliminate the redundant use of “American”. This is done in an effort to become more inclusive and to include members in Britain and potential members in other countries. It also anticipates the possible name change.</p> <p>Last line is eliminated so as not to restrict usage of a particular facility that may not be used for performance.</p>

<p>The particular purposes of the League shall be:</p> <p>1. The League shall be an advocate and a practical resource for the preservation and productive operation of these historic American theatres.</p>	<p>The particular purposes of the League shall be:</p> <p>1. The League shall be an advocate and a practical resource for the preservation and productive operation of these historic American theatres.</p>	<p>See above.</p>
<p>2. The League shall encourage the interaction of experienced and capable personnel to assist historic theatres with common problems of preservation, maintenance, operations and research.</p>	<p>2. The League shall encourage the interaction of experienced and capable personnel to assist historic theatres with common problems of preservation, maintenance, operations and research.</p>	<p>No change</p>
<p>3. The League shall help identify and document historic American theatres and shall conduct and/or disseminate research about historic American theatres and support periodic research of a representative cross section of historic American theatres, including the compilation of a directory of all historic American theatres. The research will be used to aid persons involved with historic American theatres, increase the general public's awareness of and appreciation for all historic American theatres and help create a published directory of all historic American theatres.</p>	<p>3. The League shall help identify and document historic American theatres and shall conduct and/or disseminate research about historic American theatres and support periodic research of a representative cross section of historic American theatres, including the compilation of a directory of all historic American theatres. The research Such research will be used to aid persons involved with historic American theatres and increase the general public's awareness of and appreciation for all historic American theatres. and help create a published directory of all historic American theatres.</p>	<p>This section has been edited to more clearly describe our current efforts and is left ambiguous enough to allow greater latitude in the future.</p>
<p>4. The League shall conduct an annual national conference and other such informational meetings with workshops and discussions designed to identify and to respond to the needs and desires of the membership concerning historic American theatres.</p>	<p>4. The League shall conduct an annual national conference and other such informational meetings with workshops and discussions designed to identify and to respond to the needs and desires of the membership concerning historic American theatres.</p>	<p>Minor change</p>
<p>5. The League shall raise funds from the general public, members, government agencies, and others by obtaining contributions, grants and by other legal means in order to carry out the above purposes.</p>	<p>5. The League shall raise funds from the general public, members, government agencies, and others by obtaining contributions, grants and by other legal means in order to carry out the above purposes.</p>	<p>No change</p>

ARTICLE II Membership

<p>Section 1. <i>Eligibility.</i> Any person, corporation, partnership, or unincorporated association in sympathy with the objects and purposes of The League shall be eligible for membership in accordance with the By-Laws and the rules and regulations from time to time in effect. There shall be no limit to the number of members.</p>	<p>Section 1. <i>Eligibility.</i> Any person, corporation, partnership, or unincorporated association in sympathy with the objects and purposes of The League shall be eligible for membership in accordance with the By-Laws and the rules and regulations from time to time in effect. There shall be no limit to the number of members.</p>	<p>No change.</p>
<p>Section 2. <i>Admission to Membership.</i> Any person, institution, or organization meeting the qualifications of Section 1 of this Article and interested in supporting the purposes of The League may file application for membership herein on such form as the Board of Directors may from time to time prescribe. Membership shall commence upon the payment of required dues. Each institution or organization which gains membership will be responsible for choosing one person to cast the official vote for that organization at any meetings of The League. A person, institution, or organization may be admitted to honorary membership without payment of dues in recognition of meritorious service to The League or for other reasons, as deemed appropriate from time to time by the Board of Directors, by a unanimous vote of those present at a regular meeting of the Board of Directors. Such honorary members are entitled to attend all membership meetings of The League but shall have no voting privileges.</p>	<p>Section 2. <i>Admission to Membership.</i> Any person, institution, or organization meeting the qualifications of Section 1 of this Article and interested in supporting the purposes of The League may file application for membership herein on such form as the Board of Directors may from time to time prescribe. Membership shall commence upon the payment of required dues. Each institution or organization which gains membership will be responsible for choosing one person to cast the official vote for that organization at any meetings of The League. A person, institution, or organization may be admitted to honorary membership without payment of dues in recognition of meritorious service to The League or for other reasons, as deemed appropriate from time to time by the Board of Directors, by a unanimous Two Thirds Majority vote of those present at a regular meeting of the Board of Directors. Such honorary members are entitled to attend all membership meetings of The League but shall have no voting privileges.</p>	<p>The change from Unanimous to Two Thirds Majority vote is designed to minimize the ability of one individual to block such a measure. No other unanimous condition is set forth in this document.</p>
<p>Section 3. <i>Annual Dues.</i> The annual dues of all classes of members of The League shall be set from time to time by the Board of Directors.</p>	<p>Section 3. <i>Annual Dues.</i> The annual dues of all classes of members of The League shall be set from time to time by the Board of Directors.</p>	<p>No change.</p>
<p>Section 4. <i>Duration of Membership.</i> Membership in The League shall continue until terminated by death, failure to pay the annual dues, or as otherwise provide in these By-Laws or any amendment thereof.</p>	<p>Section 4. <i>Duration of Membership.</i> Membership in The League shall continue until terminated by death, failure to pay the annual dues, or as otherwise provide in these By-Laws or any amendment thereof.</p>	<p>No change.</p>

APPENDIX 9: Tips for a New Board Chair or President

The following material, written for a handbook for community theatres, is a particularly clear and succinct set of guidelines for an incoming board chair/president.

**“So, you’ve just been elected Chair/President of the Board.
Now What?” by Twink Lynch, Ph.D.**

Reprinted with the permission of Twink Lynch, Ph.D., author, and the American Association of Community Theatre (AACT), Lago Vista, TX, publisher.

So, you've just been elected Chair/President of the Board. Now What?

It is devoutly to be wished that this honor has been conferred upon you with your prior knowledge and acquiescence. **If not, do not accept** unless and until you have met with the Nominating Committee and clarified what is expected of you. The, and only then, and only if you believe you have a good chance for success, should you say "yes" — unless, of course, you enjoy being a sacrificial lamb.

Once you have agreed to take on this sometimes awesome responsibility, arm yourself with the latest version of Robert's Rules (which you should review frequently in order to gain familiarity with them), take a deep breath and begin your planning for the year.

- Identify possible chairs for each standing and ad hoc committee. Interview these people and determine their interest and availability for service. When the match works, appoint them and ask the Board to approve the appointments (as per most bylaws).
- Meet with the Board leadership and the chief staff person (when applicable) to determine goals for the year. Often this is done as a Board Retreat, involving the whole Board, which is even better. Examine your purpose/mission/vision statements, recommit to your values statement, and identify long-range goals and prioritize them. Determine objectives for the 3 to 4 most important goals that can be accomplished in a 12-month period. Remember, objectives should be Specific, Measurable, Achievable, and Consistent with the goals. Design action plans for those objectives, with timelines, designation of responsible persons, lines of accountability, and budgets. Adopt this plan by formal action of the Board.
- Develop a calendar for the year. This should include all due dates for reports, recommendations, budgets, etc. Distribute to all players. This way there will be no (or few) surprises at Board meetings.
- You are responsible to make things happen. *Do it.*
- Coach your committee chairs: orient and train them in how to conduct meetings, how to delegate, how to read financial statements – whatever is necessary to help them be effective in their roles. Do not just turn them loose and call on them 10 months later for their report. Encourage. Inspire. Goad. Praise. Discipline. Cheer them on. You will be glad that you did.
- See that meeting agendas, minutes, timely financial reports and other important materials are sent to Board members at least 1 week before Board meetings. Let your Board members know you expect them to come prepared to all meetings. Start meetings on time. Have a clear sense of what needs to happen at each Board meeting and guide the Board by controlling discussion, asking questions, encouraging honest communication, and inspiring all to do their best by your own energy, optimism, fairness, and commitment.
- Meet regularly with your chief staff person (if you have one). A key understanding between you must be: "No surprises!"
- Be positive. Be available. Return phone calls. Smile. Catch Board and/or staff members "doing something right."
- Plan for the annual evaluation of your chief staff person. This is an absolute requirement for the Chair/President of the Board.
- Have the courage to evaluate "your year," so your successor may have an even better one. Acknowledge mistakes, celebrate victories. If you are re-elected, do not rest on your laurels – repeat the above process and become one of the true leaders of your organization – because you helped to get things done. Bravo!

APPENDIX 10: Conflicts with the Chief Executive Officer

Yes, sometimes a board and its chief executive officer (the senior staff person) come to a parting of the ways. We feel that the following article offers good advice to both sides of the issue.

“Can This Marriage Be Saved?” by Twink Lynch, Ph.D.

Reprinted with the permission of Twink Lynch, Ph.D., author, and the American Association of Community Theatre (AACT), Lago Vista, TX, publisher.

Can This Marriage Be Saved?

How terrible and final the words, “You’re fired” or “We’ve decided not to renew your contract.” Terrible for the staff person being released, and terrible for the Board Members who make the often-painful decision. The event is even more terrible when it comes “out of the blue,” with no preliminary formal notice of unsatisfactory performance, no period of probation, and sometimes after a long and illustrious tenure at the theatre.

Were there really not any signals? In retrospect, there must have been, but often the staff person simply didn’t recognize them or chose to ignore them, hoping it would all blow over. In too many cases, problems do not blow over, and in the hope that some of these “marriages” can be saved, I would like to list seven red flags that, if recognized and dealt with in an upfront, problem-solving atmosphere between Board and staff person, might enable the staff person to be proactive, and maybe save the job. (You may perceive more red flags — let me know!)

- The chief staff person (artistic director, managing director) hasn’t been formally evaluated by the Board (a key Board responsibility) on an annual, mutually-agreed-upon set of objectives.
- The CEO’s contract is renewed, but for a shorter period than usual.
- The CEO is no longer a “partner” with the Board. He or she is not asked/allowed/expected to be a leader for the theatre. Decisions are made without or in spite of the CEO. Perhaps “impossible” goals or timelines are set, against which he or she will be measured, with no regard for his or her feedback regarding feasibility or appropriateness or impact on the staff, volunteers, and/or audience.
- The CEO’s authority to supervise other staff members is taken over by the Board, or a higher position is created to supervise the (former) CEO.
- A power struggle develops between the CEO and Board Member(s) who repeatedly challenge

the CEO’s decisions and/or subvert his/her relationship with subordinate staff.

- The CEO underestimates the need for change in the organization.
- A couple of bad financial years put the theatre into a cash-flow crisis. Sometimes the Board feels the only thing to do is release the CEO and then things will be better. (This can be true if the CEO was the real cause of the problem through bad management or poor quality productions. But, he or she may be the scapegoat for poor Board performance in fundraising.)

These issues should, of course, be dealt with in a responsible, mature way. An annual evaluation is the best way to nip problems in the bud.

Unfortunately, many Board Members feel uncomfortable carrying out this major responsibility. I encourage staff members to insist on it, and start the process, if necessary, with a self-evaluation that includes accomplishments (measured against mutually-agreed-upon objectives, if possible), areas needing more Board support areas needing more personal attention, skill building and/or time, and perhaps a list of suggested objectives for the coming year. Be honest, but don’t be suicidal. Needless to say, if a Board has a long-range plan with three to five year goals, annual objectives and a work plan for everyone for the year, this process will be much easier to conduct. And I do believe strongly that the Board should evaluate its own performance as well.

A staff person has the right to expect positive as well as negative feedback. If there are deficiencies, they should be shared with an adequate opportunity to correct them; a period of probation if necessary; and all agreements should be in writing and signed by staff and Board. If Boards need help in doing this, they should find a human resources expert at a nearby college, hospital, or major business to guide them through the process. It isn’t okay for a Board

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NOT to do it just because they don't know how. It is their job.

On the other side of the coin, there are red flags for Boards to pay attention to in terms of keeping or releasing a staff member, even one of long standing.

1. Proven sexual harassment
2. Proven drinking or drug use on the job.
3. Not getting the agreed-upon job done, *e.g.*,
 - Productions consistently not ready for opening night.
 - Productions consistently of poor quality.
 - Assigned fundraising not done (grant writing, advertising solicitation).
4. Drop-off in volunteers (precipitous or consistent over time).
5. High staff turnover.
6. Evidence of lying or fraud of any kind.
7. Imprudent or inept financial management.
8. Incomplete or inadequate financial reports.
9. Evidence of loss of donors or members.
10. Alienating the media or engaging in any behavior which reflects badly on the theatre.

Once again, at the first hint of a problem, the Board President or Personnel Committee should sit down with the staff person to determine real facts, set limits, and list bottom-line expectations for changed behaviors and/or better outcomes — or rally around and protect the CEO from unwarranted accusations and gossip. If we really care about our theatre, and especially our people, problems must not be allowed to fester. They rarely “go away;” and once they grow out of proportion, it is usually the paid staff person’s head that rolls, whether fairly or not.

There are times, however, when separation is appropriate (and life enhancing) for the staff member and for the theatre: when dreams are no longer mutual or shared; when the staff member feels s/he can no longer be effective (for whatever reason); and when s/he is no longer challenged to do his/her best in this situation (is essentially “phoning it in”). Remember that Maslow said, “A met need is no longer a motivator.” If the

community is still needing 50’s comedies and musicals, and the CEO only feels alive and excited doing “avant garde” shows, then it’s clear that there is no longer a “match” here. It is in everyone’s best interest to move on to new relationships and different challenges. In that case, a planned transition and proper send-off are in order.

I am told by experts in the personnel field that firing someone is the hardest job to do, and it “never gets any easier”. It’ll probably never get any easier for those of us in community theatre either, but at least I hope it will get fairer and will happen less often as a “palace coup.”

Please read *Assessment of the Chief Executive* by Jane Pierson and Joshua Mintz, available from the National Center for Nonprofit Boards, 1828 L St., NW, Suite 900, Washington, DC 20036.

NOTES

**APPENDIX II:
Legal Requirements for Meeting Minutes**

“Legal Requirements for Meeting Minutes” by Jed R. Mandel

Reprinted with the permission of Jed R. Mandel, Esq.,
Neal, Gerber & Eisenberg LLP, Chicago, IL.

Legal Requirements for Meeting Minutes

by *Jed R. Mandel, Esq. of Neal Gerber & Eisenberg, Chicago, IL*

One of the most basic elements of association activity is meeting minutes. And a frequently asked question is what belongs in them and what does not. As is virtually self-evident, the primary purpose of association meeting minutes is to create an official record of the events that transpired at a meeting, particularly for those who were unable to attend the meeting. However, it is important to keep in mind that minutes also serve as legal documents, thus raising a second set of criteria with respect to their appropriate content.

At a minimum, meeting minutes should indicate the time, date, and place of the meeting, the fact that prior notice of the meeting was given, the names of those in attendance, the presence of a quorum, and the official actions taken by meeting participants. Beyond those basic elements, there is some latitude as to what additional material should be included in minutes in order to meet the needs of a particular association, a particular meeting, or the topics discussed.

Meeting minutes have been accorded significant evidentiary weight by many courts and government agencies. Consequently, those who draft meeting minutes should do so with the realization that they ultimately may be examined in an investigation of an association or in litigation involving an association. In view of this potential for legal significance, meeting minutes also provide an opportunity for an organization to create a record of its conscientious compliance with its legal obligations.

Notwithstanding the latitude available to organizations in creating their “record of events,” the following suggestion from *Robert’s Rules of Order* is worthy of consideration: “In ordinary society meetings and meetings of boards of managers and trustees . . . , there is no object in reporting the debates; the duty of the clerk, in such cases, is mainly to record what is ‘done’ by the assembly, not what is said by the members.”

Thus, in general, it is not necessary, nor is it wise, to include comments about who said what about a

particular matter. As for the thought that such comments will be revealing or informative later, that simply is not true. Comments at a meeting do not necessarily reflect the consensus view. In fact, it often is the minority view that is expressed at meetings, with the majority simply voting in favor or against the proposed action. As an historical record of the debate, meeting minutes can be very skewed. Further, if attendees believe that a record must be made of their positions, as opposed to actions taken, they will be compelled to make speeches for the record.

It also is not necessary to record the mover or seconder of a motion or who voted for and against a motion. However, each member does have the right to have their dissenting vote recorded. Thus, if a member were to request that their negative vote be noted in the minutes, it should be so noted.

From another perspective, when the names of movers, seconders and those opposed and in favor of an action are listed, it provides the “public,” including potential plaintiffs in actions against the organization, with a read list of friends and foes. Moreover, it suggests potential divisiveness within the organization where, to the degree possible, it always is beneficial to give the appearance of a united front.

Lastly, in order to make the minutes as easy as possible to draft and to use, it is a good idea for them to follow the agenda. Each item in the agenda should have a corresponding action item in the minutes. If attendees are interested in the background for a particular item in the minutes, they can refer to the supporting material that accompanied the agenda.

In sum, minutes should include certain basic information as to the meeting (e.g., who attended, etc.) and should report the actions taken at the meeting. In doing so, the minutes should be written accurately and concisely so that any person, whether or not they attended the meeting, would be able to know what took place.

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APPENDIX 12: Assessing Financial Viability

“Staying Financially Sound: Knowing which questions to ask can help you ensure your association’s financial viability” by Andrew S. Lang

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Staying Financially Sound

Knowing which questions to ask can help you ensure your association's financial viability.

Among your varied responsibilities as board member is the responsibility to help see that your association is financially sound. If you aren't a financial executive or you have limited experience with nonprofit financial operations, though, you may be unsure of where to start.

A series of appropriate questions to ask the management of any nonprofit organization can help. Answers to these questions will provide valuable insight into key aspects of an association's financial condition and activity.

Do we have a profit or a loss?

Every nonprofit (and for-profit) board member asks this question first. Getting an answer to this question is easy; however, interpreting the answer may not be. For-profit organizations always prefer bigger profits and never like losses; associations have a considerably more complex situation.

A large profit in an association can cause political problems. If members see that revenues greatly exceed expenses, they may feel that the organization charges too much for its services or does not provide enough services. This situation can create resentment, which can make raising revenue more difficult in later years.

Just as a large profit isn't necessarily good, a modest loss isn't necessarily bad. If an association experiences temporary revenue shortfalls it may make sense to allow a small loss to continue so that a full range of services can be provided.

Cutting back on essential service to ensure a profit can lead to the long-term deterioration of an association's revenue base. On the other hand, large losses or losses that continue over several periods clearly indicate trouble and demand that management and the board take action to increase revenues or cut expenses.

You and the other board members also need to make sure that your association's reported profit or loss truly reflects the organization's financial position. This can be a particular problem for associations using the *cash basis of accounting*.

Using the case basis, income is recorded when money is received, and expenses are recorded when they are paid. Unfortunately, this system can accidentally, or even intentionally, result in a higher net income or lower loss. For example, an organization can increase net income in one period simply by delaying the payment of its expenses until the next period.



Do we have sufficient reserves?

Nonprofit organizations rely more heavily on reserves than do for-profit organizations. While a for-profit organization can issue stock or sell bonds to raise additional funds, an association can only borrow, and borrowing can be costly and time consuming. Therefore, nonprofit organizations need to maintain sufficient reserves against the event of a revenue shortfall.

Reserves are commonly defined as total assets (what you own) less total liabilities (what you owe). This definition, however, has severe limitations. It includes assets (such as buildings and equipment) that cannot be used to

pay an organization's operating expenses; similarly, it includes liabilities (long-term debt) where the need for payment will arise only in later years. A more conservative and useful definition of reserves is current liquid assets – cash and assets that can be readily converted into cash – less current liabilities.

Nonprofit organizations usually express reserves as a percentage of one year's total operating expenses. Thus, an association with a reserve of 100 percent would have reserves equal to one year's operating expenses. A reserve of 100 percent is ideal – and somewhat rare. The average for associations is about 40 percent.

A larger association tends to have a smaller percentage of reserves because the high absolute dollar amount of its reserves compensates for the lower percentage. An endowment will typically have a very high level of reserves, since it can spend only income (and not the endowment itself).

Can an organization have too much in reserve? Political problems can arise if members see an organization building up reserves year after year so that they greatly exceed what the organization could reasonably expect to need. In extreme cases, excessive reserves can cause problem with the Internal Revenue Service. However, the IRS will accept higher levels of reserves as long as an association is fulfilling its tax-exempt purpose and has a valid justification for the accumulation – for example, buying a building for its headquarters. In most cases, members will voice concerns long before the IRS does.

While organizations generally prefer to build up reserves, there are times that require incurring losses and drawing down reserves, which is why reserves exist in the first place. If an association with a history of financial success

experiences temporary financial troubles, dipping into reserves for a short time can allow the organization to avoid the need to cut important programs, thus protecting member loyalty.

An association that is operating profitably and building reserves runs the risk of losing assets if it has faulty internal controls. On the other hand, a good internal control system will help safeguard an organization's assets.

Are we liquid?

Liquidity is the ability of an organization to meet its immediate financial obligations. Associations lacking sufficient reserves commonly have liquidity problems. This situation indicates the need to monitor liquidity by producing cash management reports on a regular (e.g., monthly) basis. Cash management reports detail the sources and uses of cash for the next period and alert the association to upcoming liquidity problems. If an association experiences liquidity problems but has other assets and secure revenue sources, the organization can usually obtain a line of credit from the bank to compensate for the lack of liquid reserves.

Do we have strong internal controls?

An association that is operating profitably and building reserves runs the risk of losing

assets if it has faulty internal controls. On the other hand, a good internal control system will help safeguard an organization's assets.

Exploring the details of an internal control system exceeds the expertise of most board members, but you can ask some important, basic questions that will provide insight into your own association's situation.

First and foremost, does the association's accounting system provide for adequate separation of duties? The person who handles the cash aspect of a transaction should not be involved in the accounting for that transaction. For example, a cashier should not handle accounts receivable or the cash receipts journal; likewise, the person who writes checks should not handle the accounts payable. A strong system of internal controls should make it very difficult for an association employee to steal significant sums and go undetected.

Secondly, are all employees, officers, and other who have access to liquid assets bonded? If so, the association could recover lost assets in the event of theft or embezzlement.

Keep in mind that internal control is also essential to accurate financial reporting. If an organization has weak internal controls, board members may not be able to rely on the accuracy of the financial information presented to them. It's best to periodically review internal control systems. The association's accounting firm can perform a review if one has not been done for several years.

Are we operating efficiently?

Adequately protecting assets is only one side of the coin when it comes to determining whether internal controls are working properly. Services also have to be provided as efficiently as possible.

Nonprofit organizations tend to grow gradually. Over a period of years, new systems are added,

outmoded systems continue to operate, and duplicate systems arise. Frequently, no mechanism exists for rooting out inefficiencies. If unchecked, this process can continue until the organization has procedures that are far more cumbersome than necessary to fulfill essential functions.

In some cases, not only have operating procedures become unwieldy, but the governance structure has also outgrown the organization. In the 1980s, when funds were plentiful, associations could afford to allow many members to have titles and positions on numerous committees, and governance structures tended to expand. In the 1990s, with revenues harder to come by, it's critical to review governance structure to determine if they can be made more efficient.

Are we meeting our budget?

If an organization has a high level of operating efficiency, its actual results will conform closely to its budget. Every association needs a strategic plan that lays out the association's objectives. Well-run associations develop programs to meet these objectives and develop annual budgets to implement the programs. Assuming a sound budgeting process, "meeting the budget" indicates that association members receive key services in an efficient manner.

Discourage the practice of using the same budget with inflation adjustments from year to year; if necessary, direct management to regularly review budgets to ensure that they are neither too lean nor too generous. Where significant variances exist between the budget and actual performance, ask management to explain the reasons for the variances and to rectify them if possible.

Analyzing the competition is part of taking a wider view; associations need to continually look over the horizon so that when the world changes, they can move quickly to adapt their program and continue to provide excellent service to their members.

Are our programs valid?

Keep in mind that simply meeting the budget does not in any way guarantee the validity of an association's programs. Typically, associations maintain all of their existing programs and add new ones from time to time.

Given today's limited resources, every program needs to be examined at least every few years to make sure it still meets the needs of the members. Those that don't can be eliminated. Continual program review also allows management to make critical changes in programs before they lose their validity to the association membership.

A related key question is whether revenue source are secure. Many of the key programs that satisfy members' needs generate strong revenue streams; therefore, determining whether important revenue source are increasing or decreasing provides key evidence of program validity. The healthiest associations rely on a variety of

revenue sources so that if one falters, another can pick up the slack.

Economic shifts will challenge the organization from time to time, causing income to fluctuate. If the association adequately serves its members, however, key revenue sources should remain high and continue upward, or at least remain steady.

Are we competing successfully?

Even when revenue sources remain strong, board members must look beyond what the association currently does to what else it might be doing. Should we provide additional services? Have we identified all of the special-interest groups within our organization that require particular services?

Associations can look at other organizations – both those that are nonprofit and for profit – to gain a better sense of the possibilities. Analyzing the competition is part of taking a wider view; associations need to continually look over the horizon so that when the world changes, they can move quickly to adapt their programs and continue to provide excellent service to their members.

In the final analysis, the most important service you, as a board member, can provide to your association is to remain alert and interested in the association's well-being.

There is no substitute for being an aware and interested board member who will make reasonable inquiries until you determine that the organization you and your colleagues on the board serve is well-protected. ■

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APPENDIX 13:
Meeting One's Fiduciary Responsibilities as a Board Member

**“Meeting Your Fiduciary Responsibilities:
What directors need to understand about the law of corporations”
by George D. Webster**

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Meeting Your Fiduciary Responsibilities

BY GEORGE D. WEBSTER

What directors need to understand about the law of corporations.

A FUNDAMENTAL RULE IN THE LAW OF CORPORATIONS is that ultimate authority for managing the affairs of the corporation is vested in the board of directors of that organization. Because the law grants directors such authority, it imposes on them the obligation to act in the best interests of the corporation and to manage its affairs with the same care, diligence, and prudence that they would use to manage their own businesses.

This, in essence, is what is meant by *the fiduciary obligations of members of board of directors*. Every state has a corporations law, and many have separate statutory schemes for for-profit and nonprofit corporations, although many provisions are frequently similar or identical to each other. In every state, the corporations statute will provide that “the management of the affairs of the corporation shall be vested in a board of directors.” A director must act in the best interests of the corporation, or at least in a manner not opposed to its best interests. A director on a board owes a “duty of care” to the corporation that he or she serves, which the law states as acting with the same prudence and diligence as a reasonable person would use in managing his or her own affairs.

Ultimate responsibility

Directors may delegate authority, and they may rely on the advice of others, but the ultimate responsibility remains theirs. Although in most situations, directors will not be held personally liable if the organization is found to be at fault, there are situations in which directors may be held personally liable for the actions of the board or of the corporation.

The power of directors to delegate their legal obligation to manage the affairs of the corporation is not absolute. Every state statute expressly states that some powers of the board cannot be delegated – for example, the power to sell substantially all of the assets of the corporation, to change its basic purposes, or to dissolve it.

Limits on delegation of authority

Directors may rely on the information and advice of others, such as the organization’s executives and employees or its outside attorneys, accountants, bankers, and pension plan administrators. Here, too, however, there are limits on the extent to which the directors can “pass off” their responsibility to others.

A good illustration of this is in the selection of plan administrators covered by the Employee Retirement Income Security Act of 1974 (ERISA). Some cases have held that, where the board of directors selected a plan administrator not based on sufficient investigation into the competency and expertise of the administrator, but on the basis of personal friendship or favor, the directors could be held liable for any harm suffered by plan participants because of mismanagement by the plan administrators. The basis of liability, of course, is not that the directors chose a friend but that the firm chosen wasn’t competent.

Another excellent example, because it seems to occur with some regularity, is the obligation to file tax returns. Under federal law, if an association has at least \$25,000 in annual income, it must file tax returns (it doesn’t necessarily have to pay any tax – just file the return for informational purposes). The directors must see to it that these returns are filed; they cannot simply rely on the representations of staff employees or tax accountants or preparers that the returns were filed. Otherwise, the association can be subject to daily fines for failing to file, which, if prolonged, can add up to thousands of dollars. The same is true, of course, with respect to almost any other type of tax that must be paid, whether federal or state, especially employment taxes (withholding, Social Security, etc.) and state workers’ compensation and unemployment compensation taxes.

Nor can directors remain willfully ignorant of the affairs of the association. A director chosen as treasurer, for example, with no knowledge of finance, could not simply rely on the

representations and reports of the staff or the auditors that “all is well.” The directors do not have to verify the work themselves (this would defeat the whole purpose of paying outside experts), but they cannot abdicate their responsibility to manage the association by totally delegating this task to others.

Again, the standard is, how would a person act in his or her own affairs? The ordinarily prudent, diligent, reasonable businessperson may rely on bankers and stockbrokers to manage investments, but he or she will at least review the statements, talk regularly with his or her advisers, perhaps make suggestions, and ultimately make the decisions. Directors of associations must act in the same manner concerning the organization’s affairs. One potential problem that some associations may have is that their bylaws provide for two sources of authority: a representative assembly and a board of governors, for example. This is perfectly legal, as long as the organization is sure to designate one body as the supreme authority – the legal equivalent of the board of directors. Otherwise, confusion and expense could result, as the lines of authority (and liability) are not clear. This may also increase the cost (or affect the availability) of officers and directors liability insurance.

Avoiding conflicts of interest

The duty to act prudently, diligently, and reasonably is but one aspect of a director’s fiduciary responsibility. Another equally important, and often misunderstood, aspect of this duty is to avoid conflicts of interest.

Frequently directors mistakenly believe that this means that they may not have any dealings with the association. This is not what it means. Avoiding conflicts of interest means essentially two things: 1) acting only with and after full disclosure and approval of the board (or the membership, if its approval is required); and 2) not appropriating to oneself advantages and opportunities that belong to the association. This standard is usually interpreted more leniently to require directors at least to act in a way not opposed to the best interests of the association.

A simple example illustrates these rules. First, suppose the association is looking for land on which to build a building. A director owns one of the properties the association is looking at. If the director discloses this fact, if the property is selected as the result of an open, competitive process (assuming there is a choice of properties); and if the price paid is one that strangers dealing at arms’ length would agree to, then there is nothing

wrong with the director’s selling the property to the association at its fair market value.

Now assume that the director knows the association is about to put a bid in on a piece of property, secretly buys the property at a lower price, and then turns around and sells it to the association. The director could be held liable for breach of fiduciary duty. In some states, a director may not vote in a matter involving him- or herself (“interested director” transactions); in other states, the director may vote.

Voting by proxy

Generally speaking, directors may not vote by proxy, although most state laws do permit directors to act via telephone or teleconferencing and by mail, provided there is unanimous consent, at least with respect to votes taken by mail. The idea behind frowning on proxy voting is that part of a director’s obligation to the association is to give it the benefit of his or her wisdom, expertise, and advice, and to reach decisions after full discussion, debate, and exchange of views.

Types of authority

Because the law vests the right to manage the affairs of the association in its board of directors, and because a legal entity such as a nonprofit corporation can act only through its human agents, the law generally treats the acts of directors as the acts of the corporation. The directors can bind the association by what they do. This can be a troublesome, dangerous legal responsibility both for the association and for the directors personally. The law recognizes three types of authority: *actual*, *implicit*, and *apparent*. It is apparent authority that causes the trouble. Suppose the board authorizes three directors to hire a chief executive. They have actual authority to do so.

The directors’ negotiations with candidates are an example of implicit authority. The board resolution may have said nothing about negotiating an employment contract, but this is implicit in the charge to hire someone.

Now suppose the board authorized a top salary of \$100,000, but the directors offered \$150,000. This would be an exercise of apparent authority. The committee has no actual authority to offer \$150,000; in fact, it has been told not to go above \$100,000. But the candidates for the job don’t know that. As far as they know, the committee is authorized to offer whatever salary is necessary. If the committee offers the candidate a job at \$150,000 and he or she accepts, the association will be bound by the theory

of apparent authority, regardless of the fact that the committee had no actual authority to offer so much. Because of the theory of apparent authority, directors must be extremely careful about what they say and promise: their words and deeds can create legal liability for the association, even where and when they have no actual or implied authority to do so.

Defenses against liability

The law affords directors three principal defenses against personal liability: incorporation itself, indemnification, and (in some, not all, states) statutory immunity.

Incorporation itself will shield directors from personal liability, although not in all cases. A basic premise of incorporating is that the corporation becomes a separate, legally recognized “person” responsible for its own acts. Thus, even if individual directors enter into a contract they were not authorized to sign, the other party to the contract will only be able to sue the corporation and not the directors individually.

There are two major exceptions to this rule, however. First, if directors are not careful to observe all the formalities and rules of separate incorporation, they can be held individually liable on what are colorfully called: 1) the “alter ego” theory – the actions of the individuals and the corporation are so closely combined that one is the alter ego of the other; or 2) the “pierce the corporate veil” theory – the court will look through or beyond the corporation to hold the directors liable. Second, if the directors act criminally or fraudulently, they could be held personally liable. Of course, even where a third party cannot hold the directors individually liable, the association itself may sue its own directors to recover damages caused by them. This, however, is exceedingly rare. The second protection that the law affords directors personally is that it allows the corporation (including nonprofit corporations) to indemnify its directors from liability for acts taken in the exercise of their official duties on behalf of the corporation. The law itself permits very broad indemnification of directors, although it is up to the association itself to decide to what extent it wants to indemnify its directors.

Typically, associations take full advantage of this right by providing in their bylaws that officers and directors shall be indemnified “to the fullest extent permitted by law.” But there are limits here, too. Under certain circumstances, which seldom arise, an association may not have any duty to indemnify directors. It is common for associations to pay for

such indemnification by purchasing officers and directors liability insurance policies (sometimes called “errors and omissions” policies). More and more states seem to be enacting amendments to their not-for-profit corporation acts granting statutory immunity to directors for their acts as directors on behalf of the nonprofit corporation. Under these amendments, a director may not be sued by a third party for actions he or she took as a director on behalf of the corporation. Some of these statutes are rather limited; for example, they may not apply to all nonprofit organizations (such as trade associations or chambers of commerce) but only to charitable nonprofit organizations (schools, universities, hospitals, foundations, philanthropies, etc.). They may also apply only where the director can show that he or she was acting in good faith, and not where willful, intentional, reckless, or malicious conduct was proved.

While no one should hesitate or fear to serve on a board of directors because of concern about personal liability, neither should anyone assume that he or she can act with impunity or recklessly simply because he or she is a director of a nonprofit, tax-exempt association.

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APPENDIX 14: Liability Issues for Boards

“Directors’ Liability: A Discussion Paper on Legal Liability, Risk Management and the Role of Directors in Non-Profit Organizations” by Volunteer Canada

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Directors' Liability: A Discussion Paper on Legal Liability, Risk Management and the Role Of Directors in Non-Profit Organizations

Funding for this resource is provided by the Government of Ontario,
Ministry of Citizenship – Voluntarism Initiatives



According to the 2000 NSGVP, about 41 percent of Canadian volunteers serve on boards and committees. Despite their deep commitment to countless causes and organizations many board members may be unaware of the legal ramifications of their volunteer work. Personal liability has become an area of increased concern for board members of not-for-profit organizations. This important resource informs board members about their legal duties and obligations, and offers them a practical 'prevention checklist' to help minimize personal liability.

Financial support for the development of this resource was provided by the Government of Ontario through the Ontario Screening Initiative.



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1. Introduction

According to the 2000 National Survey of Giving, Volunteering and Participating, over 40 percent of Canadian volunteers hold positions on boards and committees.¹ Despite their deep commitment to the effective governance of voluntary organizations, many board members are unaware of the legal ramifications of their volunteer work. As our society becomes more litigation-oriented, the public expects non-profit organizations to be more accountable and businesslike in managing their affairs. Volunteer board members are right to be concerned about their personal liability.

Directors' Liability A Discussion Paper on Legal Liability, Risk Management and the Role of Directors in Non-Profit Organizations informs board members about their legal responsibilities and provides practical suggestions for managing risks and minimizing personal liability. Although this discussion paper contains legal information, it does not provide legal advice. Neither its authors nor Volunteer Canada are in a position to determine whether organizations or individuals have fulfilled their legal duties or satisfied the applicable standard of care in every circumstance. Individuals and organizations seeking specific advice should consult with a lawyer.

This discussion paper is not intended to deter people from volunteering as board members with their favourite voluntary organization or charity. Risk and responsibility are facts of life, and every activity we undertake involves a certain amount of risk. The volunteer director needs to understand the risks involved in the position so that he or she can act reasonably and appropriately. The purpose of this paper is to raise awareness of the legal risks facing directors, and to offer directors and organizations some practical suggestions for minimizing these risks.

2. What is an organization?

Organizations come in a variety of types and sizes, under a variety of names. In this discussion paper, the generic term 'organization' is used. Some organizations are small with no staff and no office, some have a few staff, and some are large entities with many staff and volunteers.

An organization can be 'unincorporated,' and thus have no legal status, or it can be 'incorporated' as a corporation under federal or provincial statutes. This corporation can be for-profit (that is, organized to pursue commercial objectives), or it can be non-profit (that is, organized to fulfill benevolent or charitable purposes).

A non-profit organization can be referred to as:

- a club;
- an association;
- a society;
- a corporation;
- a league, or
- a committee (as in the Canadian Olympic Committee).

¹ Statistics Canada. *Caring Canadians, Involved Canadians: Highlights from the 2000 National Survey of Giving, Volunteering and Participating* (Ottawa: Minister of Industry, 2001), p. 41.

3. What is a board?

Some organizations are governed by administrative or ‘hands-on’ boards while others are led by policy-governing boards. Both boards may be called a board of directors, a board of governors or a board of trustees. The responsibility of an organization’s board is to:

- provide leadership and direction to the organization; and
- govern the affairs of the organization on behalf of its shareholders (in the case of a for-profit corporation) or its members (in the case of a non-profit organization).

4. What is a director?

A director is an individual who is a member of a governing board of an organization. Directors of non-profit organizations are volunteers and are rarely paid for their services, while directors of for-profit corporations are usually compensated. As a rule, directors are elected or appointed to their positions on the board. They may also be officers, where an officer fulfills certain corporate roles and functions (such as those duties of a ‘president,’ ‘treasurer’ or ‘secretary’ of the organization). Officers can also be senior staff persons, and in rare circumstances, staff persons can also be directors.

Regardless of the name, size, or type of organization, the role of the director remains fairly constant. Directors and officers of non-profit organizations are responsible for governing the affairs of the organization on behalf of its members. Directors and officers have a relationship of ‘trust’ with the members of the organization, and it is from this trust relationship that certain important legal duties arise.

5. Legal duties of directors

The basic responsibility of directors is to represent the interest of the members in directing the affairs of the organization, and to do so within the law. This legal duty is described in statutes (such as the *Canada Corporations Act*, provincial business incorporation statutes and provincial societies or non-profit organization statutes) and has been expanded and interpreted in the common law.

In representing the members of the organization and acting as their ‘trustee,’ directors have three basic duties:

1. The duty of *diligence*: this is the duty to act reasonably, prudently, in good faith and with a view to the best interests of the organization and its members;
2. The duty of *loyalty*: this is the duty to place the interests of the organization first, and to not use one’s position as a director to further private interests;
3. The duty of *obedience*: this is the duty to act within the scope of the governing policies of the organization and within the scope of other laws, rules and regulations that apply to the organization.

It is important to note that the duties of directors of non-profit organizations are essentially no different than the duties of directors of for-profit corporations. These duties extend broadly, and are owed to:

- the organization as a whole;
- the organization's members, participants, clients, staff and volunteers;
- other directors; and
- anyone else who may be affected by the decisions of the board and the activities of the organization, including the general public.

These three duties are discussed more fully below.

5.1 Duty of diligence

Diligent directors always act prudently and in the best interests of the organization. When performing their duties as directors, they are expected to exercise the same level of care that a reasonable person with similar abilities, skills and experience would exercise in similar circumstances. If a director has a special skill or area of expertise, such as an accountant or lawyer would have, he or she has a duty to achieve a standard of care that corresponds to his or her professional abilities.

Directors have a responsibility to act cautiously and to try to anticipate the consequences of their decisions and actions before they undertake them. They are honest and forthright in their dealings with members, with the public and with each other. Directors are also well-informed about the activities and finances of the organization. They have an obligation to foresee potential risks inherent in a situation and to take reasonable steps to manage those risks.

5.2 Duty of loyalty

Directors are required to put the interests of the organization first. These interests will always take precedence over any other interest, including a director's personal interests. As well, directors who are involved in more than one organization may find that they cannot be loyal to both.

Loyal directors will avoid putting themselves in a situation of a conflict of interest. When this is unavoidable, they will act properly in disclosing the conflict and ensure that they play no part in discussing, influencing or making decisions relating to that conflict.

Confidentiality is also an important aspect of the duty of loyalty. Directors have an obligation to keep organizational business private, and to not discuss certain matters with people outside the organization. Confidential matters may include:

- information about personnel; and
- information about clients served by the organization, the organization's finances or legal matters.

A board acts as one entity. Loyal directors support the decisions of the board, even if they might not personally agree with the decisions and might not have voted to support the decisions in the board meeting.

5.3 Duty of obedience

Nearly all non-profit organizations are ‘private tribunals’ (that is, autonomous organizations that have the power to write rules, make decisions and take actions that affect their members and participants). Legally, private tribunals are recognized as having a contractual relationship with their members. This relationship is defined in the organization’s governing documents, which include:

- its constitution;
- bylaws;
- policies, and
- rules and regulations.

Directors have a duty to comply with the organization’s governing documents, and to ensure that staff and committees of the organization do as well. Over time, organizations may move away from their legal purpose, and policies may become out of date and no longer reflect the practices of the organization. Obedient directors ensure that governing documents remain current and accurate, and oversee the process that is used to amend and update governing documents.

Directors also have a duty to obey external laws and rules that are imposed upon organizations. A wide range of laws and statutes apply to corporations and individuals: the obedient director ensures that the organization complies with these. In particular, an organization that is an employer has many statutory responsibilities to its employees. These responsibilities include:

- paying wages;
- providing paid time off for holidays;
- making deductions from wages and remitting these to the government;
- providing a safe workplace; and
- protecting employees from discrimination and harassment.

6. Liability of directors

A director who fails to fulfill his or her duties as outlined above may be liable. The term ‘liability’ refers to the responsibility of directors and organizations for the consequences of conduct that fails to meet a pre-determined legal standard. Usually, the term ‘consequences’ refers to damage or loss experienced by someone, and being responsible for such consequences means having to pay financial compensation.

Liability arises in the following three situations:

1. When a law (*statute*) is broken. The consequences of breaking a law are:

- paying a fine;
- having restrictions placed on one’s rights or privileges; or
- being imprisoned.

2. When a *contract* is breached or violated, where a contract is a legally enforceable promise between two or more parties. The consequences of breaching or violating a contract are:

- . correcting the breach through some form of performance or service; or
- . paying financial compensation.

3. When an act, or a failure to act, whether intentionally or unintentionally, causes injury or damage to another person (*tort*). The consequence of intentionally or unintentionally injuring or damaging another person is:

- . payment of a remedy in the form of financial compensation.

These three situations are discussed more fully below.

6.1 Statute

There are a variety of federal and provincial statutes that impose liability on directors in specific circumstances relating to managing the affairs of the organization. Thus, directors have specific statutory obligations relating to:

- . the election and appointment of directors and officers;
- . calling meetings of members;
- . paying taxes to government and submitting employment-related remittances;
- . keeping minutes of meetings of directors and members;
- . reporting and disclosing prescribed information about the corporation to authorities;
- . paying wages and salaries;
- . maintaining a safe workplace; and
- . activities of the organization that cause pollution or other environmental damage.

6.2 Contract

Directors are responsible for ensuring that the organization's contractual obligations are fulfilled. This includes contracts with employees and independent contractors.

6.3 Tort

Directors are responsible for ensuring that they, as well as the organization's volunteers and staff, do not behave negligently. Negligence refers to the duty that we all have to ensure the safety of those persons affected by our actions. Directors, volunteers and staff are at all times expected to act in a reasonably diligent and safety-conscious manner so that others affected by our actions (for example, fellow employees, volunteers, participants, clients, the public) will not face an unreasonable risk of harm.

The concept of negligence also applies to 'wrongful acts'—these are:

- . errors;
- . omissions; and
- . actions or decisions that harm others, not through damaging their property or their physical person, but through interfering with their rights, opportunities or privileges.

Wrongful acts relate primarily to how directors govern the organization, manage its funds, supervise its staff and make decisions that affect members, clients and the public.

7. Indemnification

Clearly, volunteer directors take on a range of legal responsibilities and face many potential liabilities. Non-profit organizations recognize that this can be quite daunting. As a result, it is almost universal practice for these organizations to ‘indemnify’ their directors for liabilities that they might incur in carrying out their duties as directors. To ‘indemnify’ means to put someone back in the same financial position as they were in before. An indemnified director would be compensated for the following:

- legal fees;
- fines that were paid under a statute;
- a financial settlement that resulted from a lawsuit; or
- any other legal obligation that a director was required to fulfill.

Incorporated organizations are required by law to indemnify their directors for such losses. There is no such obligation imposed upon unincorporated groups, but most groups do offer indemnities because it is a good policy to do so. Just remember: the indemnification is only as good as the organization’s financial ability to pay it. This is where insurance comes in (see *Directors’ and officers’ liability insurance* in section nine of this discussion paper).

8. Avoiding liability through risk management

There is risk inherent in everything we do. Volunteers, employees and directors of organizations must always be mindful of risks—this means examining situations cautiously and thinking ahead to the potential consequences of decisions and actions. Most people manage risks most of the time, and they do so instinctively. However, it is always a good idea to take steps ourselves, and to encourage others to think about risks and risk management more systematically.

The process of risk management is a simple three-part activity. It involves:

1. looking at a situation and asking what can go wrong and what harm could result;
2. identifying practical measures that can be taken to keep such harm from occurring; and
3. if harm does occur, identifying practical measures that can be taken to lessen the impacts of harm and pay for any resulting damage or losses.

The practical measures that can be taken to manage risks fall into four categories:

- assume the risk (decide that the risk is minor and do nothing);
- reduce the risk (find ways to change people’s behaviour or the environment in which people work so that the degree of risk is reduced);
- eliminate the risk (choose *not* to do something); and
- transfer the risk (accept the risk but transfer the liability associated with it to someone else through a written contract).

Every organization will face different risks and will plan and implement different measures to deal with these risks. The measures that are taken to manage risks are usually those that would be taken by any other prudent and reasonable person having the same skills, knowledge and experience as ourselves. This is why the practice of risk management is based in large part on common sense and is linked to the concept of ‘standard of care.’ These measures will tend to revolve around:

- training and educating staff and volunteers;
- enforcing reasonable rules;
- inspecting and maintaining facilities and equipment;
- screening and supervising staff and volunteers;
- properly documenting meetings and decisions; and
- meeting all statutory reporting requirements.

The final section of this discussion paper provides some practical measures that organizations, and individual directors, can take to manage the risks and liabilities faced by directors.

9. Directors’ and officers’ liability insurance

This section deals with insurance — a common risk management measure and one that is particularly important in minimizing directors’ liability. Insurance is one of many techniques used to manage risks — it involves transferring the liability associated with a risk to another party by means of a written contract. In the case of insurance, the party that the risk is transferred to is the insurance company, and the written contract is the insurance policy. Transferring risks through written contracts is a very common business practice.

Directors’ and officers’ insurance is like general liability insurance, and covers costs that the directors and officers of an organization might become legally obligated to pay as a result of damages to another party. However, unlike a general liability insurance policy that covers losses arising from physical injury or property damage, directors’ and officers’ liability insurance covers only those losses arising from a director’s own ‘wrongful acts.’

In such an insurance policy, a wrongful act is defined as:

- an error;
- a misstatement;
- a misleading statement, act, omission; or
- other breach of duty by an insured person in his or her insured capacity.

The purpose of this insurance is to provide the financial backing for the indemnity that the organization provides to its directors. Directors’ and officers’ liability insurance is a fairly recent risk exposure for many non-profit organizations. The risk is not so much that a director will be found guilty of a wrongful act, but simply that there will be an allegation of a wrongful act. Although few claims against directors are substantiated and fewer of these result in large financial awards, the cost of defending any claim can be significant. This is where directors’ and officers’ insurance tends to prove its value.

Directors' and officers' insurance policies vary, and there is no standard level of coverage. Importantly, many of these policies *exclude* coverage for:

- directors acting outside the scope of their duties as they are described in this discussion paper, including any actions that are dishonest, fraudulent or criminal;
- breach of contract, including wrongful dismissal of employees;
- fines and penalties under a statute or regulation; and
- complaints under a human rights code, including a complaint of discrimination, harassment or sexual harassment.

Insurance is a complex subject, and directors' and officers' insurance is especially so. For more information on this subject, consult with a lawyer or an insurance representative.

10. Incorporation

In this discussion paper, organizations have been described as being either incorporated or not incorporated. Many associations, societies, community groups and sport clubs are not incorporated and thus have no legal status. Yet the legal status of an organization can have a significant effect on the potential liability of directors, as described below.

The incorporation of an organization under a federal or provincial statute establishes the organization as a legal entity (almost an 'artificial person') that exists independently as separate and distinct from its members. This legal entity can:

- own property in its own name;
- acquire rights, obligations and responsibilities;
- enter into contracts and agreements; and
- sue and be sued as if it were a real person.

An unincorporated organization is not a separate legal entity and has no legal status apart from that of its members. While carrying out their duties on behalf of the members, directors can be held personally and jointly liable for the activities of the organization. For example, an unincorporated entity cannot enter into contracts of its own, so the directors or officers who execute the contract on behalf of the organization might be held to that contract in their personal capacities. Likewise, a third party cannot sue the organization (as it is not a legal entity) but can, and likely would, sue the directors collectively and individually.

An incorporated organization offers directors the protection of what is termed the 'corporate veil.' As a separate legal entity, the organization is one step removed from the directors and members. Lawsuits must be brought against the corporation, and directors of such corporations are, to a large extent, protected from liability for actions they took in their capacity as directors.

The minor costs and inconveniences of incorporation are far outweighed by the benefits that such incorporation provides to the members and directors. Incorporation can sometimes be the best, simplest and least expensive risk management measure for an organization to take.

Incorporation notwithstanding, it must be noted that directors of corporations may be held personally liable, in their capacities as directors, for unpaid wages, holiday pay, employee benefits and taxes. This is of concern to directors of organizations who have large numbers of

employees, especially if the organization is experiencing financial difficulties and may be unable to meet payroll and tax obligations.

11. Protecting yourself as a director

There is no substitute for knowledgeable governance and thoughtful risk management, and the organization that manages its affairs in a conscientious and responsible manner will reduce its directors' liability risks considerably. Nonetheless, the following practical tips will be helpful to all directors.

Before accepting a directorship with an organization, you should:

- Think about your reasons for becoming a director. Be sure you have the time, interest and commitment to do the job well.
- Learn as much as you can about the organization. What is its mission? What activities does it undertake? How is it perceived in the community?
- Ask for a written job description for the position of director.
- Educate yourself about your legal duties as a director by reading a discussion paper such as this one.
- Look at the composition of the entire board, and satisfy yourself that it can govern effectively and provide competent direction to committees, staff and volunteers within the organization.
- Confirm that the organization indemnifies its directors (either through its bylaws, through policy or by means of a written contract) and that it carries directors' and officers' liability insurance. Ask about the scope of coverage and any exclusions to this insurance.

Once you have accepted a directorship, managing your personal liability risks is an ongoing process. The following guidelines will help you to take steps to manage these risks as they relate to issues such as policy, finances, meetings, personnel, and training.

11.1 Meetings

- Attend meetings, be prepared to discuss the items on the agenda and participate fully in decision-making.
- Provide your reports to the board in written form.
- Ensure that minutes reflect abstentions from votes, votes for and votes against motions.
- If you have any real or perceived conflict of interest, declare it when the issue first arises, and do not vote, participate in or influence the decision-making process. Have your disclosure recorded in the meeting minutes.
- Do not rush important decisions. Ensure that board members receive meeting materials in ample time to digest them. If important information is lacking, postpone the decision until this information can be obtained.
- Keep your own personal copies of key documentation and minutes of controversial meetings.

11.2 Finances

- Take an interest in finances by reviewing regular financial reports, and approving and monitoring the organization's annual budget.
- Use a professional, independent accountant to perform an annual audit of the organization's finances.
- Know who is authorized to sign cheques and for what amount.
- Do not be shy about asking questions and seeking clarification on financial matters from staff.
- With the assistance of your auditor, develop a list of statutory reporting requirements and assign a staff person or director to monitor that these requirements are being fulfilled.

11.3 Contracts

- Ensure that all contracts the organization enters into are carefully reviewed by staff or by counsel.
- When the organization partners with other entities on joint projects, or enters into agreements be sure that all terms and conditions are clearly expressed in a written contract, and that risks and liabilities are appropriately shared.

11.4 Policy

- Ask for a copy of the organization's policy manual. If the organization does not have a policy manual, develop a work plan for staff (or others, as appropriate) to prepare one.
- Be familiar with the content of the organization's constitution and bylaws. If they are out of date, or no longer adequately reflect the mandate and activities of the organization, then undertake to update them.
- On important matters and for decisions that have the potential to adversely affect someone, ensure that the organization's policies are adhered to as written. If the policy is unsuitable for dealing with the particular circumstance, then take steps to change the policy for the future.
- Commit staff and volunteer time and financial resources to developing risk management policies.

11.5 Personnel

- Ensure that all staff and volunteer positions have written job descriptions.
- Insist that the organization develop a clear personnel policy and ensure that staff evaluations are performed at least annually or as required by the policy.
- Be sure that suitable screening measures are in place for those staff and volunteer positions that involve interaction with children, youth, seniors or other vulnerable persons in positions of trust.

11.6 Insurance

- Ask for copies of the organization's insurance policies and become familiar with their scope of coverage.
- Consider asking the insurance broker to meet with the board and make a brief presentation on these policies.

11.7 Training

- Support professional development for staff and training for volunteers.
- Encourage the board to engage in training. Bring in a board development instructor or a facilitator to help the board improve its effectiveness.
- Offer board members training opportunities in association with board meetings or annual general meetings.
- Commit resources to the development and updating of board and staff orientation materials.
- Leave aside a short portion of every board meeting to allow the board to evaluate its effectiveness in conducting the meeting and making governance decisions.

11.8 General

If the organization is unincorporated, consider incorporation. As a risk management measure it is well worth the expense and inconvenience.

- If you suspect that something is not right, go with your intuition and check it out! Be curious. Remember, as a director you will be held responsible for circumstances and situations you *ought* to have known about, whether or not you actually did know about them.
- Do not speak negatively about the organization to the public. Publicly support the board's decisions, even if you might have voted against the majority of directors.
- If the organization needs to deal with a complex matter in which staff or directors lack expertise, consider the services of an outside professional (for example, a lawyer, financial advisor, human resources consultant, risk management specialist, or engineer).

12. Summary

There are tens of thousands of voluntary organizations and charities in Canada that undertake important work in every community in the country. Volunteer board members are to be applauded and supported for their willingness to take on the responsibilities associated with directorships and the corresponding risks.

This discussion paper is meant to inform directors of the legal dimensions of their voluntary contribution. It is Volunteer Canada's view that an informed director is a more confident and competent director.

The most widely available, most effective and least expensive risk management technique is common sense. Voluntary organizations can capitalize on this common sense by:

- recruiting capable board members and well-qualified staff;
- providing an orientation program for all new people;
- putting on paper clear job descriptions and sound policies;

- supporting professional development at all levels of the organization; and
- creating an organizational culture that emphasizes and rewards risk management thinking and behaviour.

Common sense arises from a mix of knowledge and experience. Most people become directors because they have abundant experience with an organization or the cause to which it is committed, or because they feel that they can bring professional and work-related experience to a rewarding voluntary position. This experience, coupled with the knowledge that can be gained from this discussion paper, will well equip directors to perform their duties effectively and capably.

13. Additional Resources

13.1 References

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White, Leslie T., John Patterson and Melanie L. Herman. *More Than a Matter of Trust: Managing the Risks of Mentoring*. Washington, D. C. : Nonprofit Risk Management Center, 1998.
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13.2 Electronic References

Baker, Allyson L. *Directors' and Officers' Liability Insurance: An Overview*. Vancouver: Clark, Wilson, 1998.

<http://www.cwilson.com/pubs/insurance/alb1/Index.htm>

<http://www.boarddevelopment.org> (a website on board development training, accountability and governance in the Canadian voluntary sector)

Ontario Ministry of the Attorney General website

<http://www.attorneygeneral.jus.gov.on.ca>

United Way of Canada / Centraide Canada website

<http://www.unitedway.ca>

Voluntary Sector Roundtable (VSR) website (the VSR website is hosted and maintained by United Way of Canada / Centraide Canada—see web listing above)

<http://www.vsr-trsb.net/main-e.html>

Volunteers and the Law: A guide for volunteers, organizations and boards. (a web document prepared by the People's Law School)

<http://www.publiclegaled.bc.ca/volunteers>

APPENDIX 15: Conflict of Interest Policies

Appendix 15-A: “Board Conflicts of Interest” by George D. Webster

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Board Conflicts of Interest

Protecting against breaches of loyalty

The fiduciary duty owed an association by its officers and directors includes loyalty. A breach of that duty – whether a board member serves with or without compensation – typically involves a *conflict of interest*, generally defined as “a clash between the association’s interests and the private pecuniary interest of an officer or director.”

The three most common potential conflicts are these:

- *Conducting business with the association* An association officer or director contracts with the organization to buy or sell goods or services or to derive some personal benefit.
- *Usurping an association opportunity*. An officer or director acquires for his or her own benefit a business opportunity that should belong to the association.
- *Competing with the association*. An officer or director engages in a similar yet independent business.

Ensure full disclosure

The duty of loyalty does not totally preclude business interaction of the type described above. However, it does mean these transactions would be subjected to intense scrutiny by a court if called into question. Consequently, if a situation with the markings of potentially conflicting interests does arise, the association’s best first move is to seek full disclosure.

The officer or director insulates him- or herself from potential liability by fully disclosing to the association his or her interest or involvement and all facts and/or

terms of any agreement. However, disclosure alone is rarely enough.

- Where the officer or director risks usurping a corporate opportunity, he or she also should offer the association the opportunity. Only upon the association’s informed rejection is the officer or director’s duty fulfilled so that he or she may proceed.
- Where an officer or director is competing with the association – either as an officer or director of another association or sole proprietor in a similar business – if the officer or director is unable to carry out his or her duties to the associations without any harm to the associations and with positive benefit to the associations, then he or she must resign from one or both boards.
- Finally, if after the member discloses the potential conflict, any related matter is put to a vote of the board, the interested member should either refrain from voting or have any such action he or she participated in approved by a disinterested majority of the board.

Protect through policy

To protect the association and maintain its credibility, work with legal counsel to develop, adopt, and implement a formal statement of conduct for officers and directors. Include association policy regarding

- the affirmative obligation of officers and directors to notify the board immediately upon becoming aware of any potential conflict;
- employment of or contractual arrangements with officers or directors or their relatives; and

- provision of services, other than those provided through an official capacity, by officers or directors.

A policy statement also should include a discussion of the procedures whereby a disinterested panel would investigate a potential conflict of interest and report its findings, and the manner in which the association would resolve any disputes arising from an investigation. In addition, in the event that a violation of the standards is deemed to have occurred, the policy should enumerate the available remedies – for example, voiding the deal, returning the improperly obtained “benefit of the bargain,” passing through a usurped opportunity, and suspending or expelling the officer or director from his or her position or from the association.

Finally, an association can further protect itself by amending its bylaws to include a provision setting forth a special quorum and voting requirement when the board votes on a conflict of interest transaction or a requirement that officers and directors serve in that capacity, or any other, for only one association.

George D. Webster is general counsel to ASAE and a partner in Webster, Chamberlain & Bean, a Washington, D.C. law firm.

Appendix 15-B: LHAT Conflict of Interest Policy

Reprinted with the permission of the League of Historic American Theatres (LHAT), Baltimore, MD. (Note that the League no longer uses these documents, since it no longer functions as an all volunteer-run organization.)

CONFLICT OF INTEREST POLICY

I. Policy

It shall be the policy of the League of Historic American Theatres (LHAT) that no member, while serving LHAT in a leadership capacity, either as an Officer, a Director, a Committee Chair, or in another type of leadership capacity, will take personal advantage of his or her leadership role by allowing a situation to exist that may be construed as a conflict of interest situation.

II. Purpose

It has been the intent of LHAT since its inception to carry on its activities in accordance with the highest ethical standards. Adoption of this Policy by the LHAT Board of Directors is, therefore, a reaffirmation of LHAT's intent that all Directors, Officers, Committee Chairs, and other members holding elected or appointed leadership positions practice the highest ethical standards and give undivided loyalty to LHAT and its goals. Any activities which do not serve the best interest of LHAT or which favor the personal advantage of another person or corporation are inconsistent with the duties and responsibilities owed to LHAT.

III. Practice / Procedure

It is therefore resolved That:

- I. All Directors, Officers, Committee Chairs, and members holding other leadership positions with LHAT (Leaders), shall scrupulously avoid any conflict between their own respective individual interests and the interests of the League of Historic American Theatres, in any and all actions taken by them on behalf of LHAT in their respective capacities.
2. Annually, at the fall meeting of the Board of Directors, all Officers and Directors shall disclose any direct or indirect relationships with organizations, either for-profit or not-for-profit, that may, during their term of office, be

involved with LHAT in a formal capacity. Examples of such relationships may include, but not be limited to, employer-employee relationships, governance relationships, shareholder relationships, contractor-contractee relationships, etc.

3. In the event that any Director or Officer of LHAT may stand to derive a personal gain or benefit from a transaction with LHAT, or shall have any direct or indirect interest in or relationship with any individual or organization (i) which proposes to enter into any transaction with LHAT for the sale, purchase, lease or rental of property; or (ii) which proposes to render or employ services personal or otherwise, to LHAT; or (iii) which may be seen as competing with the interests or concerns of LHAT, such Director or Officer shall forthwith give the Board of Directors of the League of Historic American Theatres notice of such interest or relationships and shall, therefor, refrain from voting or otherwise attempting to affect any decision for LHAT to participate or not to participate in such transaction and the manner of the terms of such participation. Minutes of appropriate meetings should reflect that such disclosure was made, and that such Director or Officer abstained from voting and absented hi or herself from the final review and vote on the matter.

A copy of this Policy shall appear in the orientation materials for newly elected Board members and be shared with the Nominating Committee for distribution to all prospective candidates.

This policy shall be reviewed periodically for the information and guidance of all individuals who serve LHAT in a leadership capacity.

Adopted January 21, 2001

APPENDIX 16: Letter of Understanding for New Board Member

Here are samples of the type of letters written over a board president's signature to clarify the organization's expectations of a new board member.

Appendix 16-A: "Sign on the Dotted Line" (a contract with volunteer board members) by Twink Lynch, Ph.D.

Reprinted with the permission of Twink Lynch, Ph.D., author, and the American Association of Community Theatre (AACT), Lago Vista, TX, publisher.

“Sign on the dotted Line”

Here's a revolutionary idea – use a “contract” with volunteer Board Members! Before you think I'm trying to run off all of your potential Board volunteers, let me explain.

A decade ago, I read an article in *The Grassroots Fund Raising Journal* which suggested such a contract (“Earth to Board Members: Are We Clear?”) I've adapted it for use in community theatres and talk about it in my workshops and consultations.

I have tested this idea with many groups – not just community theatres – and consensus is that it's a great idea **if** it is called a “letter of understanding” rather than a “contract” (lawyers, in particular, disliked the word “contract”).

At the very least, letters of understanding clarify expectations for Board Members, hopefully leading to better interviews during the nominating process, and ultimately to a better match between the volunteer Board Member and the job.

The Lincoln Community Playhouse in Nebraska has adapted the idea of the contract to its own particular situation, and it is reproduced here, with permission. Potential Board Members read and sign it before their names are submitted for election to the Board. Such a “statement of intent” goes a long way toward eliminating “dead wood” from our Boards. Bravo to Board Members of the Lincoln Community Playhouse!

Letter of Understanding

As a member of the Board of Directors (Board) of the Lincoln Community Playhouse (Playhouse), I understand that I have duties and responsibilities to the organization. These shared duties and responsibilities provide a basis of trust with other Board Members, and I will fulfill them to the best of my ability. Such duties and responsibilities include:

1. to carry out the mission of the Lincoln Community Playhouse and promote the work of the Playhouse in the community;
2. to develop a long-range plan; to set policies governing the implementation of programs to achieve that long-range plan, and to oversee the implementation of those policies and programs;
3. to approve the budget for the Playhouse; to develop the financial base to support that budget, and to participate in the financial oversight functions;
4. to provide personal financial support of the Playhouse at least at the level of a patron membership (\$80 above season ticket prices);
5. to work on season ticket solicitation and fundraising for the Playhouse. Such work would include selling at least two season memberships in addition to my own. Further, this would include attendance at and participation in special events, writing letters, telephone solicitation, and/or other such activities as well as the training sessions for such events;
6. to participate in regular and special meetings of the Board and its committees. Such participation would include attendance at 12 Board meetings each year; work on at least

one active committee of the Board (as appropriate to my skills and expertise), and telephone consultation as needed. I understand that if I miss four Board meetings (executive committee meetings can be substituted) during any 12 consecutive months, my Board seat may be declared vacant. If I anticipate prolonged absence due to circumstances beyond my control, I may request a leave of absence from my Board duties and responsibilities;

7. to resign from the Board should my circumstances change so that I am not able to fulfill this commitment to the Board.

In its turn, the Playhouse is responsible to me in a number of ways:

1. to send timely notice of all meetings with appropriate documents for decision making, including monthly financial reports which allow me to meet the "prudent person" section of the law;
2. to make paid staff available to discuss program and policy, goals and objectives, and for administrative support for all Playhouse projects and Board committees;
3. to respond (through staff or other Board Members) in a straightforward and thorough manner to inquiries of a substantive nature necessary to carry out the duties and responsibilities of the Board.

If you need more background, read *A Guide to Orchestra Governance* (the principles are the same), published by the League of American Orchestras (formerly the American Symphony Orchestra League), 33 West 60th St., Fifth Floor, New York, NY 10023-7905, U.S.A.

Appendix 16-B: LHAT Board Member Letter of Understanding

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(Note that the League no longer uses these documents, since it no longer functions as an all volunteer-run organization.)

League of Historic American Theatres

Board Member Letter of Understanding

Dear (new board member),

I am delighted to welcome you aboard as a new Director of LHAT. Our organization is committed to: (LHAT mission statement). I am sure that your skills and experience will help us meet our common goal.

Role of the Board – Basic governing functions of the Board:

- Organizational and Planning – set the mission, establish goals, create and monitor By-laws, develop internal organizational roles and external strategic partnerships
- Programming – outline the strategy to meet the League's goals
- Financial – oversight for the budget to keep the organization fiscally healthy
- Advocacy – for the League with potential new members and the public
- Personnel – policies and procedures for recruitment and review of paid and volunteer staff, including committees and Board
- Assessment – regularly assess the performance of the League and the Board in achieving its stated goals

Role of the Director – To summarize our previous conversation, as a trustee of the League your responsibilities will include:

- Setting policy for the League's operations, programs and finances
- Actively managing and advocating our organization
- Contributing your skills, time and energy to the League, including attendance at board meetings and the annual LHAT Conference
- Demonstrating your support through dues and donations

Welcome aboard. I am looking forward to working with you.

President
League of Historic American Theatres