The Legal Responsibilities of Boards

The board of directors of an incorporated non-profit organization is legally responsible for the actions of the organization, including those of its employees and volunteers. The organization may be liable (subject to a penalty) if something goes wrong. The board members themselves may be liable if it can be shown that the board itself was negligent[1]. The board must therefore demonstrate "due diligence"[2] with respect to the following four areas of responsibility[3]:

1. Fiscal responsibility

The board must insure that the organization operates in a financially responsible manner. This includes:

- Developing a financial budget and monitoring financial performance relative to that budget
- Avoiding a deficit
- Insuring the collection and remittance of required payroll deductions (income tax, UI and CPP)
- Insuring that none of the resources of the organization is used for the personal gain of officers and directors
- Maintaining financial records

2. Statutory responsibility

The organization is required to obey all laws relating to individuals and employers. Boards themselves or their primary "agent", the organization's executive director, should be familiar with labour standards, human rights and occupational health and safety legislation. Those organizations operating in particular areas would need to be familiar with additional laws and regulations (e.g. environmental protection).

Laws also come into play in terms of fundraising practices and acquiring and maintaining non-profit incorporation and charitable status.

3. Contracts

The board should have a full understanding of the organization's major contractual obligations, especially to funders, and monitor the organization's compliance with them.

4. Standard of care

The board must insure that practices are in place to reduce the risk of harm to its employees, volunteers and clients.

Due Diligence Safeguards

1. **Board education**: The Board must have some understanding of how to interpret the organization's financial statements, the kind of policies (directions to staff) it requires, and how to assess the level of risks[4] the organization faces in its day-to-day activities.

2. **By-laws and policies**: The board must insure that it follows the *by-laws* with which it was incorporated (or change them) and direct operations by setting *policies* that give directions on how the organizations will conduct itself in regard to:

   - Financial management practices
   - Human resource or personnel management practices
   - Personnel safety and client care practices

3. **Monitoring of performance:** While boards struggle with balancing their attention between the competing demands of internal operations and external and strategic issues, on a regular and consistent basis, they must spend time monitoring what the organization is doing. Monitoring primarily involves:

   - The regular review of income and expenditures (actual compared to budget)
   - An annual review or independent audit of financial results (financial statements)
   - Reviewing reports on activities (e.g. the monthly executive director's report)
   - Monitoring the implementation of key policies (e.g. part of the evaluation of the executive director)

   Evidence of the board of directors monitoring work is the **minutes** of its meetings. While minutes need not be extremely detailed, they must be complete and maintained in a safe place.

4. **Adequate insurance**: Insurance should be considered the last line of defence in risk management. Most organizations require:

   - General liability insurance
   - Motor vehicle public liability insurance (if they own/lease and operate one or more vehicles)
   - Accident, fire, theft insurance

   Where the risk to individuals is judged to be high (standards of care), organizations may want to obtain:

   - Directors' and officers' liability insurance[5]

[1] Negligence refers to the *failure* to do something a reasonable and prudent person would do or *doing* something a reasonable or prudent person would not do in the circumstances. While it is extremely rare in Canada for a volunteer board to be sued, and rarer still that it is found to be liable (i.e. successfully sued), the possibility exists.

[2] Due diligence refers to the degree of oversight, attentiveness or vigilance that would be expected from a reasonable and prudent person. Due diligence with respect to monitoring operations does not imply that a board needs to constantly delve into details, sometimes referred to as "micro managing".

[3] Legal responsibilities as used here equate with the possibility of liability. Accountability is a somewhat different area of responsibility which has more to do with the organization's ethical or moral obligations to its members, its funders and the community.

[4] Organizations in the health and human services sector, particularly those with the responsibility for the care of dependent individuals, often undertake a formal "risk management" process to determine what safeguards should be put in place.

[5] Such insurance should pay the organization's legal costs as well as compensation in the unlikely event the board is found to have some liability.