

Roles and Responsibilities for Directors and Members of Boards

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Role of Council

224 It is the role of council,

- (a) to represent the public and to consider the well-being and interests of the municipality;
- (b) to develop and evaluate the policies and programs of the municipality;
- (c) to determine which services the municipality provides;
- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) to maintain the financial integrity of the municipality; and
- (f) to carry out the duties of council under this or any other Act.

External Boards and Corporations

- Municipalities required to appoint members of Council to certain related boards (ex. Greater Sudbury Police Services Board, Public Health Sudbury & Districts, Conservation Sudbury)

Police Services Board Members

- Some boards such as Police Services Boards have specific legislative requirements regarding powers and responsibilities of directors and boards.
- O.Reg. 421/97 Code of Conduct for Members of Police Services Boards.
- S.25 PSA permits Ontario Civilian Police Commission to investigate, inquire and report on the conduct or the performance of duties of a member of a police services board.

External Boards and Corporations

- Municipalities create external Boards and Corporations in different ways.
 - S. 203 *Municipal Act, 2001* (MA) allows municipalities to establish corporations.
 - S. 204 MA municipalities can establish Boards of Management to oversee Business Improvement Areas (BIAs) (ex. Downtown Sudbury BIA, Flour Mill BIA)

External Boards and Corporations

Examples of municipal corporations incorporated under s. 203 of the *Municipal Act* or predecessor municipal legislation:

- Greater Sudbury Housing Corporation
- Greater Sudbury Utilities Inc. and Subsidiary Boards
- Sudbury Airport Community Development Corporation
- City of Greater Sudbury Community Development Corporation (known as GSDC)

External Boards and Corporations

- Must comply with any specific legislation related to the particular business (for ex. GSU – Electricity Act).
- In addition, corporations must comply with corporate statutes:
 - Business Corporations Act*
 - Greater Sudbury Housing Corporation
 - GSU and subsidiaries
 - Corporations Act*
 - Sudbury Airport Community Development Corporation
 - GSDC

Directors' Duties and Obligations (Business Corporations Act)

- Directors of a corporation are required to manage or supervise the management of the business and affairs of the corporation (*BCA*, s. 115(1)).
- Duties imposed on directors (*BCA*, s. 134).
 1. Fiduciary duty to act honestly, in good faith, and with a view to the best interests of the corporation;
 2. Duty to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
 3. Duty to comply with the Act, the regulations, articles, by-laws, and any unanimous shareholder agreement.
- Disclose conflicts of interest (*BCA*, s. 132)

Directors' Duties and Obligations (Corporations Act s.127.1)

- In discharging their duties to a corporation, directors shall:
 - Act honestly and in good faith with a view to the best interests of the corporation.
 - Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
 - Comply with the Act, regulations and by-laws of the corporation.

Directors' Duties and Obligations

In practical terms, duty of good faith involves:

1. Directors must act with a view to the best interests of the corporation, as opposed to their own interests or those of a particular constituency of the corporation (i.e. controlling shareholder)
2. Director may not divulge confidential information received in their capacity as a director, and may not use that information for personal advantage or for the advantage of another corporation of which they are directors.
3. A director may not divert opportunities for personal benefit or the benefit of another business if they could be of interest to the corporation.

Directors' Duties and Obligations

Duty of Care, Diligence and Skill

1. Directors' decisions must be informed judgments – decisions that take into account all material information reasonably available.
2. Directors must take due care to consider the relevant information; this means, for instance, that they must take the necessary time to review key documents or summaries and to deliberate.
3. Directors must take an active and direct role in key matters such as decisions concerning diversification, financings and acquisitions, and divestitures.

Directors' Duties and Obligations

Business Judgment Rule

In *Peoples Department Stores Inc. (Trustee of) v. Wise*, the Supreme Court of Canada assessed whether directors have fulfilled their duty of care and stated:

“Directors and officers will not be held to be in breach of the duty of care if they act prudently and on a reasonably informed basis. Their decisions must be reasonable in light of all the circumstances about which the directors or officers knew or ought to have known.

In determining whether directors have acted in a manner that breached the duty of care, it is worth repeating that perfection is not demanded.

Courts are ill-suited and should be reluctant to second-guess the application of business expertise to the considerations that are involved in corporate decision making, but they are capable, on the facts of any case, of determining whether an appropriate degree of prudence and diligence was brought to bear in reaching what is claimed to be a reasonable business decision at the time it was made.”

Liability of Directors

- Directors may have personal liability in some circumstances. For example:
 - Failure to pay employee wages;
 - Failure to pay taxes, HST or employee withholdings;
 - Workplace Health and Safety, EPA;
 - Payment of dividends where corporation insolvent;

Available Resources

- Effective March 1, 2019, changes to the Municipal Act will come into effect broadening the functions of Integrity Commissioners (ICs).
- ICs will be able to respond to requests from Members of Council regarding:
 - the municipality’s Code of Conduct
 - any procedures/policies governing ethical behavior of members
 - advice respecting the obligations of members under the *Municipal Conflict of Interest Act*

Protections for Directors/Board Members

- Municipal insurance program at CGS provides coverage for members of Council while performing their duties as Council members and as members of related boards.
- Indemnification for directors by corporations (ex. SACDC and GSDC). Protects director from liability except where occurring from director's willful neglect or default.
- Certain statutes have legislative protections (PSA s. 29(1) No proceedings against member for acts done in good faith.)

QUESTIONS?