



Session Guidelines

- Disclaimer: not giving advice
- Wisdom of all is needed for the best results
- Unhinge from distractions as you are able
- Ask questions

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The Big Picture

Concept

“Not-for-profit organizations operate within a framework of laws that govern what they can do and how they must do it.”

External Rules

- “Like ordinary people, incorporated organizations must obey the law.”

Internal Rules

- Objects, bylaws, policies, procedures, customs

(The Muttart Foundation, 2014)

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Types of Not-for-Profit Organizations Fact

- Unincorporated Association
- Not-for-Profit Corporation
- Trust

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What is Incorporation? Fact

- “Incorporation is the process by which an organization gets **formal legal status**.”
- Once incorporated, an organization is considered to be a **“legal person”** and has almost the same status in law as a human being.
- **Societies, companies, and cooperatives are all examples of types of corporations.”**

(The Muttart Foundation, 2014)
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What is Your Corporate Status? Fact

| | |
|--|---------------------------------|
| Societies Act (Alberta) | Companies Act, Part 9 (Alberta) |
| CNCA: Canada Not-for-Profit Corporations Act | Other |

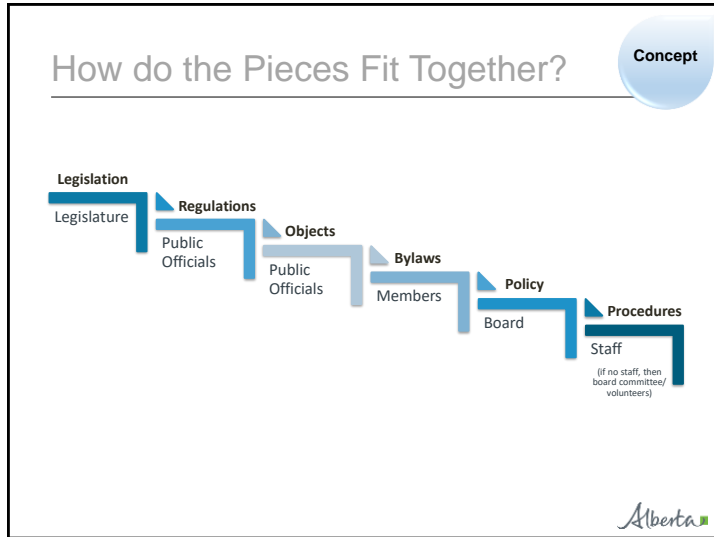
What does your birth certificate say?

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Why is it Important to Know if we are Incorporated or Not? Concepts

“The statute (law) that created your organization sets out the powers of your board and a number of rules that your organization must follow”

(The Muttart Foundation, 2014)
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What is our “Constitution”?

Fact

- Varies from statute to statute
- Generally speaking, an organization is required to file documents stating the general **objects** of the organization and **bylaws**
- These documents form the organization’s constitution

(The Muttart Foundation, 2014)

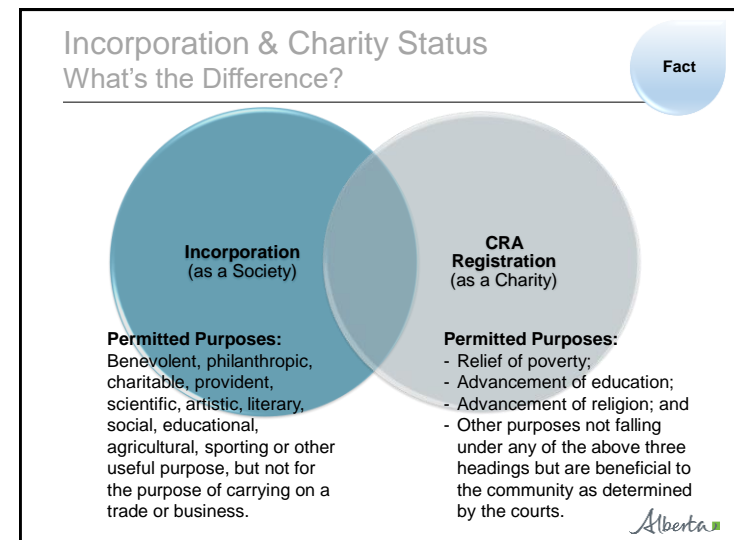
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What are our Objects?

Fact

Objects are short statements of the ultimate purpose of the corporation (non-profit).

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What Other Legislation do we Need to be Aware of?

Fact & Concept

Income Tax Act

- Nonprofit tax exemption (but still need to file an annual return!)
 - NPO: a club, society or association that is not a charity but is organized and operated exclusively for any purpose except profit.
 - NPO may earn a limited profit as long as it is incidental to and arising from activities that are directly connected to its not-for-profit purposes
- Registered Charities

Charitable Fundraising Act

- You must register as a charitable organization in Alberta if:
 - you intend to raise more than \$25,000 in gross contributions in your financial year from solicitations to individuals in Alberta
 - you will use the services of a fund-raising business
 - you have raised more than \$25,000 without intending to (in this case, you have 45 days after your contributions reach \$25,000 to apply for registration)

Others?



What are Internal Rules?

Concept

In addition to federal and provincial laws, your organization must follow its own rules.

Internal Rules Include:

- **Objects & Bylaws**
- **Policies & Procedures**
- **Motions passed by the board**

❖ Failure to follow your own rules may lead to claims for damages and even personal claims against directors.

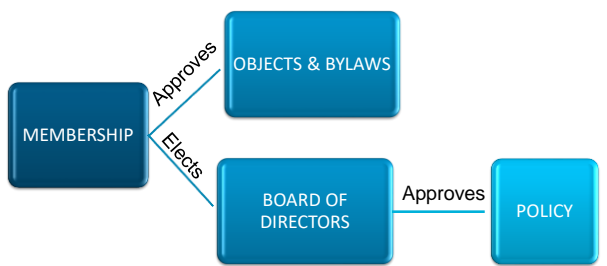
(The Muttart Foundation, 2014)



Who Makes What?

Fact & Concept

Incorporators create the first set of objects – contained in the application.



Objects/Bylaw changes are not legal until approved by Corporate Registry



What are Bylaws?

Fact

- Governing rules and regulations
- Tell your members how your organization will be managed and how decisions will be made


| | |
|------------------------------------|---|
| ARTICLE 1 - DEFINITIONS | 2 |
| ARTICLE 2 - INTERPRETATION | 2 |
| ARTICLE 3 - MEMBERSHIP | 2 |
| Eligibility | 2 |
| Withdrawing Membership | 3 |
| Membership in Good Standing | 3 |
| Initiation Fees | 3 |
| Dues | 3 |
| ARTICLE 4 - MEMBERS MEETINGS | 3 |
| General Meetings | 3 |
| Special Meetings | 4 |
| Emergency Special Meetings | 4 |




What is Policy?

Fact & Concept


- Form the written basis of operation secondary to legislation and the organization's bylaws
- Explain the rules or laws related to the group's overall mission, goals and objectives
- Provide the parameters, terms, or conditions to guide the actions of the board, committees, staff and volunteers
- Prescribe limits and pinpoints responsibilities within the organization



Activity: Checklist



| | | |
|---|---|---|
| <p>We are incorporated</p> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure | <p>Our incorporating legislation is...</p> <input type="checkbox"/> Societies Act <input type="checkbox"/> Companies Part 9 <input type="checkbox"/> CNCA (federal) <input type="checkbox"/> Other / Not incorporated <input type="checkbox"/> Unsure | <p>We are a Registered Charity</p> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure |
| <p>I have our objects</p> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure | <p>I have our bylaws</p> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure | <p>Other legislation</p> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |



Check-in


How is the pace?

Do you have any questions about the:

- Information?
- Terminology?

Do you have a question about how this information applies to your organization?

Write it down and we'll address it near the end of the session.




Governance Overview

- Concepts of Governance
- Role of the Board
- Responsibilities of the Board
- Organizational Design
- Board Effectiveness



What is Governance?

Definition
and
Concept

There are a variety of definitions for governance but they typically contain similar concepts. Two definitions we find helpful are as follows:

Governance is...

"A combination of both the overall processes and structures that are used in directing and managing the organization's operations and activities."

"The framework of rules, relationships, systems and processes within and by which authority is exercised and controlled."

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What is Stewardship?

Definition
and
Concept

Another concept related to governance is "stewardship"

Stewardship is

"The responsibility of the board of directors of an organization and involves active oversight by the board of the organization's governance."

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What is the Role of the Board?

Concept

Four Key Roles:

- Define and advance the organization's **purpose**
- Ensure, develop and conserve **resources** (financial, human and property)
- Provide **oversight** (exercise effective control)
- **Engage** in outreach with stakeholders (manage relationships)

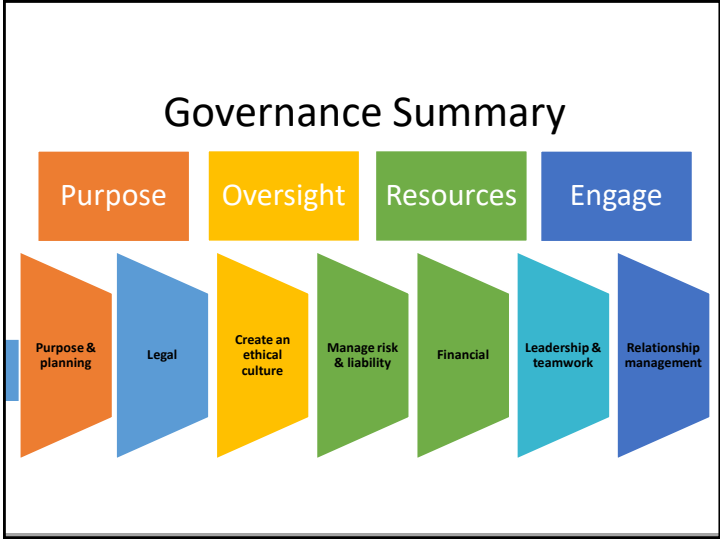
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What are the Board's Responsibilities?

Concept

1. Organizational purpose and planning
2. Legal responsibilities
3. Create an ethical culture and practice good governance
4. Manage risk and liability
5. Financial responsibilities
6. Demonstrate leadership and work as a team
7. Relationship management

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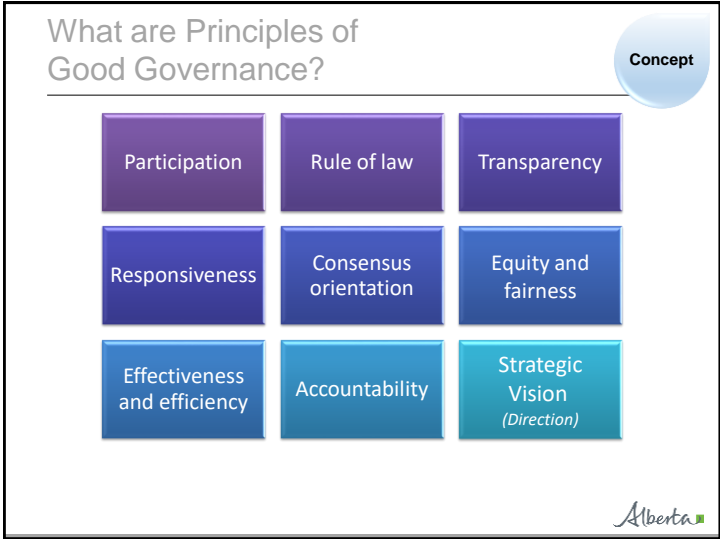


Activity: Small Group Discussion

Reflect & Share:

Can you think of examples that demonstrate how you are fulfilling the roles and/or responsibilities of a board?

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What are Skills of a Good Board Member?


Concept

Ability to present opinions

Willingness and ability to listen

Ability to ask questions

Flexibility


Dependability

Ability to think critically, creatively and strategically

ACTIVITY - Brainstorm specific activities you currently do or could do as a board to demonstrate these concepts in your organization.


(Jane Burke-Robertson, 2009)


Organizational Design: How to get the work done



Concept

Depends on:

- Governance framework** as set by the board:
E.g.: Board positions; committees; paid staff &/or volunteers; reporting relationships – who is accountable to whom and for what?
- Systems & Policies** the board puts in place:
E.g.: Agenda design / preparation; meetings; minutes, information storage; policies and procedures.
- Processes** the board uses:
E.g.: Decision making; communication; managing conflict of interest, conflict resolution.
- Organizational culture, mindset and skills** of the board.




Activity: Defining Governance Framework




1. Identify various “players”
2. Place “players” on the page and map out relationships

Decide:

- Who is accountable? – On the hook
- Who is responsible? – Does the work
- Who we need to communicate with? – Keep in the loop




Takeaways & Ideas


Enduring Understanding

KEY POINTS FROM THIS SECTION

IDEAS FOR ACTION PLAN



Legal Responsibilities

Fiduciary Duties
~Duty of Loyalty~
~Duty of Care~

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The Most Fundamental Duty

Legal Concepts

A “fiduciary” is a legal term intended to refer to a person who, because of the position they hold, has a responsibility to act primarily for another’s benefit.

F₄ I₁ D₂ U₁ C₃ I₁ A₁ R₁ Y₄

(Jane Burke-Robertson, 2009)

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What are Fiduciary Duties?

Legal Concepts

Fiduciary Duty

- Duty of Care:** Be informed and act with competence & diligence to a “standard of care”
- Duty of Loyalty:** Act honestly and in good faith in the best interests of the organization

**Board members owe these duties to the organization itself*

(Jane Burke-Robertson, 2009)

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Fulfilling the Duty of Care

Legal Concepts

- Duty to act honestly
- Duty of diligence
- Duty to exercise power
- Duty of obedience

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What is Standard of Care?

Legal Concepts

The degree of care (watchfulness, attention, caution, and prudence) that a reasonable person should exercise under the circumstances.

The **objective standard** judges all directors against the same criteria. ***'reasonably prudent person'***.

The **subjective standard** judges directors against personal characteristics, attributes, skill level, education, experience, and profession.

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How can a Director Fulfill the Duty of Care?

Legal Concepts

Pay attention and exercise 'due diligence'.

Due diligence refers to the level of judgment and degree of care, diligence, skill and activity that a person would reasonably be expected to exercise under particular circumstances.

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Activity: Examples of Duty of Care

Legal Concepts

Brainstorm as many ways as you can think of to demonstrate duty of care.

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How can a Director Fulfill the Duty of Loyalty?

Legal Concepts

- Act in the best interests of the organization and not their own interests; and
- Avoid situations in which they have competing fiduciary duties.
- Two types of “Conflict of Interest”
 1. Personal conflict between duty to act in best interest of organization and your own self-interest
 2. A conflict of duties that the director owes to the organization they serve and to another organization

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How can a Director Fulfill the Duty of Loyalty?

Legal Concepts

1. Be familiar with the organization's **conflict of interest policy**.
2. **Manage actual conflict of interest** and the appearance of conflict for self or another organization by immediately declaring any conflict of interest and following the process and requirements of the policy (i.e. abstain from discussion and voting).

Toolkit information on Conflict of Interest

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Personal Liability

Legal Concepts

Personal liability is minimized when board members are acting prudently, within their authority, and are not negligent.

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Some Final Things...

- Legal and Governance Concepts
- Roles & Responsibilities of the Board

Board also needs:

- Planning
- Financial
- Risk Management
- Meetings
- Relationships

Board's Role in Planning


Concept

One of the roles of the board:

- ❖ Define and advance the organization's purpose (objects)

One of the responsibilities of the board:

- ❖ Define and advance the mission; organizational planning (setting direction)



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Financial Responsibility

Fact

\$

“Board members are responsible for the overall management of the organization's resources – the responsibility does not simply fall to the Treasurer of the organization.”

• Source: "A Guide to Financial Statements of Not-Far-Profit Organizations" Chartered Professional Accountants (CPA) of Canada, p.8.

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Steps to Manage Risk

Concept

1. Identify
2. Assess
3. Prevent
4. Risk Response
5. Create, communicate & implement a plan
6. Monitor
7. Evaluate

Source: Adapted from *The Law of Charitable and Not-for-Profit Organizations*, 5th edition. Donald J. Bourgeois, p. 170



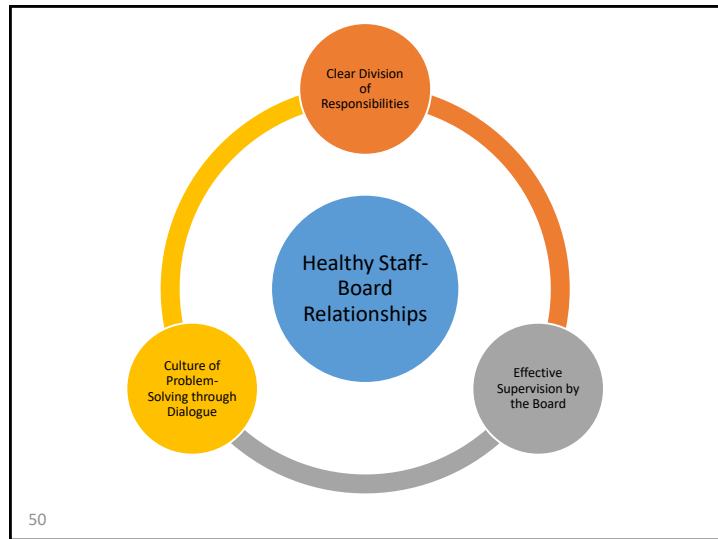
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Ingredients for Effective Meetings





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Questions?

What is sticking?

What is puzzling?

What is promising?

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