

Pro Bono Law of British Columbia

**The Establishment Operation and Maintenance of
Non-For-Profit Organizations and Charities**

How to Avoid the Most Common Mistakes

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By

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Overview

1. What kind of organization are you?
2. How are you regulated?
3. Common mistakes and how to avoid them
4. Questions and answers

What Kind of Organization are You?

- Incorporated or Unincorporated?
 - Incorporated
 - B.C. Society
 - Federal Not-For-Profit Corporation
 - B.C. Company
 - Other
 - Unincorporated
 - Club or association
 - Chapter of another organization
 - Trust
 - Established by statute

- Registered Charity, Non-Profit Organization, or something else?
 - Registered Charity
 - Charitable organization
 - Public Foundation
 - Private Foundation
 - Section 248(1) and section 149.1 of the *Income Tax Act*
 - Non-Profit Organization
 - Section 149(1)(l) *Income Tax Act*
 - Other
 - “Unregistered” charity
 - For-Profit organization
 - Foreign charity

How are You Regulated?

- B.C. Society Act
- Federal Income Tax Act
- Enabling Legislation
- Constitution
- Bylaws
- Resolutions of the Members at a general meeting
- Policies and internal rules
- Requirements of 3rd parties and funders
- Laws of general application
 - Tax law (GST, PST, etc.)
 - Criminal law
 - Human rights legislation
 - Employment law
 - Privacy laws
 - Contract law
 - Administrative law and principles of natural justice
- Duties of directors and officers
 - By statute
 - Common law

Common Mistakes and How to Avoid Them

- Failure to file returns
- Not maintaining good records
- Poor meetings
- Lack of governance
- Other nasty things!

Common Mistakes and How to Avoid Them

Filing Returns

- If you are incorporated:
 - Are you filing your annual report on time? Have you diarized the deadlines?
 - Are you filing notice of changes to your directors?
 - Are you holding your AGM within 6 months of your year end?
 - Is your Board approving the financial statements before you hold your AGM?
 - Are you filing all changes to your Constitution and Bylaws?

- Do you need to file a T2 Corporate Tax Return? (see s.150)
- Do you need to file a T1044 NPO Information Return? (see s.149(12))
- Are you filing your T3010B Charity Information Return on time? (see s.188.1(6))
- Do you need to file a GST Return? Are you entitled to a rebate? (see s.259)
- Are you selling any goods or materials? Do you need to register as a vendor for PST?
- Do you need to file any other returns (eg. T3 Trust Return, T4 slips, WCB returns, etc.)?
- Do you need to file any returns, reports or statements with any other regulator or organization?
 - Bank
 - Parent organization
 - Gaming commission
 - Government

Common Mistakes and How to Avoid Them

Maintaining Good Records

- Do you know who your members are?
 - Voting members
 - Non-voting members
 - Current names and addresses and contact info
- Do you have non-members who attend meeting? How do you identify them?
- Who are your current directors and officers? Do the records in Victoria match?
- When were they appointed? When does their term expire?
- Who are your committee members?
- Where do you keep your records?
- Is your Minute Book up-to-date?
- Where do you keep original contracts, agreements, bank documents, etc.?
- Where do you keep copies of donation receipts?
- Do you have up-to-date copy of your Constitution and Bylaws to provide to members and directors?
- Do you update bank signing authorities regularly?
- Do you keep past bank statements, financial statements, and filed returns in the event of an audit?
- Do you keep minutes of meetings and documents approved at meetings?
- Do you keep copies of all policies, committee terms of reference, job descriptions, performance evaluations, employment contracts?
- Who has access to your records?
- Do you have a records retention policy?

Common Mistakes and How to Avoid Them

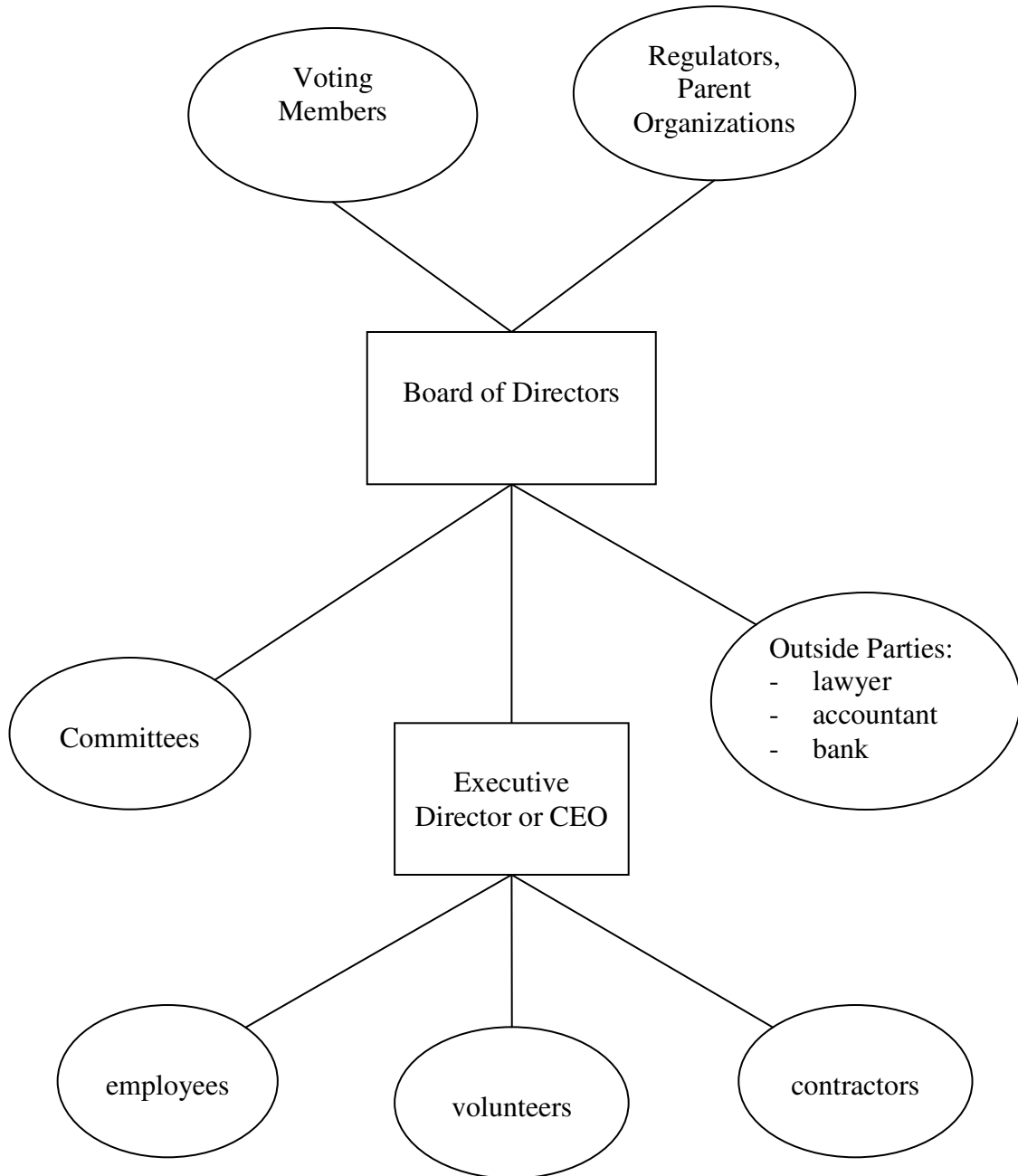
Proper Meetings

- Do you distinguish between different types of meetings?
 - Meetings of members (general meetings)
 - Meetings of directors
 - Meetings of committees
- Do you give proper notice of meetings (eg. number of days, date, location, special business)?
- Do you circulate an agenda in advance?
- Do you circulate materials in advance?
- Do you follow proper procedures at meetings?
 - List attendees / absent / guests?
 - Quorum and losing quorum
 - Appointment of chair and recording secretary
 - Adoption of rules of order / conduct
 - Documenting motions, amendments and decisions
 - Documenting dissent
 - Going “in-camera”
- Does your Chair know the role of Chair? Is the Chair trained to run a good meeting?
- Are minutes prepared?
 - Who does it? Is it the right person?
 - Do you have a policy regarding minute taking? Accurate? Complete? Prompt?
 - Discussions recorded? Names?
 - Include documents circulated or referred to
 - Signed
- Are minutes circulated and approved at the next meeting?

Common Mistakes and How to Avoid Them, cont'd

Good Governance

- Does everyone understand their role and the chain of authority?



Common Mistakes and How to Avoid Them

Good Governance (cont'd)

- Is the organization acting within its Constitution and in accordance with its Bylaws, policies and governing statutes?
- Is the organization complying with the rules in the Income Tax Act for charities or NPO's?
- Are the roles of members, directors, officers, committee members, Chair, Executive Director / CEO defined in writing?
 - Duties
 - Responsibilities
 - Authority
 - Reporting obligations
- Is it clear who speaks for the organization?
- Do you have orientation materials or programs for new members, directors, committee members, volunteers, employees?
- Do you have an annual calendar for meetings, filing deadlines and other obligations?
- Ins and outs:
 - Do you have documentation and procedures for incoming and outgoing members, directors and officers?
 - Do you have clear retirement and nomination policies and strategies for recruitment?
- Do you have key policies such as:
 - Conflicts of interest
 - Financial
 - Personal
 - Spending; cheque signing
- Are performance evaluations done consistently and regularly?
- Are budgets prepared and approved?

Common Mistakes and How to Avoid Them

Good Governance (cont'd)

- Are financial controls in place?
- Are directors aware of their duties and potential liability? Is insurance required?
- Are the Board's procedures and decision-making processes fair and transparent?
- Is everyone fulfilling their roles and doing their jobs properly? Who is making sure?
- Does the organization have ways to correct itself?

Common Mistakes and How to Avoid Them

Other Nasty Things to Watch for and Avoid

- Internal fraud or theft
- Personal benefits received
- Weak financial position of the organization
- Lack of risk analysis and strategies to minimize risks
- Lack of financial planning – short term and long term
- Lack of leadership or direction
- Weak Boards and unbalanced Boards
- “Rogue” Executive Directors / CEOs
- Weak Chairs; Dominant Chairs
- Lack of succession planning
- Conflicts and power struggles
- Disagreements and philosophical or ideological differences
- Organization is disorganized or ineffective
- Volunteer burnout
- Meetings feel like a waste of time
- Lack of an effective communications strategy. No clear message. No clear mission. Stakeholders don't have a good undertaking of what you are doing.
- Declining reputation among stakeholders. Who is monitoring this?
- Conviction by the “court of public opinion”

Question & Answer Session

Thank you for participating!