

A PRIMER ON NOT-FOR-PROFIT AND CHARITABLE GOVERNANCE

A PRACTITIONER'S PERSPECTIVE ON MATURE ORGANIZATIONS



Written by Inga Petri
Published April 2022
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Acknowledgement

Strategic Moves acknowledges that we live, work, meet and travel on the traditional territories of Indigenous peoples that have cared for this land now called Canada since time immemorial. In Whitehorse, Strategic Moves is located on the **Traditional Territories of the Kwanlin Dün First Nation and Ta’an Kwäch’än Council**, self-governing nations that negotiated modern land claims and self-government treaties (2005 and 2002 respectively) under the Umbrella Final Agreement (1993) between the 14 Yukon First Nations and the Governments of Canada and Yukon.

BACKGROUND

This primer has come about from a series of projects I have worked on in the last few years. It applies to any not-for-profit organization in Canada. Notably, many seem to use *charitable* and *not-for-profit* interchangeably. But that is incorrect: While it is true that ALL charities are not-for-profit, NOT ALL not-for-profit organizations are charities. As such, charitable organizations' key obligations that are defined in federal legislation are reflected in this primer as well.



Provinces and Territories in Canada have their own legislation related to Societies or Not-for-profit organizations as does the federal government:

Federal Legislation

[Canada Not-for-Profit Corporations Act](#) (2009)

[General Requirements for Charitable Registration](#) (2012)

Provincial and Territorial Legislation

1. Yukon's [new Society Act](#) (2018, in force 2021).
2. Northwest Territories' information about [Societies](#) and [Societies Act](#) (1988, last amended 2018)
3. Nunavut's [Societies Act](#) (1988, last amended 2011)
4. BC's [Societies Act](#) (last amended 2015)
5. Alberta's [Societies Act](#) (2000, last amended 2019)
6. Saskatchewan's [Not-for-Profit Corporations Act](#) (1995, last amended 2019)
7. Manitoba's [Corporations Act](#) (1987, last amended 2020)
8. Ontario's [Not-for-Profit Corporations Act](#) (2010, last amended 2021)
9. Québec's [National Benefit Societies Act](#) (1999, last amended 2021)
10. New Brunswick's [Companies Act](#) (1973, last amended 2019)
11. Nova Scotia's [Societies Act](#) (1988, last amended 1993)
12. PEI's [Companies Act](#), Part II (1988, last amended 2015)
13. Newfoundland and Labrador's [Corporations Act](#) (1990, last amended 2021)

These federal and territorial or provincial laws together **specify** the powers and accountabilities of members and their elected board of directors, as well as the fiduciary duty of the board of directors. These laws **do not** include any mention of the delegation of powers or accountability mechanisms to the Executive Director or other staff.

GOVERNANCE MODELS: AUTHORITY, RESPONSIBILITY, ACCOUNTABILITY

In early-stage societies, the board is often a **working board**, developing and providing services and programs directly to its membership, without any paid staff and often relying on the deep involvement of the broader membership.

As organizations grow and mature and their scope increases, they tend to require increased capacity to deliver on their mandate. Capacity comes in two ways predominantly: money and people. As revenue streams are developed, and budgets increase, boards can hire their first paid staff person. The board begins to delegate some of its responsibilities to this person. As the staff complement grows, the board tends to move to being a **management board** that complements staff activities, and, eventually, to a “hands-off, nose-in” **governance board** concerned with strategy and policies that govern the organizations.

At each stage, the governing documents should be reviewed and updated to ensure they meet the needs of an evolving organization. As an employer, policies and procedures must be developed and updated to satisfy a wide range of legal obligations emanating from Employment Law and Labour Standards, Tax legislation, Human Rights legislation, Occupational Health and Safety and any other relevant provincial and federal laws. Any delegation of day-to-day financial management should be explicitly defined to ensure the board’s fiduciary obligations and oversight are fully met. Evolving social obligations to serve a diverse membership and the community at large as well as practical considerations to provide standardized, reliable services and programs also require a set of policies and procedures.

Up-to-date, transparent delineation of lines of authority, responsibility and accountability are crucial, in order to avoid legacy behaviours from an earlier stage of organizational development – such as maintaining the committee structure of a hands-on working board while having evolved to a governance board – and to avoid misunderstandings and misinterpretations that become detrimental to the health and vitality of a society.

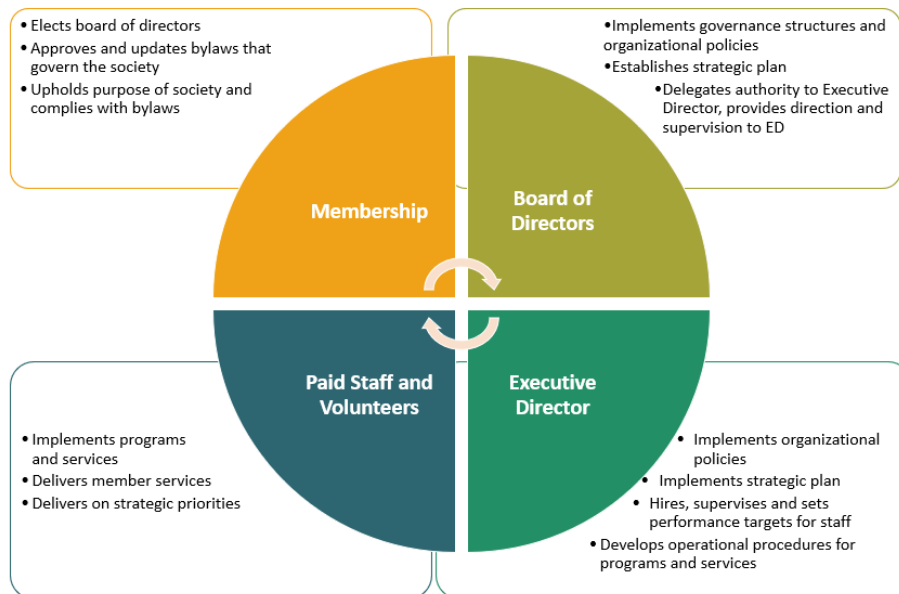
This graphic shows the basic organizational dynamic: the delegation of powers (authority and responsibility) moving clockwise from the membership toward front-line staff, while accountabilities and reporting are moving in the opposite direction from staff back to the membership of the organization.



As staff delivers programs and services directly to members, their relationship with membership can and should be trusted and respectful. Notwithstanding that closeness, accountability from staff never goes directly to the membership or the board; staff members' authorities and responsibilities are delegated through the executive director. Therefore, staff is accountable and reports to the executive director who in turn is accountable and reports to the board who in turn is accountable and reports to the membership.

BASIC ROLES AND FUNCTIONS

Each of the four groups of people within a society has specific roles and functions to ensure a well-functioning society:



1. Membership elects the Board of Directors, approves bylaws and upholds them; receives services.
2. The society is governed by a Board of Directors. The board **can delegate any of its authorities and responsibilities** to an executive director who it directs and supervises. Importantly, the Board **cannot delegate or abdicate its accountability** to the membership. As a result, boards tend to retain oversight over governance and strategy. Well-functioning boards adopt a “trust and verify” approach to hold the executive director accountable for their actions, decisions and results.
3. The executive director is normally the sole direct report to the Board¹. They are directed and supervised by the board through the founding documents, the strategic plan, annual business plans, performance planning and review as well as monitoring results.
4. All other staff report to the Executive Director or their designated managers.

¹ In some arts organizations, in particular, there are staffing and reporting models where both the executive or managing director and the artistic director report equally to the board. That two-headed structure has its own dynamics and challenges which are not discussed here.

GOVERNANCE TOOLS

Every not-for-profit organization has the same basic governance tools at its disposal. It can use them to achieve sufficient cohesion and accountability in the organization to achieve its purpose.

Legal required documents to found and maintain an organization

1. Constitution or Memorandum of Association = The purpose and what the organization exists to achieve in general terms; this document is created and updated by the membership with guidance and recommendations from the board, and anyone the board engages in that process.
2. Bylaws = Specify the governance of the not-for-profit organization, rights and obligations of members and board; the bylaws are created and updated by the membership with guidance and recommendations from the board, and anyone the board engages in that process.

Typical tools to establish standards of behaviour and how to get things done

3. Organizational Policies = Establish the broad standards of behaviours; Establish code of conduct for staff and volunteers; policies are usually created by the board in collaboration with the executive director and/or the senior management team, and anyone the board engages in that process.
4. Operational Procedures = Specific sequences of activities to implement specific tasks; usually developed by staff as it relates to implementation of plans and priorities

Not-for-profit organizations have adopted standardized management practices using key planning documents to keep track of their goals and objectives and translating them into actionable workplans

5. Strategic Plan = A 3- to 5-year strategic plan sets out the specific goals and objectives as well as success measures to take the next steps toward advancing the purpose of the society. A strategic plan is a key tool for a board in a mature organization; its creation should be undertaken jointly by the board, paid staff (sometimes with key volunteers) with input and feedback from the membership, as well as considering external factors, trends or risks, to ensure best results. Often organizations engage external strategic planners to lead this research and development.
6. Annual business plan = This plan turns the high-level multi-year strategic plan into detailed annual action or activity plans for the society; this is usually the responsibility of the executive director or the management team of a society in collaboration with staff. In large organizations there may be specific functional plans developed as well, e.g. programming, marketing and branding, development plan, facility maintenance and upgrading.
7. Annual performance plans = the annual business plan for the organization is translated into each employee's specific performance plan and targets suited to their individual role; this is usually the responsibility of the manager that the employee reports to in consultation with the employee.

As organizations grow, they may adopt management tools to aid in ensuring clarity on how decisions are made and who is involved. A popular tool is the RACI Matrix. RACI stands for **R**esponsible, **A**ccountable, **C**onsulted, and **I**nformed. The first two elements make clear each person's role in various decisions and the last two make clear what type of communication they should engage in during the project and with who.

CHARITABLE STATUS

In addition to not-for-profit incorporation, some organizations can also register as a charity with Canada Revenue Agency. Those organizations must meet the definitions of charitable activity:

- Relief of poverty
- Advancement of education
- Advancement of religion
- Or certain other purposes beneficial to the community in a way the law regards as charitable.

A number of arts organizations meet the later requirement.

Charitable status has several additional benefits:

- Issue donation receipts for gifts it receives to reduce income taxes for the donor
- Exemption from paying income tax
- Can donate gifts to other registered charities
- Donors may be more inclined to donate to a charity than a not-for-profit given the tax advantage and the trust that stems from the added financial scrutiny to which charities are subject
- Can receive grants from foundations, as charities are "qualified donees"
- Many goods and services the charity offers are exempt from GST/HST.
- Charities must have a minimum of 3 directors, with 50% at arms-length, i.e. not closely related, bylaws can stipulate a higher number of board members.

Charities can only ever undertake the charitable activities they have been approved for. They cannot act outside of those activities.

THE HUMAN FACTOR

There are some basic aptitudes and attitudes that help realize the benefits of good governance:

1. Always remember the common purpose and be responsive to emerging needs
2. Prudence in policy-setting and decision-making
3. Encourage a board attitude of being *hands off, nose in*
4. Best interest of members and the organization's health are paramount
5. Common version of reality
6. Ensure strategic planning processes include both the board of directors as well as staff who will be charged with execution to engender ownership of the plan throughout the organization

Operational Board	Governance Board
Mode: Hands-on	Mode: Hands off - nose in
No staff	With staff
Designs and runs programs to meet mandate	Strategic direction, policies, budgets to meet mandate
Recruit and support volunteers	Supervises Executive Director and delegates authority for implementation, day-to-day decision-making
Financing, grant applications, risk, growth	Staff writes grant applications, day-to-day financial management

In the end, much boils down to good, effective communication. Boards can be overly hands-off and blindly trusting; or they can default to micro-management due to a lack of trust. Staff may complain about having tremendous responsibilities without authority or autonomy. There is utility and advantage to establishing parameters within which staff can make day-to-day decisions and exercise authority over their domain. In so doing, staff must know how they will be held to account for their decisions, actions and the outcomes achieved. Board and staff should be able to maintain a supportive attitude, make space for dissenting voices and divergent opinions during deliberations without letting the issues deteriorate into personal conflict. This can be a difficult balancing act especially when there is stress in an organization, such as financial precarity or a dissatisfied membership. Several values can inform that kind of relationship.

Value	Board behaviour
Trust	Trust and verify
Respect	Be conscious of your tone; it matters. Treat others as you want to be treated.
Inclusivity	Include people (members, staff, stakeholders) in deliberations where possible and useful ("Nothing about us, without us")
Reciprocity	Mutual investment and benefit
Generosity	Give more than you take

Characteristics of Good Governance	What Can Undermine Good Governance
<ul style="list-style-type: none"> ▪ Active participation by entire board ▪ Accountable to each other, to members, the community ▪ Responsive to emerging needs and issues ▪ Consensus oriented - The popular Robert's Rules sets up a Westminster-style (adversarial) parliamentary process of motions, seconds and counter motions instead of focussing on the substance and talking out issues until a consensus emerges ▪ Transparent - being open, transparent and clear is the best way to avoid unintended communications or consequences ▪ Effective and efficient - meeting as often as needed, using committees to avoid always tasking the full board, delegating responsibilities, clear accountability measures ▪ Equitable and inclusive - reflecting the community at large is an important element in good governance, to ensure voice is shared and diverse perspectives heard ▪ Rule of law - Employment law, Occupational health and safety, Human Rights Codes all apply 	<ul style="list-style-type: none"> ▪ People - people can have personal agendas, or appear as if they do; they may also not have the knowledge or experience needed to be effective ▪ Personalities - styles of communication, styles of decision-making, styles of leadership all can contribute to creating difficult to resolve dynamics between different personalities ▪ Policies (Ineffective or too detailed) - policies that merely solve a one-off issue the organization has encountered are counter productive as are policies that are ignored or consistently enforced. ▪ Processes (Overly complicated) - it is important to scale processes and procedures to the size of an organization, and ensure quality assurance and accountabilities are clear ▪ Passive-aggressive communications - there are so many ways in which communications can go wrong ▪ Using email instead of face-to-face - many of us aren't effective email writers and we may be misunderstood, especially when it comes to emotional content; speaking together more in person or by phone, video call can help ▪ Using rules instead of standards - Rules are the ceiling, i.e., they are finite and designed to be met even if without enthusiasm; a standard is the floor, i.e., a standard can be exceeded, and excellence or innovation can be achieved. Rules based organizations tend to be risk-averse and fall back on status quo instead of looking for better ways to accomplish their goals.

It is my hope that this article can help untangle some of the more complex aspects of governance and help generate the good behaviours that make working on a Board of Directors wonderfully rewarding.