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DIRECTOR AND OFFICER LIABILITY AND BEYOND**

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**Part II
Good Governance in Meeting the Duties of Directors
of Charities and Not-for-Profits**

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Note: For a more detailed discussion, see attached Appendix B. See also the book by Donald J. Bourgeois entitled “The Law of Charitable and Not-for-Profit Organizations”, 3rd Edition

A. WHY “GOVERNANCE”?

- **Is there life after Enron and Worldcom?**
- **Tougher corporate governance laws are becoming the standard for business corporations**
- **The same need for governance applies to charities and not-for-profits as much, if not more than business corporations**
- **Accountability requires good governance**

2

B. WHAT DOES “GOVERNANCE” AND “GOOD GOVERNANCE” MEAN?

- **Governance is not the same as Good Governance**
- **“Governance” in the voluntary sector is:**
 - **“the processes and structures that an organization uses to direct and manage its general operations and program activities”**
- **Good Governance**
 - **Achieving desired results and achieving them in the right way**

3

– **Elements of “Good Governance”:**

- **Vision - envisioning the future**
- **Direction - setting goals**
- **Resources - securing resources**
- **Monitoring - reviewing periodically**
- **Accountability - ensuring efficient use of resources and reporting progress**

4

C. HOW TO ACHIEVE GOOD GOVERNANCE?

Due Diligence Is the Key

- **In order to achieve good governance, the directors must exercise due diligence**
- **To do so directors must understand the basis for their duties and responsibilities:**
 - **Objects and activities of the charity**
 - **Common law duties**
 - **Statutes, regulations and policies under which the charity operates**
 - **Regulators who have jurisdiction over the charity**
 - **Financial position of the charity**

5

Eight Areas That Are Key to Effective Good Governance:

1. Mission and Strategic Planning

- **Carrying out the mission of the charity**
- **Mission statement and organizational goals must be consistent with the law, e.g.,**
 - **Letters patent**
 - **Constitution**
 - **By-laws**
 - **Trust deed**
 - **Other restrictions**
- **Periodic review**

6

2. Transparency and Communication

- **Communicating to members, stakeholders and the public**
- **The board should:**
 - **Establish policies for communication and feedback**
 - **Establish code of ethics for the board**
 - **Establish complaint and grievance procedure**
 - **Meet regularly**

7

- **Focus on ensuring accountability**
- **Keep proper minutes and corporate records**
- **Respond appropriately to requests for information**
- **Develop a privacy policy**

8

- 3. Organizational Structures**
 - **Developing appropriate structures for the organization**
 - **Basic organizational structure documents include:**
 - **Letters patent**
 - **Constitution of the charity**
 - **By-laws of the charity**
 - **Trust deed**
 - **Proper and legal procedures for directors and members meetings**
 - **Audit committee for finance and legal liability**

9

4. Board's Role

- **Understanding of the board's role**
- **Understanding the duties of directors**
- **Developing a board governance policy**
- **Developing a code of conduct for board members**
- **Developing a conflict of interest policy for directors and officers**

10

5. Fiscal Responsibility

- **Maintaining fiscal responsibility by the board**
- **Establishing a budget; monitoring and controlling expenditure; maintaining proper accounting books and records**
- **Proper issuance of charitable donation receipts**
- **Preparing and auditing financial statements**
- **Proper management and protection of the assets of the charity**

11

6. Human Resources

- **Effective management team to oversee human resources**
- **With respect to employees:**
 - **Ensuring compliance with employment legislation and workplace safety regulations**
 - **Establishing policies and procedures**
- **With respect to volunteers:**
 - **Screening volunteers**
 - **Establishing policies for recruitment and oversight**

12

7. Implementing Assessment and Control Systems

- **Establishing a code of ethical conduct**
- **Establishing a framework of internal regulation**
- **Establishing periodic review and audit procedures**
- **Establishing an audit committee**
- **Establishing legal risk management procedures**
- **Establishing a legal risk management committee**

13

8. Planning for Succession and Diversity of the Board

- **Orientation of new directors and diversity of the board**
- **Continuous education of directors**
- **Periodic internal review and audit**

14

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