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  

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
- 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

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
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

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

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
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

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
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

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
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