### UNITED WAY/CENTRAIDE Windsor – Essex County DIRECTOR AND OFFICER LIABILITY AND BEYOND

Windsor – January 19, 2005

## 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", 3<sup>rd</sup> 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

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#### 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

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- 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?

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**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

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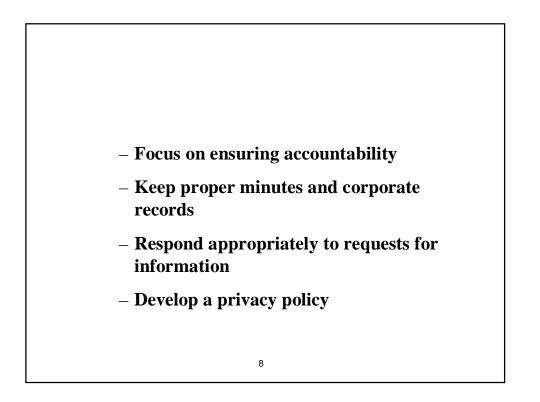
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**Eight Areas That Are Key to Effective Good Governance:** 

- 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
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- 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

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- Meet regularly



- 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

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- 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

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- 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

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#### 6. Human Resources

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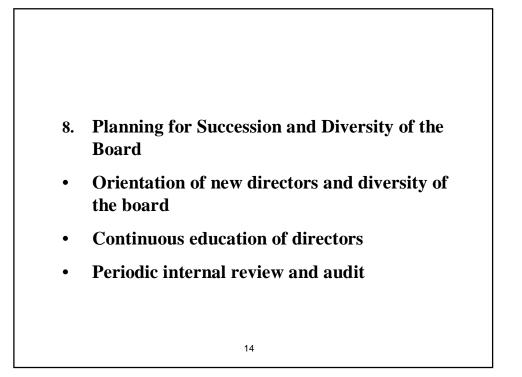
- Effective management team to oversee human resources
- With respect to employees:
  - Ensuring compliance with employment legislation and workplace safety regulations
  - Establishing policies and procedures
- With respect to volunteers:
  - Screening volunteers
  - Establishing policies for recruitment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

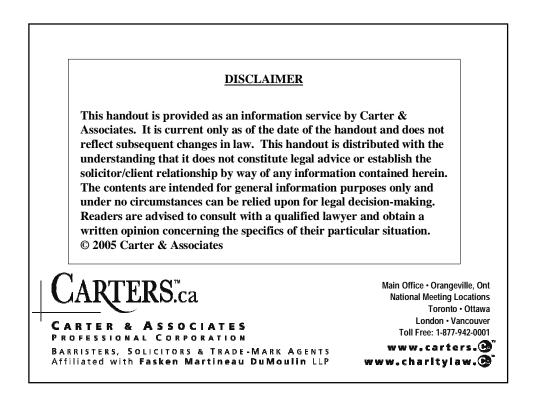
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- 7. Implementing Assessment and Control Systems
- Establishing a code of ethical conduct
- Establishing a framework of internal regulation
- Establishing periodic review and audit procedures
- Establishing an audit committee
- Establishing legal risk management procedures
- Establishing a legal risk management committee

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