



Considerations for Municipal Councillors and Staff Prior to Accepting Positions on Outside Boards

As a Municipal Councillor or staff member, you may be asked to sit on an outside Board of Directors. Each outside organization has unique needs and their own set of values, culture and sense of community. It's very important that their value system align with your municipality. A good risk management practice is to set up protocols to guide your elected officials or staff re: accepting outside board positions. Your protocols should consider the following issues.

1. Who is the organization?

An internal review of the organization should be undertaken with senior administration and/or committee members.

Questions to ask:

- a. Is there a personal and/or municipal conflict of interest?
- b. Do the mission statement, objectives and philosophy of the organization align with your municipality?
- c. Did the organization make a formal verbal or written request?
- d. Is the municipality required by legislation to have representatives on the organization's board?
- e. If you are unfamiliar with the organization, ask a staff member to do some research, (i.e. review local papers, do a Google search, along with other sources; speak with people in the community).

- f. Does your chosen representative have the required skill-sets to serve on this board?
- g. Have there been any prior or current complaints, legal investigations, Directors and Officers liability insurance claims made against the organization?
- h. Is the organization registered as an incorporated not for profit, for profit or local committee group?
- i. What role will your representative play on the board?
- j. Does your representative want to sit on the board for municipal reasons or personal interest?

2. Key Risk Management Documentation

Set up a risk management file to track:

- a. Persons that have been approved to serve on the board.
- b. Reasons for the approval.
- c. Requests that have been denied.
- d. Reasons for the denial.

This file should be updated with each new request and reviewed annually.

Here is a list of some of the documents you should request for review and keep on file:

- a. Articles of Incorporation
- b. Bylaws

- c. Conflict of Interest Policy
- d. Current financial statements
- e. Copies of their Directors and Officers insurance policies or Certificate of Insurance
- f. Confirmation of any claims
- g. Number of years to sit on the board
- h. Confirmation your municipal insurer has been informed

3. Do elected officials and staff, have the time to continue fulfilling their duties to the municipality and sit on the Board?

You should determine if the board is advisory or a real working board. Varying amounts of your time will need to be dedicated to the organization depending on what type of board it is and the responsibilities of the Directors. Find out how long board members serve because some boards have terms as long as five years. Can you commit to that length of time? How will it impact your current workload?

4. Conflict of interest, either real or perceived?

Become aware of any non-arm's length parties who own the company or hold shares and who could be contracting with the municipality. Also determine if the board participates in lobbying interests that are or could be perceived to be in conflict with those of the municipality or place your representative in a conflict of interest position. What will you do if a conflict of interest arises? How likely is that to occur?

5. Are you aware of your responsibilities under the applicable municipal conflict of interest legislation?

Every province has legislation in effect that details a director's responsibilities in a possible conflict situation. You should review this legislation and be aware of what you are required to do if a conflict of interest arises.

6. Does the organization provide sufficient personal director's liability insurance and indemnification?

Serious consideration should be given to the steps the organization is willing to take to protect its directors from personal liability. Determine that the board purchases Directors and Officers liability and that the limits are adequate to protect the Directors.

It is extremely important that each individual be aware that even though they might be given the green light to sit on a board to represent their municipality, it does not mean that they are automatically covered under the municipality's insurance.

It is also important to note, when sitting on a board created by Provincial bodies or Acts, that there is not always clear language on whether or not the members will be indemnified.

If there is no Directors and Officers insurance, in place, you are exposed!

7. How financially viable is the organization?

If the organization does not have the resources or financial frameworks in place consider this as a major red flag. (Example: Lower liability limits on their Directors and Officers liability insurance to save premium dollars but does not have solid cash reserve.)

Conclusion

We understand that many organizations and community groups are continually seeking both elected officials and staff to support them. Though you may feel obligated to accept an organization's request for a board position, you and the municipality must first realize and understand not only the rewards but also the risks.

If a group does not meet your municipality's protocols, all is not lost. There are different options available: such as appointing a liaison to work with the group; offer to sit on a committee of the organization or offer to advise on issues that involve the organization's relationship with your municipality.

As a final note – not all insurance policies are created equal. The organization's Directors and Officers liability insurance policy should be reviewed by your licensed insurance professional. It is imperative that you understand not only the coverage afforded but also the exclusions or policy limitations.

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