WELCOME

Added experience. Added clarity. Added value.
Governance Essentials for School Foundations

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Corporate Structure

Private schools and boards of education are legal persons.

- Boards created under the authority of the Education Act.
- Private Schools incorporated under OCA, CNCA, OBCA or CBCA

Governed by Board of Trustees or Board of Directors, who are elected by constituents or members.

Managed by a Director of Education or Principal, and administrative staff.

May be a registered charity.
Why have a Foundation?

Advantages:

• Different corporate purposes
• Separation of roles and decision-makers
• Requires different expertise
• Protection from liability
• Can go beyond the school level, create new partnership opportunities
A public foundation, either incorporated under OCA or CNCA, or established by trust.

Separate legal entity from school or school board

Foundation Board of Directors, and corporate members, staff, volunteers

Registered with CRA as a charity, as defined by Income Tax Act (S.149.1(1))
Foundation’s Corporate Purpose

Directors have a duty to carry out the Foundation’s charitable purpose, as defined in:

• Letters Patent, Supplementary Letters Patent (OCA); or

• Articles of Incorporation or Articles of Continuance (CNCA).

Should also be familiar with Special Provisions and Corporate authority, and dissolution clause.
Foundation Board of Directors

Board elected by Foundation’s corporate members.

**Under OCA/ONCA**

Can also have *ex officio* appointments, eg. Director of Education, Principal, and/or a Trustee.

**Under CNCA**

Directors must be elected by members. *Ex officio* appointments not permitted.
Board of Directors

Board of Directors has responsibility for management or overseeing management of corporation.

Must comply with incorporating statute (OCA or CNCA), other applicable statues, including Income Tax Act, common law, Letters Patent/Articles of Incorporation, By-laws and board policies.
Duty of Foundation Board of Directors

Fiduciary Duty to Foundation

1. Duty of Care: to act honestly, in good faith and in best interests of corporation.

Common Law: such skill and diligence that an ordinary person of similar knowledge and experience might be expected to take in the circumstances on his or her own behalf. (subjective)

ONCA/CNCA: the skill, care and diligence of *reasonably prudent person* in comparable circumstances. (objective)
Fiduciary Duty

Higher standard of care for directors of charities:

The “Trustee Standard”:

a degree of skill and prudence comparable to a reasonable business person caring for his or her own property.

Can’t be delegated, so calls for a more active role.
2. Duty of Loyalty

- No divided loyalties to other organizations
- No personal gain, conflict of interest
  - Need a Conflict of Interest policy or by-law provision
  - See provisions in ONCA, CNCA
- Confidentiality: Meetings presumed to be in camera
- Information remains confidential to Foundation unless Board resolves it can be disclosed
Foundation Members

How is membership defined in By-law?

• How is a membership created
• When does it start
• How does it expire (can it be terminated)
• How do members meet and make decisions
• Are there membership classes
Rights of Members under ONCA/CNCA

Under CNCA/ONCA, members have the right to:

• Vote as a class, and vote even if a non-voting member, on fundamental changes
• Make a proposal, including to nominate directors
• Requisition a meeting
• Remove a director
Officers

OCA: Directors shall elect a President from among themselves, shall appoint a secretary, and may appoint one or more vice-presidents and other officers. (S.289)

CNCA: Subject to the articles, by-laws and any unanimous member agreement, the directors may designate the offices of the corporation.
Corporate Records

Board is required by law to keep at corporate head office:

• Registry of Members, Directors and Officers;
• Letters Patent, By-laws, Special Resolutions
• Minutes of member, director and Executive Committee meetings, and resolutions
• Accounting records, including debt obligations
Privacy

School Boards: MFIPPA

Private Schools: policies and procedures

Duty to keep student and employee information confidential, without consent

Students: collect information for purpose of providing education, not fundraising.

Student images – need separate consent for use by Foundation
Check By-law for indemnification, and insurance policy for director liability coverage.

Examples of exclusions: directors are not covered if acting outside their capacity, guilty of wrongdoing or negligence, or have failed to act honestly, in good faith and in best interests of corporation.

Director of a charity can be held personally liable for breach of trust, imprudent investment, mismanaging of charitable funds, misdirection of a special purpose charitable trust, breaching corporate authority...
Director Liability

Also personal liability under many statutes, for example:

- AODA
- CASL
- Employment Standards Act – wages (6 months) and vacation pay (12 months)
- Income Tax Act: failure to remit employee income tax deductions, or file return
- OCA: failure to keep proper books and records
- CNCA: Contravention of Act or its Regulations

Can result in fine, repayment of debt, imprisonment.
Due Diligence Defense

Most statutes imposing personal liability on directors provide a due diligence defense. ie:

Director acted honestly and in good faith with a view to the best interests of the corporation.

Document oversight, accountability and dissent in minutes. Note that absent directors may be deemed to have consented if fail to act after becoming aware of a decision of the Board, and abstention from vote constitutes consent.
Due diligence (cont.)

Did a director reasonably rely on procedures which ought to have prevented act or omission? Factors:

• Appropriate systems and controls for monitoring
• Regular reporting mechanisms
• Requests for reports where concerns arise - can rely on staff and consultant reports where reasonable to do so.
• System for tracking implementation of resolutions
Exemption from consent and content requirements for a CEM that

“is sent by or on behalf of a registered charity as defined in subsection 248(1) of the Income Tax Act and the message has as its primary purpose raising funds for the charity.”

Consent implied for messages sent to a volunteer, member or donor in last two years.
Exempt Purposes

Examples of exempt messages

• soliciting donations;
• tickets to dinners, golf tournaments, fun runs, and other fundraising events;
• Lotteries, upcoming campaigns;
• Can mention sponsors, but not encourage recipient to participate in a commercial activity.

Electronic messages should include an unsubscribe mechanism
Liability for Volunteers

Vicarious liability, similar to employees. Therefore, ensure:

• job description and appropriate training
• policies and procedures for volunteers
• oversight
• insurance
• restrict access to personal information and other confidential data – as needed
By-Law Review

Checklist:

• Corporate objects: what may the Foundation do
• Definition of member: creation, renewal, termination, meetings, voting
• Eligibility for board of directors, nomination process, length and number of terms, rights and responsibilities
• Board and Committee meetings: how do decisions get made
By-Law Review (cont.)

• Board Procedure: how are the rights of the majority/minority views protected

• Leadership: how are officers and Chair chosen

• Board/Staff relationship: how do decisions get implemented

• Do minutes/resolutions reflect the pursuit of corporate objects.

• Conflict resolution, and conflict of interest