

Legal Issues

Legal issues are difficult. **There can be no substitute for consulting a qualified lawyer.**

For educational purposes, the following brief information gives some general examples of where a board might have problems in Ontario. **It does not claim to be a complete set of such examples.** It does **not** deal with those laws that are **specific** to individual organizations.

1. TO THE ORGANIZATION AND MEMBERS

1.a. HONOURING THE TRUST

Board members should:

- Be loyal & **honest**, act in good faith and declare any conflict of interest.
- Promote the organization's **interests** and protect its **assets**.
- Place the interests of the Organization **first**.
- Not **misuse** a vote, the assets or the organization for personal benefit.
- Not act **outside** their authority.

1.b. SHOWING DILIGENCE, CARE & SKILL

Board members should:

- Use what they can be **expected** to know (given their personal experience and background).
- Act **in the best interests** of the Organization and its members.
- Insure that the organization is properly **managed**.
- **Know** the state of the organizations's affairs.
- Become aware of the **law**.
- Avoid organizational **risk**.
- Ensure that the organization has **insurance** where applicable, including that for:
 - The **indemnification of directors** against legal fees, fines, settlement of a lawsuit or any other legal obligation expected of a board member.
 - 3rd parties.
- **Attend** meetings.

1.c. KEEPING CONFIDENTIALITY

Board members should not **disclose** information to outsiders:

- That would **harm** or **embarrass** the organization or anyone associated with it.
- For **personal** benefit.

1.d. MAINTAINING THE LEGAL STATUS

Board members should ensure that:

- An up-to-date list of **members** is kept.
- **Bank accounts** are used.
- **Annual general meetings** are held.
- Regular **board meetings** are called.
- **Directors** and **officers** are elected and appointed according to the by-laws.
- All legal **records** are kept (board-meeting minutes, annual-general-meeting minutes, financial records, policies, contracts, the Constitution, by-laws, letters patent).

1.e. OBEDIENCE

Board Members should act in accordance with the **governance policies** and **by-laws** of the organization.

2. ***TO GOVERNMENT***

2.a. **PAYING TAXES** (*or ensuring that they are paid*)

Board members can be held **personally liable** (especially in the case of bankruptcy) if the organization is **not** up to date in:

- The withholding & submitting of employee income tax, Employment Insurance, government pension contributions, etc.
- Paying GST.

2.b. **AVOIDING CRIMINAL OFFENCE** (*and ensuring that the organization avoids it*)

Board members can be held responsible if:

- They or the organization do **not** keep within the **law** (even including such things as causing environmental damage).
- For registered charities, donation **receipts** are not dispensed appropriately.

3. ***TO EMPLOYEES***

3.a. **PAYING WAGES** (*or ensuring that they are paid*)

Board members can be held liable (particularly in the case of bankruptcy) if the organization is **not up-to-date** in regular, severance, termination or overtime **pay**.

3.b. PROTECTING EMPLOYEES

Board members should ensure that the Board **fulfils** its **obligations** to employees, including:

- Providing appropriate personnel **policies** and **programs**.
- Maintaining a **safe workplace**.
- Not dismissing an employee without supporting **documentation**.
- Abiding by the Workers Compensation Act and the Occupational Health & Safety Act.

4. *TO ANY 3RD PARTY*

Board members should:

- Take precautions for 3rd party **protection**, which will be particularly needed if they:
 - act outside their authority, or
 - participate in the damage.
- Honour all **contracts**.

5. *THE LEGAL DOCUMENTS*

Those documents that have legal significance must be carefully maintained. They include:

1.	The Constitution:	A governing document which establishes the formal existence of the organization and its "founding principles".
2.	By-Laws:	Amendments to the constitution.
3.	Letters Patent (Articles of Incorporation)	Evidence of incorporation.
4.	Policies:	Guiding principles that are approved and amended through board motions.
5.	Other Documents:	Board Minutes, Contracts, Financial Statements & Records