

# Director and Officer CRF Board of Directors Duties, Code of Conduct and Responsibilities

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It is important for individual Directors to understand their legal responsibilities. The following considerations and obligations are based on the publication *Duties and Responsibilities of Directors of not-for-profit organizations*, by Hugh M. Kelly. The booklet is provided as part of the Board Orientation package and is available through the CAR office.

**Duty of Knowledge** – A CRF Director must know certain aspects about the organization. This includes, but is not limited to, being aware of the organization’s fundamental documents which are the legal foundation of the organization (e.g. Articles of Continuance, By-laws) and understanding the CRF governance process, policies, mission, vision, objectives and strategies.

**Duty of Care** – A Director has a duty in the performance of the activities of the CRF to act in accordance with a minimum standard of care, and may incur personal liability where the conduct falls short of this criterion. This generally means acting honestly and in good faith and exercising care, diligence and skill of a reasonably prudent person, in exercising his/her powers and performing his/her duties as a CRF Director.

**Duty of Skill, Prudence and Relations** – A Director has a duty to act with skill and prudence in accordance with the expertise he/she brings to the organization and the responsibilities he/she has within the CRF. To act with the duty of prudence, a Director must act with practicality and not necessarily expertise in mind, it requires a Director to act cautiously and anticipate probable consequences of courses of actions that the CRF may consider or choose to undertake. A Director should give open and fair consideration to diverse and opposing views. A Director should exercise independent judgement and should not hesitate to express dissenting opinions in an appropriate manner. A culture of respect, cooperation and collegiality should be fostered and an individual Director should not unduly disrupt the Board. The differing views of others should be respected and no attempt made to undermine or falsely impugn another Director. Disagreements must be about issues and not between individual directors.

**Duty of Diligence and Commitment** – A Director must act in the best interests of the CRF and must be fully informed as reasonably possible with respect to all aspects of the CRF. This duty involves becoming thoroughly acquainted with the CRF’s purpose and policy, what tasks are delegated and to whom, and an awareness of the organization’s operations and governance processes. A diligent Director is expected to devote the time and resources reasonably necessary to fulfilling his/her commitment including attending all Board meetings unless there are unusual or predicted personal circumstances preventing attendance during his or her term. If absence does occur, the Director is expected to review the Board materials and subsequent minutes and if the Director feels an illegal or similar act has been committed must register a dissent immediately otherwise he/she may be liable.

**Duty to Manage and Support the Board** – A Director has the duty to manage the affairs of the CRF within its current governance model. It involves establishing policies and providing guidance, complying with legal requirements, acquiring adequate knowledge of the organization and its stakeholders and enacting the bylaws and policies. There is a distinction between the duties and obligations of the Directors and those of staff. In broad and general terms, Directors are responsible for establishing policies (“the what”), management for implementing them (“the how”), and Directors for measuring management’s implementation of these policies (duty of monitoring). A Board Director should, to the best of his/her ability, be informed about the needs and opinions of the CRF membership and should ask questions necessary to be fully informed before making decisions.

A Director must act as an ambassador of the CRF staying faithful to CRF policy and should not reinterpret CRF decisions to suit his/her view. Whilst retaining independent judgment and the right to dissent during Board meetings is accepted, the Director also has the obligation outside the Board to support the consensus decisions of the Board even though they, as an individual, may have dissented from that view. A Director must not take public action that undermines the decisions of the CRF Board. If a Director intends to publicly oppose a Board action he/she should resign his/her position on the Board before doing so.

**Fiduciary Duty and Investment powers** – A Director is a fiduciary of the organization in that he/she is a person who maintains a position of trust. Where such a position exists, there is a higher standard of care. Fiduciary duties of Directors require them to act honestly and in good faith; be loyal to and to act in the best interest of the organization; avoid any conflict of interest; and subordinate every personal interest to those of the organization.

The Directors should actively engage in decisions regarding the allocation of the budget and the monitoring of financial performance.

A Director faces potential liability with respect to loss on the investment or cash balances of a corporation’s funds. The Board must oversee the CRF’s investment and other financial policies. These have established acceptable levels of risk, and the Directors must ensure that those undertaking the investments comply with the policies. They must work with the CAR’s Finance working group, Finance Director and Board appointed Auditors closely to establish ongoing policy in the light of current Canada Revenue Agency legislation regarding Not-for-Profit organizations. Although the Secretary-Treasurer is a conduit to the Finance Director for the Board, the Directors must maintain knowledge and accountability by being familiar with the circulated CRF budgetary accounts for every Board meeting. More information on how to read and become familiar with the layout of these statements can be found in: *A Guide to Financial Statements for Not-For-Profit organizations: Questions for Directors to Ask*. This is a publication of the Chartered Professional Accountants of Canada and is circulated to all Directors with their training packages.

**Delegation by directors** – Directors will sometimes be required to delegate responsibilities, for example if leading a Working Group of the CRF. Delegation does not relieve the Director from liability regarding delegated tasks; a Director continues to be responsible for the resulting actions. Delegation is best done through adopting and developing policies. Delegation should be governed by the test of what a prudent person would do under the same circumstances. If a Director cannot attend a Board meeting he/she is still responsible for reading the Board materials and is equally liable for the resulting actions of the Board.

**Duty to avoid conflicts of interest** – When a Director has a personal interest in the same subject as the organization, a conflict of interest arises. For example, a conflict may arise where a person is a Director of two organizations that are involved in the same transaction since the Director owes a fiduciary duty to both organizations, or where a Director receives direct or indirect benefits to their business or property outside of the actual transaction. There is nothing inherently wrong with the conflict of interest which are common in a Federal organization such as CRF where Directors often have provincial responsibilities, but the conflict of interest must be clearly stated and the Director must recuse himself/herself.

It is not a conflict of interest for Board Directors to be advocates for their areas of practice or geographic areas but they should be open to the views of all areas of practice and geographic regions and should act and make policy based on the overall good of the CRF without partisanship. Problems arise only when a person who has such a conflict fails to place the personal interest second, behind the organization. Such conflicts should be declared at the relevant point in every Board meeting.

**Duty of Confidentiality** – Transparency about policy and decisions to the membership must be balanced with these duties.

A Director may not disclose any confidential or proprietary information related to CRF to anyone outside the Board or authorized CAR staff. A Board Director must not disclose Board process such as individual directors' opinions on issues or negatively characterize the position of the Board or an individual member when decisions are made public. Remember the Board speaks with one voice. Where a decision is delayed or deferred, a Director should not disclose Board actions or deliberations.

**Duty to act within scope of authority** – Directors must know both the scope of their own authority and the permitted activities of the organization. Personal liability can attach to a Director whenever that Director, by positive action or neglect, permits the organization to carry on activities that are *ultra vires* of the organization (beyond its power or authority). An individual may also incur liability when acting outside the scope of the actual authority that has been granted to him or her.

A Director may not act in an official capacity or speak publicly on behalf of the CRF unless empowered to do so by the President, CAR CEO or as specifically empowered by the Board. A Director who, by Board assignment or duty, is expected to communicate through an official CRF channel such as the e-newsletter or CRF Social Media tools is authorized to speak for the Board in that capacity and for that purpose. A Board Director speaking publicly to CRF members or others, where not specifically empowered, must ensure that his/her statements are clearly identified as personal opinions and that he/she is not speaking in any official capacity or expressing the views of the CRF.

#### References:

- *Duties and Responsibilities of Directors of not-for-profit organizations*, by Hugh M. Kelly.
- *A Guide to Financial Statements for Not-For-Profit organizations: Questions for Directors to Ask*. CPA of Canada
- CRF Board Director Job Description 2017

Adopted by the CRF Board of Directors on October 4, 2017