

The BC Conference of Mennonite Brethren Churches

A. Guidelines for Board Members (also means Elders in Leadership) Legal Responsibilities

1. The Board structure and governance model should be described in your church bylaws. These bylaws should include a clause that authorizes Board members, officers or elders to be indemnified (*not held responsibility for the guarantee to make compensation for loss or damage*) against actions permitted by charity law. This is in addition to the insurance coverage negotiated by the BC Conference for directors and officers.
2. Board members of leadership teams have fiduciary responsibilities (*means the duty to act in good faith, with honesty and in the best interest of the organization*) as well as trustee (*or stewardship*) responsibilities. Common-law responsibilities are based on common sense and implementing the following suggested policies will help to protect Board members from liability (*you are “liable” if you do something negligent that hurts someone or costs them money. That means you can be asked to pay for damages or losses*).
3. The Board must be aware that actions it has delegated to a committee remain the Board’s responsibility as a whole.
4. Individual Board members have only those powers which are bestowed on them at Board meetings. They should not make decisions and carry out actions that are not approved and recorded in minutes of the whole board. If a member or officer of the Board acts in a manner inconsistent with the Board's specific authority but has been allowed to hold himself out to the public as having authority to represent the organization, the decision or action of such member or officer may still be enforceable and binding on the organization and the Board under the doctrine of ostensible or apparent authority. A Board must ensure that only those persons specifically authorized to represent their organization are in fact allowed to do so.
5. Specific duties imposed on Board members of a charity include:
 - 5.1. Every Board member must act with honesty, in good faith and in the organization’s best interest. This includes sharing with all Board members any knowledge of illegal or improper volunteer or employee actions. Failure to do so could result in the Board member being held personally liable should such acts result in material loss to the church.
 - 5.2. The requirement to act with diligence and prudence means the Board members must keep themselves informed about the organization’s policies, activities and affairs
 - 5.3. A Board member who is an expert in any field must use that knowledge to benefit the organization. Common law does not make Board members liable for honest mistakes, or to go beyond the limits of their own knowledge and ability.
 - 5.4. Avoid the “follow the leader” syndrome where the church sets a policy to act in a certain way just because another charity has done so and seemingly “got away with it”. You must investigate the facts, policies and law for yourself or rely only on a very trusted source. This is particularly prudent when dealing with donated funds.
 - 5.5. Failure to attend Board meetings on a fairly regular basis might make that member liable for decisions made in their absence and about which they had little or no knowledge, as this could be demonstrated as a lack of diligence.

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5.6. Board members who were present at a Board meeting are considered to have agreed with any resolution passed or action taken. The only exception is when they have their negative vote recorded in the meeting's minutes. If a Board member is not present at the meeting and disagrees with the vote or action, they can have their disagreement registered in writing as soon as they become aware of the decision or action.

5.7. Board members should ensure that they receive regular, detailed reports about the church's activities as carried out by the Pastor/s and staff. When the Board receives those reports, it should make sure they evaluate those reports to make sure they comply with the Board's policies and all legal and fiduciary requirements.

5.8. The Board should have a conflict of interest policy that covers both real and perceived conflict of interest for all Board and committee members as well as staff. In the event of a likelihood of a conflict of interest or perceived conflict of interest, the Board member (or staff) must make full disclosure to the board of the specific form of interest and the benefits that would be received. Then that Board member should excuse him or her from taking part in debate or voting on that particular issue and this would be recorded in the minutes.

5.9. Board Members might be held liable to third parties for misrepresenting their authority by misusing funds, making improper loans or making unlawful profit in the course of their duties as directors. Another potential liability would be in acting outside the scope of their authority as defined by the church's constitution and bylaws. This applies to current Board members as well as past members.

6. Review the operating procedures and policies of your church and ensure that the guidelines are in place including hiring practices, harassment, abuse and reporting abuse policies as well as employment related practices. Also ensure that these policies are adhered to by staff and volunteers.
7. Ensure that your church has in place procedures and guidelines for the required filings, taxes, withholding and remittances due to the Provincial and Federal Government, including Charities Division.

Bibliography:

Information adapted from "Serving as a Board Member" by Dick Kranendonk, CCCC (distributed by permission)

Handouts at the CCRA "Roadshow" seminar

Volunteers & the Law Booklet published by the People's Law school and Volunteer Vancouver – one copy available for each church