

20 Questions Directors of Not-For-Profit Organizations Should Ask about Human Resources

Laura Cassiani • Paula Pettit



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Preface

The Corporate Oversight and Governance board (COGB) of the Chartered Professional Accountants of Canada (CPA Canada) is committed to helping directors of not-for-profit organizations fulfil their responsibility for supervising their organization's human resources (HR).

Accordingly, CPA Canada developed this publication to equip directors of not-for-profit organizations with insights and advice on the kinds of HR issues that can face a board. From recruiting and retention through compensation and succession planning to terminating employee relationships, this publication aims to help navigate the complex people issues and regulatory compliance obligations that arise in not-for-profit organizations in Canada today.

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Introduction

Serving as a director on the board of a not-for-profit organization and giving back to your community can be enriching and enjoyable. It also involves some significant responsibilities, and key among them is the board's stewardship of one of the organization's most important asset—its people.

Discharging this responsibility requires directors to understand the multifaceted, rapidly evolving human resources (HR) challenges that are unique to the not-for-profit sector, while also being aware of the legal and regulatory landscapes that govern HR matters.

You don't need to become an HR expert to serve as a director of a not-for-profit organization, but it's helpful to know the kinds of issues that can arise and some strategies for dealing with them. The 20 questions in this guide offer guidance and tools to help directors of not-for-profit organizations:

- understand their role and responsibilities for overseeing the organization's overall HR strategy
- recruit, manage and evaluate the organization's executive director¹
- oversee the organization's other employees, volunteers, independent contractors and other service providers.

Bear in mind that this publication is not a substitute for legal advice. Directors are encouraged to seek legal counsel for specific issues.

¹ The title of the most senior management position in not-for-profit organizations varies and includes executive director, chief executive officer, national director and general manager. For simplicity, references to "executive director" in this publication encompass all top-most management titles.

HR Law 101

In Canada, most employees are governed by the laws of the province they regularly work in. Only a fraction of Canadian employees are federally regulated, and they are employed in federal businesses or federally regulated undertakings, such as banking or telecommunications. HR law in Canada is quite complex as a result, with federal laws governing federally regulated employees, and different provincial laws governing provincially regulated employees.

Further, except in Quebec, employees are subject to the common law or “judge-made” law arising from jurisprudence developed by courts and other adjudicative bodies, such as human rights tribunals. In Quebec, the Civil Code of Quebec is the governing law, in addition to provincial employment-related statutes and regulations.

While the laws governing the workplace are largely consistent federally and from province to province, directors should be aware that there are some subtle—and not so subtle—differences. Local laws should be consulted in each case.

The Director's Roles and Responsibilities

1. What are the director's HR responsibilities?

Directors of not-for-profit organizations are responsible for the supervision and management of the organization's activities and affairs.² While boards of directors usually delegate direct management of people issues to senior employees, the directors retain overall responsibility for overseeing the organization's human resources – which include not only staff but also volunteers, interns, agents and independent contractors.

This responsibility extends to overseeing the organization's overall HR strategy, which often includes:

- attracting and retaining talent
- succession planning for key employees
- enhancing employee engagement
- diversity and inclusion initiatives.

Ensuring compliance with all legal requirements related to HR is also a key responsibility of the directors.

To minimize risk and liability, directors need to understand the organization's obligations to its employees and other service providers. While it is appropriate to expect that management will keep the board apprised of HR developments, directors should proactively seek the information necessary to satisfy themselves that their understanding is sufficient to oversee the organization's HR appropriately.

² See, for example, the Canada *Not-for-profit Corporations Act*, S.C. 2009, c. 23, s.124. Other jurisdictions have adopted similar language to express the duties of the directors of a not-for-profit organization.

Organizations that do not meet their HR-related legal obligations may be subject to legal proceedings and penalties. Directors can be personally named in a lawsuit, human rights application or other proceeding. In some cases, directors may be personally liable for their own actions or omissions, or for the conduct of the organization. Directors' and officers' liability insurance can help protect directors in these circumstances.

Since effective HR oversight is critical to risk mitigation and avoidance—and the organization's success—directors should consider whether appropriate talent has been recruited and retained, especially at the senior management and leadership levels. Organizations should also consider recruiting directors with expertise in the HR field, where possible.

2. How can directors organize themselves to discharge these duties and responsibilities?

There is no one-size-fits-all approach to how directors should organize themselves to meet their HR-related responsibilities. Directors may consider many factors, including the size of the organization, HR complexities arising from its workplace, the nature of the organization's activities, and the competencies of directors and management. Whatever structure is established, the board of directors as a whole remains responsible for directing and overseeing the organization's staff and HR strategy and for putting in place processes to minimize risk and liability.³

Smaller organizations may not have a qualified HR professional on staff. Their directors may need to get more involved in management issues, making decisions about recruiting, retaining and compensating employees and other service providers, and about discipline and termination. In larger organizations, the executive director and other senior or dedicated HR staff handle these functions, with the board of directors providing strategic direction and oversight.

Depending on the organization's size and resources, the directors might choose to form a committee to manage these obligations, established with a clear mandate and well defined tasks (e.g., collective bargaining, policy development, leading employee engagement initiatives, compensation surveys and job reviews). Where possible, directors on the HR committee should have relevant HR experience. Unless restricted by the organization's bylaws or where there is a potential conflict of interest, the

³ See CPA Canada's *Governance for Not-For-Profit Organizations: Questions for Directors to Ask*.

HR committee might include HR personnel from the organization, either as members or in an ad hoc advisory capacity. Bear in mind, however, that even when a HR committee is established, the board as a whole retains overall responsibility for the HR function.

HR committees are often tasked with making recommendations to the board on the recruitment and appointment of the executive director and the organization's compensation philosophy. The committee might also oversee and, depending on the size and resources of the organization, develop, for recommendation to the board, policies for recruitment, training, employee relations, health and safety, succession and talent management, compensation, performance management and benefits administration.

Organizations may try to recruit directors with HR expertise and to provide the HR committee or full board with ongoing training and education in this complex area.

While these tasks may seem daunting, there are strategies that a board of directors can adopt to manage potential liabilities.

One strategy is for the organization to establish a code of conduct that sets the foundation for the organization's expectations. A code of conduct may identify accountabilities not only for the organization's employees but also its directors, volunteers, contractors and other service providers. If properly and consistently implemented, a code of conduct can discourage conduct that is out of step with the organization's principles and values.

While codes of conduct vary among not-for-profit organizations, they usually:

- codify and communicate the organization's core principles and values
- set clear expectations for behaviour and conduct of employees and others covered by the policy
- help recruit and retain talent
- provide a tool for new employee training
- set expectations for service providers (e.g., contractors, agents) in their dealings with the organization and its employees
- specify sanctions for breaches.

In addition, as part of their oversight role, directors should require and ensure that the employees who manage the HR function review all personnel policies annually or as prescribed by legislation. It is also advisable to have legal counsel review the organization's personnel policies every few years to ensure ongoing compliance.

3. What personal liabilities might arise for directors from HR issues, and how can directors mitigate the risk?

The HR-related legal duties imposed on directors of not-for-profit organizations arise from common law, corporate statutes, employment-related statutes, or a mix of this legislation. These legal duties can be complex and vary among jurisdictions. Directors should be aware of the personal liabilities that might arise, the standard of care required in fulfilling their duties, and available defences if their conduct is scrutinized. As a result, the board needs to confirm that the executive director and other senior management are discharging their duties on behalf of the directors competently and in compliance with all legal requirements. [Appendix A](#) sets out various statutes that impose liability on directors of not-for-profit organizations.

Some potential personal liabilities for directors are as follows:

Employment standards

Directors may be personally liable for paying amounts owed to employees under employment standards legislation, as well as other penalties and fines. Among other things, this liability may extend to unpaid wages and severance and vacation pay. In some cases, directors can be liable for other breaches of the statute. In some jurisdictions, legislation does not allow directors to use due diligence as a defence.

Occupational health and safety

Federal and provincial occupational health and safety laws impose significant obligations and personal liability on directors in some circumstances. In Ontario, for example, directors must “take all reasonable care” to ensure that the corporation complies with the legislative and related requirements or face personal liability including fines, surcharges and, in rare cases, imprisonment.⁴

⁴ Occupational Health and Safety Act, R.S.O. 1990, c. O.1, s.32 and 66(1).

Criminal negligence

Directors can be charged under the *Criminal Code* (R.S.C. 1985, c. C-46) for criminal negligence if reasonable measures are not taken to protect an organization's employees from harm at work.

Taxes, withholdings and source deductions

Directors could be liable if the organization fails to comply with certain federal and provincial income or sales tax requirements. These lapses include not making and remitting source deductions such as income tax, Canada Pension Plan (CPP) premiums and Employment Insurance (EI) contributions, and not meeting certain reporting obligations.

Pension plans

If an organization administers a pension plan, the administrator (usually the organization) has a duty of care under pension standards legislation and has fiduciary duties to plan beneficiaries under common law. However, ultimate legal responsibility under the pension legislation rests with the board of directors. Although some aspects of plan management and administration can be delegated, the board of directors is still ultimately responsible for ensuring that the pension plan and the pension fund are properly administered, and that the assets of the pension fund are invested in compliance with relevant legislation and regulations.

Under pension standards legislation, a director may be subject to penalty for breach of the legislation in some cases, regardless of whether the organization has been found liable for the breach. Liability may also arise under common law for breach of fiduciary duty if the director fails to act in the best interests of plan members and other beneficiaries.

Corporate statutes

Directors are potentially liable for unpaid wages under federal or provincial corporations statutes. The pre-conditions for director liability and quantitative limitations differ among these statutes, so directors should find out the requirements of the legislation that applies to them.

The board and individual directors can minimize exposure to liability for HR-related matters by ensuring effective oversight mechanisms are in place to confirm that management complies with statutory requirements and maintains complete records. In some cases, it may be prudent (or required as part of the board's duty of care) for the board to employ outside experts and advisors for guidance. A sample checklist for compliance attestation is included in [Appendix B](#).

In addition, directors should confirm that the organization covers directors for HR-related liabilities by providing indemnification and insurance (via bylaw or agreement), where legally permitted. In some cases, the right to indemnification may arise under the organization's governing statute.

Overseeing the Executive Director

4. How does the board select and hire an executive director?

The executive director is the public face of the organization—its key representative to funders, donors, members, employees and other stakeholder groups. It is important for the board to retain a person who can effectively represent the organization while handling the position's demands competently, diligently and professionally.

Selecting the right executive director is one of the board's key functions. To do so, the board needs a clear sense of the executive director's overall mandate and specific duties. These responsibilities are typically set out in a detailed job description, which is broad enough to cover the job's full scope while remaining flexible to allow the role to develop and expand.

Before the search begins, the board should assess the organization's current and projected needs and objectives in light of its strategic plan, values and mission. The board could also complete an inventory of the skills and competencies needed to fulfill these needs and goals.⁵ In this process, the board may enlist executive recruitment and selection advisors to help review and update the executive director's role description and design the recruitment process. The board may also consult with staff at various levels to determine whether the job profile needs revision based on the day-to-day realities of how the executive director functions.

⁵ For an in-depth discussion of succession planning and CEO recruitment, see CPA Canada's *20 Questions Directors of Not-For-Profit Organizations Should Ask About CEO Succession*.

There are many approaches boards can take to select an executive director. Some act jointly in all aspects of the recruitment process. Others establish a special executive search committee or delegate the search to an existing HR committee. Given the amount of time involved, putting a committee in charge can be effective. Not-for-profit organizations also commonly retain third-party professional recruiters to help identify candidates and do preliminary screens and background checks. While a committee may recommend a candidate for recruitment, the board as a whole is responsible for the final decision.

Once the job profile is in place and potential candidates have been identified, the board (or committee), possibly with help from a third-party recruiter, would then interview candidates and conduct other preliminary screens. One of the difficult but important aspects of the recruitment process is hiring an executive director who is a good cultural fit for an organization, meaning someone who has an attitude and approach that is aligned with the organization's corporate culture and values. It may also be worthwhile to consider a personality assessment of potential candidates. Human rights laws apply to the selection and recruitment practices of all organizations, so the board should educate itself on these obligations before the process starts. In some jurisdictions, accessibility laws may also impose requirements on the recruitment and selection process. Diversity and inclusion initiatives (see [Question 16](#)) should also be kept in mind throughout the hiring process to ensure it is in line with the organization's broader objectives.

5. How should the board set the compensation of the executive director?

Compensation is a key factor in the recruitment and retention of leadership talent in the not-for-profit sector.⁶ As noted below, the compensation strategy should not only help in recruitment but also reflect a responsible use of the organization's resources.

As with recruitment, the task of setting compensation for the executive director may be delegated to the board's HR committee, but the board as a whole is responsible for setting and approving compensation for the executive director. Retaining external consultants is often advisable and prudent in exercising the board's fiduciary duties in this regard.

6 HR Council for the Nonprofit Sector, "Driving Change: A National Study of Canadian Nonprofit Executive Leaders" (J. Morris and G. Cottle) [www.hrcouncil.ca/documents/driving_change.pdf].

The board can establish an objective process for setting the executive director's compensation, taking into account the organization's financial constraints as well its mandate and strategic goals. These factors should be part of an overall compensation philosophy that directs what and how performance is to be rewarded.

When reviewing compensation, the board's overriding objective may be to confirm that pay is effective for recruiting top talent in specialized roles, responsible in value and cost, and defensible to stakeholders.⁷ Elements that the board may consider when reviewing the organization's compensation philosophy include:

- **Benchmarking**—How do the organization's compensation practices compare with those of similar organizations?
- **Internal equity**—Is the compensation philosophy applied uniformly to all roles within the organization, and are similar roles compensated in a similar manner? Is there equity internally, and if not, can differences be justified?
- **Pay/performance linkages**—Is compensation designed to motivate particular behaviours or reward achievement of specific goals?
- **Link to organizational strategy**—Can the compensation philosophy be clearly linked to the organization's strategy?

Elements of Executive Compensation

"Compensation" includes base salary as well as other monetary and non-monetary benefits and fringe benefits an employee may be entitled to in exchange for their services. In addition to a base annual salary, the following benefits may form part of the executive director's compensation package:

- Insured health and dental benefits and life insurance
- Income replacement coverage in the event of illness, including short-term and long-term disability coverage
- Defined benefit or defined contribution pension plan, or contribution to a registered retirement savings plan
- Vehicle allowance (if appropriate for the role)
- Separation terms that provide for a severance package exceeding minimums provided under employment standards legislation but appropriate in the circumstances
- Competitive leave provisions (e.g., job-protected sabbaticals, paid vacation)
- Subsidized professional development
- Other perquisites (e.g., mobile phones, laptops, flexible work arrangements, relocation allowance).

⁷ Adapted from CPA Canada's *20 Questions Directors Should Ask About Executive Compensation (2nd ed)*.

- **Incorporation of non-financial rewards**—Does the compensation philosophy address non-monetary benefits such as working environment, flexible hours and opportunities for development?

External controls and limits may also influence how executive compensation is set. For example, not-for-profit organizations operating in the public sector may be subject to compensation guidelines and/or legislation. As another example, the directors of a registered charity should ensure that the executive director's compensation is within the range of fair market value for the services rendered to avoid claims that charitable funds or resources are being used inappropriately.

6. Should the organization disclose the executive director's compensation?

The rules requiring not-for-profit organizations to disclose the compensation paid to its top earning employees vary across the country.⁸

Provincial compensation disclosure legislation applicable to broader public sector employers may oblige a not-for-profit organization to disclose the compensation of its executive director and other staff who are paid over a statutory threshold. For example, Ontario's *Public Sector Salary Disclosure Act* requires not-for-profit organizations under its purview to disclose compensation of any employee earning \$100,000 or more in certain cases.

Registered charities in Canada are required to disclose in their annual filing with the Canada Revenue Agency (CRA) the total compensation for all employees, including the aggregate paid for all part-time or part-year employees in the fiscal period. Registered charities must also disclose their ten highest paid permanent, full-time employees by indicating the range of compensation from \$1–\$39,999 to \$350,000 and over. This information is made available to the public. Charities do not have to disclose individual compensation figures, link the positions to salaries, or identify specific employees. Similarly, non-profit organizations may need to disclose the total remuneration and benefits paid to all of its employees if it is required to file an annual return with the CRA.

⁸ See the compensation disclosure obligations set out in the new British Columbia *Societies Act* [SBC 2015] Chapter 18.

Given rising public interest in corporate accountability and transparency, executive compensation across all sectors continues to make headlines in Canada. Good governance is generally accepted to entail transparency over how compensation is set and what compensation is paid, whether or not required by law. For example, as part of its accreditation, Imagine Canada requires not-for-profit organizations to make information on compensation available to their stakeholders “to at least the same level as that required by the CRA”⁹ for registered charities.

Where no legislative requirements apply, it is up to the board to determine the organization’s compensation disclosure practices in line with its guiding principles and values and any requirements mandated by funders or the organization’s bylaws.

Terminology

The terms registered charity, non-profit organization and not-for-profit organizations are often used interchangeably, but in fact have different meanings.

Registered Charity: a charitable organization, public foundation, or private foundation registered with the Canada Revenue Agency.

Non-profit Organization (NPO): an association, club, or society that is operated exclusively for social welfare, civic improvement, pleasure, recreation, or any other purpose except profit. It is not a charity.

Not-for-Profit Organization (NFP): an overarching term encompassing both registered charities and non-profit organizations.

7. What is the board’s responsibility for overseeing the executive director?

CPA Canada’s *Governance for Not-For-Profit Organizations: Questions for Directors to Ask* underscores the importance of the relationship between the board and the executive director:

The board-[executive director] relationship is the most important one in the not-for-profit. The [executive director] translates the board’s directions into action and provides the board with most of its information about how the organization is performing. Consequently, a healthy productive relationship between the board and

9 Imagine Canada Standards Program for Canada’s Charities & Nonprofits (revised October 2014), at B.11.

the [executive director]—and especially between the board chair and the [executive director]—is essential to the board’s effectiveness and the organization’s success.¹⁰

The executive director manages the organization, and the board is responsible for managing the executive director. A board that does not properly discharge this responsibility could be seen as failing to exercise its fiduciary duty to oversee management.

The board’s oversight function requires it to ensure that the executive director is fully engaged in all aspects of the organization and has set appropriate reporting and control mechanisms across the entire organization. Since the executive director channels information about the organization to the board, the board is responsible for ensuring that the executive director has put in place the internal systems needed to support accurate and timely reporting of all material items.

The board should evaluate the executive director’s performance formally and informally, as needed but at least annually. It is critical that the board hold the executive director accountable for discharging the role’s responsibilities in ways that align with the board’s objectives and expectations. As a corollary, the board is responsible for clearly communicating those objectives and expectations to the executive director.

Directors should seek to establish an active dialogue with the executive director to support and advise them as necessary. The chair of the board or HR committee may engage with the executive director between board meetings to manage and monitor the relationship and keep on top of any issues.

Finally, as with any employment relationship, directors must act honestly and in good faith toward the executive director throughout his/her employment, including at its end. Failing to uphold these obligations could result in a finding of bad faith and liability for the organization and, in some cases, individual directors.

¹⁰ At p. 33.

8. How can the board fulfill its responsibilities for executive director oversight?

The board as a whole is responsible for managing and overseeing the executive director, even when some supervisory functions are assigned to specific directors or committees. At the same time, the board should be cautious about overstepping its role and undermining the executive director. Micromanaging the executive director can diminish his/her role and authority, impairing his/her effectiveness with stakeholders, employees and others. In some cases, a board's interference can result in legal consequences, such as a "constructive dismissal," or job dissatisfaction that could lead to the executive's premature departure. In extreme cases, the executive director might even claim that he/she was bullied or harassed, depending on the nature of the interactions.

To promote a good working relationship with the executive director while maintaining oversight, the roles and responsibilities of the board and the executive director should be clearly documented, communicated and enacted by all parties. The board should also set and communicate reasonable, clear and objective performance and behaviour standards for the executive director, together with output measurements. As with any employee, the board may involve the executive director in setting goals and seek their feedback regarding measurements.

Best practice in executive director oversight includes regular performance reviews based on consistently enforced performance standards and measures. The executive director's performance should be formally reviewed against the agreed-upon objectives annually and informally as needed.

The board's feedback to the executive director may include guidance on areas where improvements are needed. This feedback may serve as the basis for a program of development for the executive director. Changes in the organization or its environment may also necessitate training and development for the executive director. The HR committee or the board chair should confirm that any additional training is consistent with and advances the organization's goals.

In camera sessions¹¹ should be held as part of every board meeting, and when appropriate, the board should be offered opportunities to informally share their opinions and observations about the executive

11 An *in camera* session is one where the board meets without the executive director or others present.

director's performance and identify areas where more coaching or support from the board may be needed. It is also helpful to have a process in place for two-way communication between the board and the executive director between regular board meetings.

9. How does the board address succession planning for the executive director?

The board needs to be ready for a planned or unplanned departure of the executive director. Succession planning is a key part of the board's oversight function of the executive director's office and the directors' duties to confirm the organization remains well-managed.¹²

However, succession planning is often overlooked until the organization faces a crisis. In a 2011 survey, over half of the 1,251 executive leaders employed in the Canadian not-for-profit sector said they planned to leave their positions within four years.¹³ Most board members surveyed said that their organizations did not have a succession plan in place for the executive director role, while just over half reported that their organization had an "emergency succession plan in place."¹⁴

A "planned succession" involves a succession plan that is triggered by an expected event, such as a planned retirement. To prepare for a planned succession, the board should have regular discussions with the executive director regarding his/her plans, including a timeline for any retirement or resignation and the status of ongoing projects and initiatives. However, an executive director cannot be compelled to provide a retirement date and the board needs to be flexible when plans change.

An "unplanned succession" due to the executive director's sudden illness, unplanned resignation or a dismissal is often more challenging as the board works with little notice of the executive director's departure.

As a director, you may face a situation where the board has decided to terminate an executive director's employment. Generally, the organization must give employees advance notice of their dismissal, or pay in lieu of notice, unless "cause" for the termination is established.

12 For an in-depth review of this topic, see CPA Canada's *20 Questions Directors of Not-For-Profit Organizations Should Ask about CEO Succession*.

13 HR Council for the Nonprofit Sector, "Driving Change: A National Study of Canadian Nonprofit Executive Leaders" (J. Morris and G. Cottle) [www.hrcouncil.ca/documents/driving_change.pdf].

14 *Ibid.*

A broad range of conduct can constitute cause, from single incidents of serious employee misconduct (i.e., stealing) to minor but repeated incidents of poor conduct (i.e., persistent lateness). The bar for proving cause is quite high, however, so any board that is considering a termination for cause should seek legal advice beforehand.

Special legal considerations apply where an executive director's unplanned absence is due to a disability or the leave is statutorily protected, such that the executive director may have a legal right to return to the position. In these cases, the board should ensure that it can appoint interim leadership or temporarily step in to fulfil the executive director's mandate. The board should have an emergency plan that addresses how the organization's immediate needs would be fulfilled and who would be assigned the executive director's key functions until a permanent or clearer interim plan is in place.

The succession plan for the executive director may set out a process for installing their successor quickly and efficiently when a vacancy arises. At minimum, boards are advised to maintain an up-to-date job profile of the executive director position and a detailed organizational chart accompanied by job profiles of other senior staff.

The plan may also identify good internal and external candidates to succeed the current executive director or fill the role in the future. If the executive director departs suddenly, the board may need to assign another senior employee to the executive director position on an interim basis to minimize disruption.

The succession plan should be reviewed and amended periodically to adjust to organizational and operational changes and projected needs as they evolve. Outdated plans can stall the succession process and create false expectations for internal candidates.

10. What happens when the executive director cannot work for an extended period due to illness?

The executive director's absence from work for an extended period due to illness can create operational challenges for the organization and the board, especially for smaller organizations that have no other senior or qualified staff to temporarily assume the executive director's duties.

The board has a duty to ensure that the organization continues to be managed properly in the absence of the executive director. In some cases, the board may need to appoint a director (the chair or others) to help with management activities during the executive director's absence. Depending on the length of the anticipated absence, a formal interim appointment may be necessary.

Human rights legislation in Canada prohibits discrimination in employment on the basis of "disability", which generally includes physical and mental disabilities.¹⁵ Terminating, disciplining or otherwise punishing an employee for being absent due to a disability is "prima facie" discriminatory.

An employer has a duty to accommodate an employee who has a disability and requires accommodation, which could include a leave of absence from work. This duty is not without limits—an employer generally has a duty to accommodate to the point of "undue hardship", which still sets the bar quite high. Undue hardship cannot be based merely on business inconvenience or interruption. Ontario legislation prescribes the factors to consider when determining whether the undue hardship threshold has been met. These factors, which are also considered in other jurisdictions, include cost, outside sources of funding, and health and safety requirements.

To trigger the duty to accommodate, the employee must inform their employer of the disability (but generally not a diagnosis) and request accommodation. It is not enough for an employee to merely assert a disability. The employee must provide sufficient information, usually via a note from a health care provider, to substantiate the disability and the need for accommodation.

Where an employee asserts a need but does not provide adequate information, the employer may have an obligation to inquire further and seek additional information or clarification. An employer may also be required to inquire about an employee's fitness if there is a reasonable basis to suspect the employee may have a disability.

15 For example, under the *Alberta Human Rights Act*, RSA 2000, c A-25.5, subsection 44(1), "mental disability" and "physical disability" are protected grounds and defined as follows:

- "mental disability" means any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder..
- "physical disability" means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a guide dog, service dog, wheelchair or other remedial appliance or device..."

Where the duty to accommodate is triggered, an employer is required to assess and determine options for accommodation and to accommodate to the point of undue hardship, including permitting a period of leave from work.

As part of its oversight of the executive director, the board must manage the executive director's absence due to disability and provide accommodation as required. This involves:

- seeking medical information to substantiate the leave
- determining the expected duration of the leave
- seeking medical information if the leave needs to be extended or when the executive director returns to work.

Before allowing the executive director to return, the board should satisfy itself that the executive director can resume their work safely and whether any permanent or temporary restrictions are needed.¹⁶

Where illness keeps the executive director from work for an extended period and the prospect of a return to work is slim, the board may consider whether the employment relationship has been “frustrated”. An employment agreement is generally “frustrated” by an employee's illness where there is no reasonable likelihood of the employee returning to work in the reasonably foreseeable future at the time the frustration is asserted. A frustrated employment relationship ends by operation of the law, and that event is not by itself discriminatory.¹⁷

11. What happens when the board decides to replace the executive director?

The board is obliged to replace an executive director where doing so is clearly in the organization's best interests. These decisions should be based on an objective assessment of the situation and, where appropriate, legal advice.

¹⁶ Accommodation cases can be challenging and should be approached with caution.

¹⁷ The law of frustration of the employment contract is complex. While the period of absence alone is not determinative, a lengthy absence is typically required as well as confirmation by a medical professional that there is no reasonable likelihood of the employee returning to work in the reasonably foreseeable future.

Reasons why a board might consider replacing the executive director include:

- Ongoing job performance shortfalls
- Leadership deficiencies
- A different skill set is required to take the organization in a new direction
- Insubordination
- Conflict of interest
- Dishonesty
- Lack of professional judgment
- Criminal activity
- Other breaches of the organization's code of conduct

An executive director's employment may also be terminated in cases of integration, merger, acquisition or reorganization.

In some cases, the executive director's departure must be immediate for safety and security reasons. In other cases, a period of working notice may be preferable (where allowed by law). The board's options depend on the reasons for the termination, legal requirements, board by laws and any provisions in the executive director's employment contract.

In every case, the board should verify that it has appropriately investigated, deliberated as a board and made a decision based on non-discriminatory factors. The executive director should have an opportunity to address concerns and allegations of inadequate performance or misconduct before any decisions are made.

During the board's investigation, it may be appropriate in some cases to relieve the executive director of their obligations temporarily, especially where the executive director's continued presence raises health and safety concerns or may compromise the investigation.

If a pattern of non-performance is ongoing and the executive director is struggling to address the issue, the board should take steps as soon as it becomes apparent. In some cases, it may be appropriate to provide support through increased supervision, training and mentorship. Depending on the customs of the organization and the circumstances, it may be premature to end the executive director's employment before giving them enough time to correct the performance or conduct issues.

When considering whether to terminate the executive director's employment, the board should take into account the potential legal liability (e.g., notice, pay in lieu of notice, severance pay), as well as the non-monetary impact on the organization and stakeholder groups.

While the executive director commands the board's attention as the organization's key employee, the board is also responsible for overseeing the rest of the organization's human resources, as explored in the next section of this guide.

Overseeing the Organization's People

12. Do the organization's HR policies and practices comply with minimum standards legislation, statutory health and safety requirements and human rights laws?

The board has a responsibility to confirm that the not-for-profit is complying with all legal requirements regarding its employees, and so the board needs to gain a general understanding of those obligations.

Workplace and employee relations are governed by various statutes and regulations as well as common law or the Civil Code of Quebec, as applicable. As noted in the Introduction, provincial human resources law governs provincially regulated employers in the private and public sector while federal law applies to federally regulated employers. While there are differences, there is also much consistency in these laws across the country.¹⁸

Employment standards

In Canada, federal and provincial laws set minimum employment standards for areas such as:

- wages
- overtime
- public holidays
- leaves of absence
- hours of work and rest periods
- vacation
- entitlements on termination.

¹⁸ These rules can be complex and frequently change. Local laws should be consulted in each case.

Human rights

Human rights laws generally prohibit discrimination and harassment in all aspects of employment based on prescribed grounds. Although there are differences, human rights laws in Canada generally prohibit discrimination in employment on the following grounds:

- disability, including mental and physical disabilities
- race
- ancestry
- place of origin
- colour
- creed or religion
- sex and sexual orientation
- gender identity and gender expression
- age
- citizenship
- ethnic origin
- marital and family status
- record of offences.

It should be noted that there is generally a narrow exemption for organizations that are primarily engaged in serving the interests of persons identified by certain prescribed grounds (for example, a religious organization) to give preference in employment to persons similarly identified if the qualification is reasonable and genuine based on the nature of the employment.

Other workplace legislation

Other legislation that directors of not-for-profit organizations may need to be acquainted with include:

- Occupational health and safety laws requiring an employer to provide a safe workplace and take precautions to prevent injury
- Workplace safety and insurance laws generally providing for some measure of wage loss protection through an employer-funded insurance scheme to employees who are injured or become ill during their employment
- Labour relations laws governing collective bargaining rights and the conduct of relations between employers and unions and their members
- Corporate legislation, which in some cases overlaps with employment standards legislation
- Related statutes, such as privacy and accessibility laws.

The board should verify that management is keeping apprised of developments in HR legislation. Policies should be reviewed regularly or as often as required by statute. Employment agreements should also be reviewed to confirm that they comply with minimum legal requirements. Requiring the organization to undergo an audit of its policies and practices periodically may also reveal deficiencies requiring process improvement. Some policies are required to be reviewed and amended by law.

13. How does the organization engage independent contractors and other non-employees to provide services?

Engaging external service providers can be a cost-effective way for the organization to retain people to provide specialized skills or expertise for a particular project or fixed period. It is important for the organization to properly classify their service providers in order to comply with tax and employment-related laws. Unlike employees, independent contractors are generally not entitled to minimum employment standards protections, and different tax and social benefit obligations (e.g., CPP, EI) apply. The line between an independent contractor and employee is not always easy to draw, and titles alone are not determinative.

The board should confirm that the organization has a process for engaging service providers including a process for reviewing the nature of the engagement and its terms and conditions, requiring pre-screening clearances as needed. The organization should be periodically reviewing these engagements to verify that the provider's classification remains accurate and the terms and conditions of engagement continue to be followed.

Independent and dependent contractors

Generally, a person providing services may be an independent contractor of the organization where these conditions are met:

- The service provider is not limited to providing service to the organization but can and does provide their services to others.
- The service provider is not subject to the organization's control (except as needed for quality control purposes) and decides how and when they perform the services.
- The service provider uses their own tools and resources to perform the services.
- The service provider has the risk of profit or loss in a business sense.
- The service provider is not integrated with the business of the organization.¹⁹

¹⁹ Adapted from *Belton v. Liberty Insurance Co. of Canada*, 2004 CanLII 6668 (ON CA), (see para.11).

Independent contractors are paid for services rendered. They do not receive a salary, source deductions are not withheld, and no CPP or EI contributions are made on their behalf. Independent contractors do not receive vacation pay, vacation time, other paid leave or other benefits that the organization's employees receive, including insured benefits. Independent contractors are not entitled to minimum notice of termination, pay in lieu or severance pay, or "reasonable notice" of termination under common law or other minimum employment standards.

In some cases, the service provider may be found to be a "dependent contractor." Despite other indicators of an independent contractor relationship, the nature, degree and duration of economic dependence on the organization could mean the provider is found to be a dependent contractor. Like employees, dependent contractors are entitled to reasonable notice under common law on termination without cause in several Canadian jurisdictions.

Interns

Not-for-profit organizations often hire interns or offer student-work placements through relationships with educational institutions. However, not all internships are the same, and in some cases, an intern may be considered an "employee" under minimum employment standards and other legal requirements.

Before hiring an intern, the board should investigate the organization's obligations under the employment standards legislation relevant to the intern's engagement. These arrangements should be closely monitored to confirm that the organization is complying with any minimum employment standards to which these individuals may be eligible.

14. How does the board oversee the organization's engagement and use of volunteers?

Organizations in the not-for-profit sector regularly engage volunteers to support their activities.²⁰ The board's responsibility for overseeing the organization's HR strategy and policies extends to its practices for recruiting, supervising and deploying its volunteers.

²⁰ In 2010, 13.3 million Canadians were engaged in some volunteer activity (Statistics Canada, 2012. The 2010 Canada Survey of Giving, Volunteering and Participating (Ottawa)).

While volunteers are legally distinct from “employees”, volunteers may have the same legal protections.²¹ Volunteers are effectively representatives of the organization when providing services to it. Since the organization could find itself responsible for wrongful acts done by the volunteer, it is important for the organization to properly screen, appoint and train them.

Background screening

Not-for-profit organizations should have a well-documented, consistently applied screening process for volunteers to help make decisions on their engagement and deployment. For example, a background screening process could require volunteers to provide a full or partial police record, a screening for people seeking to volunteer with vulnerable people such as children and seniors (“vulnerable sector check”), and academic and professional references. Volunteer candidates should be told about the screening requirements before they are engaged.

In some jurisdictions, the information the organization can request or how it can be used may be restricted. Privacy legislation may impose restrictions and requirements on the use and handling of personal information received from volunteers. Even where no legislative requirements apply, the organization should be cautious about how it manages and stores the personal information in its possession.

Many employers outsource the background screening function to third parties specialized in this area.

Engagement agreements

It is a good practice for not-for-profit organizations to require volunteers to sign an agreement that acknowledges their legal status in the organization, confirms that they are not an employee and states that they understand their obligations regarding behaviour and compliance with policies and procedures (including code of conduct).

Given the nature of the volunteer activity or function, it may be advisable to make it a condition of engagement that the volunteer provide assurances on confidentiality, releases, indemnifications and waivers of liability. The engagement agreement may also describe the volunteer's

21 The Human Rights Tribunal of Ontario has found that volunteers can be considered “employees” for purposes of the anti-discrimination provisions set out in the Ontario Human Rights Code: *Rocha v. Pardons and Waivers of Canada*, 2012 HRTO 2234 (CanLII). The same has been found in other jurisdictions.

assignment (including specific tasks and responsibilities), any remuneration they may receive (e.g., honorarium, paid expenses), and how their engagement may be ended.

Training

In some cases, a not-for-profit organization may be legally required to provide volunteers with the same training it is legally required to provide to its employees.²²

Even where no legislative requirement applies, not-for-profit organizations should provide volunteers with training on its policies and procedures to help them perform their duties safely and effectively. Appropriate supervision and guidance can help make the experience more rewarding for volunteers and mitigate risk to the organization.

15. Has the board adopted a whistleblower policy?

Fraud and other internal abuses by employees can have devastating effects on a not-for-profit organization. In some cases, the board members may be personally liable for any losses suffered by the organization where it is established that the board did not act diligently.

The board can mitigate these risks by adopting a whistleblower policy for the organization that includes a process by which employees and members of the public can report complaints.

It is generally accepted that implementing policies and procedures for reporting suspected cases of fraud or misuse can deter wrongdoing by opportunistic employees, volunteers or others, and facilitate early detection and prevention. According to the Association of Certified Fraud Examiners (ACFE), “occupational fraud is more likely to be detected by a tip than by any other method.” The ACFE says the majority of these tips come from employees within the organization,²³ and reported frauds persist for 18 months on average before detection.²⁴ The ACFE says, “Providing individuals a means to report suspicious activity is a critical part of an anti-fraud program,” and relying on external audits is not sufficient as a “primary fraud detection method”.²⁵

22 For example, in Ontario, the *Accessibility for Ontarians with Disabilities Act, 2005* requires volunteers of most not-for-profits operating in Ontario to be trained on the requirements of the legislation's accessibility standards and the *Ontario Human Rights Code* as it pertains to persons with disabilities.

23 “Report to the Nations on Occupational Fraud and Abuse”, 2012 Global Fraud Study.

24 *Ibid.*

25 *Ibid.*

An effective whistleblower policy includes assurances of confidentiality and protection against retaliation and reprisal. The policy complements the organization's other controls, including internal and external accounting procedures and oversight, a clear and consistently enforced code of conduct, training and education. The policy also should be flexible enough to allow for rapid escalation where necessary since swift response can help limit financial and reputational damage, and avoid or recover losses.

Allegations received from whistleblowers should be evaluated before launching a full investigation, including the credibility and gravity of the alleged issues. Allegations that should be elevated to the board level include those involving:

- serious financial mismanagement or misappropriation of funds
- issues concerning the executive director
- misrepresentations to a government
- knowingly falsifying documents
- colluding with a distributor or a supplier for kickbacks.

In short, the board should be made aware of any allegation that could have serious repercussions for the organization if the allegations were made public and/or substantiated.

Some organizations choose to engage a third party to provide their whistleblower hotline. Advantages of this approach may include increased employee morale due to the perception of ethical and effective governance by the organization, an increase in the number of tips as employees gain confidence in the third party, and an increase in detection of internal and external fraud. However, this approach may bring increased costs and higher call volumes due to petty or vexatious calls about immaterial issues.

Elements of a Whistleblower Policy

An effective whistleblower policy includes:

- A commitment to maintaining the highest ethical standards
- Consistency with applicable and related policies, procedures and code of conduct
- Clear expectations for behaviour
- A flexible and confidential mechanism for making complaints of actual or suspected wrongdoing
- Prohibition against retaliation for those who make complaints in good faith
- Consistent enforcement
- A process for investigating actual or suspected cases of wrongdoing and addressing confirmed cases.

Ultimately, the effectiveness of any whistleblower policy depends on a number of factors, including whether the organization has taken a proactive approach in implementing a sound whistleblower policy, assigning qualified staff at all levels of the hotline (i.e., information collection, assessment, investigation, management and reporting), and ongoing education of staff on ethical conduct and fraud awareness.

16. How inclusive are the organization's hiring practices?

According to the HR Council for the Nonprofit Sector, Canada's not-for-profit organizations lag behind other Canadian sectors²⁶ regarding ethnic diversity in the workplace. Their research confirms "the need for the sector to focus greater effort on building an ethnically diverse workforce or risk being left behind as other sectors build competencies in this area."²⁷

Adopting inclusive hiring practices helps the organization benefit from the diversity reflected in the general population, and, in some cases, the organization's membership, by leveraging the different experiences and perspectives that come with a diverse employee base. It can also help the organization stay competitive for recruitment and retention purposes.

The term "diversity" is not legally defined. It generally refers to "the presence of a wide range of human qualities and attributes within an individual, group or organization."²⁸ These attributes include, among others, age, race, ability, religion, gender, sexual orientation and experiences. "Inclusion" has been described as "appreciating and using our unique differences—strengths, talents, weaknesses and frailties—in a way that shows respect for the individual and ultimately creates a dynamic multi-dimensional organization."²⁹

Building a diverse workplace entails inclusive hiring practices that encourage the hiring of people from different social and ethnic groups and eliminate hiring practices that inadvertently create barriers. Internal and third-party recruiters tasked with identifying candidates should be apprised of the organization's diversity and inclusion initiatives and could

26 HR Council for the Nonprofit Sector (HRCNS), "Recruitment and Retention of New Immigrants and Members of Visible Minorities in the Nonprofit Sector's Workforce" (2012).

27 *Ibid.*, at page 44.

28 Ontario Human Rights Commission, *Teaching human rights in Ontario—A guide for Ontario schools*, Appendix 1, (2013)

29 *Ibid.*

be asked to source candidates from a variety of outlets and through different media. Inclusive recruitment strategies include building relationships with cultural groups and volunteer organizations that work with diverse communities and posting positions in local ethnic community newsletters or with cultural community groups.

The organization should review its hiring practices periodically, including how it establishes job requirements for a position and how it evaluates non-Canadian experience and credentials. For example, the Ontario Human Rights Commission's (OHRC) *Policy on Removing the "Canadian experience" barrier*³⁰ says that "a strict requirement for 'Canadian experience' is *prima facie* discrimination [i.e., discriminatory on its face] and can only be used in limited circumstances. The onus will be on employers and regulatory bodies to show that a requirement for prior work experience in Canada is a *bona fide* requirement, based on the legal test this policy sets out."³¹ The Manitoba Human Rights Commission (MHRC) has adopted the same position, and also generally considers job requirements regarding "citizenship" to be *prima facie* discriminatory.³²

The success of diversity and inclusion initiatives depends on a commitment from the top, which includes demonstrating diversity on the board and in key senior positions.³³ Various human rights statutes across the country permit the enactment of "special programs" for the hiring of historically disadvantaged groups. These special programs include affirmative action plans that target underrepresented groups and programs to help employees outside the workplace, such as providing accessible accommodations for people with disabilities.³⁴

30 Approved by the OHRC on February 1, 2013.

31 While persuasive, OHRC policy does not have the force of law and is not binding on the Human Rights Tribunal of Ontario or other adjudicative bodies or the courts.

32 MHRC Board of Commissioners' Policy, *Canadian Experience or Citizenship Requirements* (2002).

33 As the HRCNS points out in their report (see footnote 26) diversity in the workplace must also be reflected at the board level.

34 For example, the MHRC Board of Commissioners' Policy, *Special Programs* (2003), defines "special programs" for purposes of *The Human Rights Code* to include:

- a. affirmative action or equity plans or programs designed as a response to the under-representation of target groups defined by the stated group characteristics of The Code at various levels within a particular work force, program, etc. (i.e., not simply at entry). Such programs have both quantitative and qualitative dimensions. Ideally, they should include strategies for the identification and elimination of systemic barriers to participation (or continued participation) by those groups; and special measures such as preferential hiring, training, and/or promotion opportunities to bring about more proportional representation of the target groups at all levels in that work force or program;
- b. special programs which operate beyond the employment context. For example, special programs include specially designed housing units or facilities for persons with disabilities, education equity programs at all levels, seniors' programs, and so on; and,
- c. programs designed to address specific needs of disadvantaged individuals or groups defined by the stated group characteristics in The Code in a manner which is immediate and direct, but is not necessarily intended to bring about systemic change.

Employers in federally regulated sectors must comply with the *Employment Equity Act* which, among other things, requires employers to provide equal employment opportunities to women, Aboriginal peoples, persons with disabilities and members of visible minorities. In Ontario, the *Human Rights Code* permits organizations to enact special programs designed to relieve hardship or economic disadvantage, help disadvantaged people or groups work toward equal opportunity, or help eliminate infringement of rights under the legislation.

17. What should the board know about terminating employment relationships, and how can the board mitigate any related liability risk?

Management usually handles decisions about employee dismissals, except where the dismissal of an executive director and perhaps other senior employees are concerned. In fact, depending on the employee and the organization's size, the board may have no reason to be aware of any termination unless the matter leads to litigation. Nevertheless, employee terminations can result in significant financial and reputation liabilities for not-for-profit organizations. The board can minimize liability by confirming that sound practices and HR strategy planning are in place.

An employment relationship can end on a voluntary or involuntary basis.

- A voluntary termination of employment occurs where the employee chooses to leave their employment and the departure is not motivated by any alleged misconduct or unlawful conduct on the employer's part.
- An involuntary termination occurs when the employer triggers the cessation of the employment either "for cause" or "without cause," or where an employee leaves their employment but claims that the termination was involuntary due to some breach of contract and misconduct on the employer's part.³⁵

Termination without cause

Subject to contractual restrictions, including those in a collective agreement, provincially regulated employers in Canada can terminate an employee's employment without cause by providing the legally required notice and related entitlements.³⁶ An employer does not need to have a

35 The employment relationship can also come to an end by operation of law, including the illness or incapacity of the employee which renders the employment relationship "frustrated." See [question 10](#).

36 There are limits to terminating an employee's employment without cause for employers who are subject to the *Canada Labour Code*.

reason, but a termination without cause cannot be motivated by unlawful factors including (among other things) discriminatory reasons or to punish the employee for asserting a lawful right.

An employee terminated without cause may be entitled to rights under provincial minimum employment standards legislation. In most provinces, an eligible employee is entitled to notice or pay in lieu of notice, and possibly continued benefits during the notice period and/or a minimum severance payment.

An employee's entitlements on a termination without cause may be specified in their employment contract.³⁷ If not, employees in the common law provinces are entitled to "reasonable notice at common law," which includes a notice period (or payment in lieu) and all compensation and benefits that would have accrued in this period if the employee had continued to work (subject to contractual limitations). Reasonable notice at common law includes any statutory notice or severance due to the employee. The reasonable notice period is based on the employee's age, length of service, re-employment prospects and nature of employment.

Common law obliges dismissed employees to mitigate their losses by taking steps to find new employment, and their entitlement to notice is affected to the extent that the employee is successful.

Termination with cause

Where an employer has cause to terminate an employment relationship, the employer can end the employment immediately without notice, pay in lieu of notice or any severance. According to the Supreme Court of Canada, "just cause" occurs where the employee's misconduct "... violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to their employer."³⁸

Whether the organization has just cause requires assessing the nature, quality and circumstances of the employee's misconduct and other aggravating and mitigating factors, including the employee's length of service, discipline record, and acceptance of responsibility. The organization also needs to prove that the misconduct occurred.

³⁷ A termination clause in an employment contract is not enforceable if it is found to violate the minimum statutory entitlements set out in the applicable legislation. A growing body of jurisprudence has developed around the rules for interpreting and enforcing without cause termination provisions in employment contracts.

³⁸ *McKinley v. BC Tel* 2001 SCC 38 (CanLII), [2001] 2 S.C.R. 161 at para. 48.

A terminated employee can file a complaint under the employment standards, labour relations or human rights law, depending on the nature of the complaint and in some cases, whether or not the employee is unionized. If a court or tribunal finds that the employer did not provide sufficient notice or otherwise meet its legal obligations to the employee, a monetary amount, interest and possibly reinstatement can be ordered. Where the termination is conducted in a way that shows bad faith or other wrongful conduct on the part of the employer (including the board as a representative of the corporate employer), additional damages may be awarded to compensate for mental distress or punish the employer (and in some cases directors) for that conduct.

Costs arising from these claims can be significant, so it is important to make decisions about terminating employment based on a careful review of the facts. The departure or dismissal of a key employee can also have serious non-monetary costs for the organization regarding, among other things, workplace morale, recruitment and relationships with funders, donors, stakeholder groups and affiliated organizations.

While directors may have some personal liability for unpaid wages and vacation pay, they are not personally liable for any common law notice or other damages in a wrongful dismissal matter unless it can be shown that a director acted improperly and outside their duties.

18. What is the board's obligation to prevent workplace violence and harassment?

As an employer, a not-for-profit organization is obliged to comply with rules and regulations for preventing workplace violence and harassment. If not, directors can be personally liable under Canada's occupational health and safety regimes (see [question 12](#)). Workplace violence and harassment can harm the organization's reputation, along with its ability to attract talent, secure and retain funders and donors, and properly serve its stakeholders. In extreme cases, workplace violence and harassment can lead to tragic consequences.

The board should satisfy itself that management has instituted and consistently enforces policies and procedures for preventing workplace violence and harassment. In particular, the board should confirm that management:

- has a process in place for responding to complaints and incidents of harassment and violence in the workplace

- acts quickly and effectively when it becomes aware of actual or potential for workplace harassment and/or violence
- takes appropriate disciplinary and corrective action.

Workplace harassment and discrimination rules are set out in human rights and occupational health and safety legislation, and sometimes both. The statutory definitions of “workplace harassment” and “workplace violence” differ provincially and federally but generally cover:

- physical assault or aggression
- unsolicited and unwelcome conduct, comment, gesture or contact that causes offense or humiliation
- physical harm to any individual that creates fear or mistrust, or compromises and devalues the individual

Workplace harassment may be deliberate or unintended. It may involve a single event or a series of incidents. The test is whether a reasonable person knows, or ought to know, that the recipient would consider the behaviour unwelcome or inappropriate by the recipient.

Workplace health safety laws may require the organization to develop and maintain written workplace violence and harassment policies and procedures, and may specify their content. Even without legislative requirements, it is good HR practice to have written policies and procedures that address these issues.

In addition to legal requirements, the board should determine whether management has adopted policies and procedures that:

- set clear expectations for employee conduct
- prohibit workplace violence and harassment
- include a procedure for reporting actual or suspected workplace violence and harassment and for investigating incidents and complaints
- set out how an employee can get immediate help if faced with actual or potential violence
- prohibits retaliation and reprisal for those who make complaints in good faith.

The board should ensure that management sets the standard of acceptable conduct, consistently implements these policies and procedures, and responds to complaints or issues as they arise through appropriate corrective and preventative measures.

19. What is the board's role in setting compensation and benefits?

The board's HR responsibilities include establishing and approving the organization's overall compensation philosophy. This philosophy articulates the organization's goals and desired outcomes and how the elements of the organization's compensation plan support those outcomes. An effective compensation program aligns the interests of staff (particularly management) with those of the organization and helps it attract and retain talent. The compensation strategy may also need to comply with legislative requirements, including pay equity and competition restraint legislation.

In considering the organization's compensation structure, the board should understand the economic conditions of the region in which it functions, the market for the kinds of workers the organization wishes to attract, and any legislative requirements. When setting compensation ranges, a first consideration is where the role fits organizationally, which can be determined through job evaluation/classification. A second consideration is the application's job-relevant skills and experience. Other considerations include internal equity and the potential for raises.

The compensation philosophy should cover new hires, increases for existing employees, lateral moves, promotions and other movements. Within these categories, the philosophy should consider factors as diverse as market conditions, the scarcity of a particular skill, and succession planning. Since these considerations are complex, it can be useful to commission an independent salary survey to gather compensation data from similar organizations and provide benchmarks. Once the data is received, the board can then determine a competitive compensation structure that is attractive to talent and in line with the organization's fiscal objectives.

20. What special considerations arise for unionized employees?

The vast majority of Canada's not-for-profit organizations are not unionized.³⁹ For the minority that are, workplace relations are fundamentally different.

39 HR Council for the Nonprofit Sector, "Current State of Skills Development: The Canadian Nonprofit Sector" (September 2011) at p. 9. The council reports that in a 2011 survey of 772 Canadian not-for-profit organizations, the majority (83 per cent) reported being non-unionized.

In a unionized workplace, the union is the employees' exclusive bargaining agent. The not-for-profit organization cannot negotiate terms and conditions of employment with employees directly or individually. The terms and conditions are negotiated by the employer and the union and set out in a collective agreement applying to all employees in the bargaining unit that the union represents.

Both the union and the employer have a duty to bargain in good faith. If they are unable to reach an agreement, strikes and lockouts can occur. However, statutory conditions must be met before a strike or lockout can be lawful.

An employer retains the right to manage and direct the workplace subject to the limits set out in the collective agreement. The collective agreement cannot contain terms and conditions that violate minimum statutory entitlements and protections, and it cannot be amended unilaterally by either the union or the employer. Disputes often arise when interpret management decisions as deviations from the collective agreement. Among other terms and conditions, most collective agreements set out protections against unjust dismissal and processes for determining layoffs, setting wage scales and benefits, and job allocations.

Depending on its structure, the board may be directly involved in collective bargaining as a whole or through a committee. Where the board is not directly involved, the executive director or, in larger organizations, senior HR staff, are involved in bargaining and managing grievances.

Disputes between parties subject to a collective agreement are settled through binding and final arbitration.⁴⁰ In some jurisdictions, unionized employees also have the right to advance some workplace disputes in other forums. In Ontario, for example, a unionized employee can bring a human rights complaint against their employer to the provincial human rights adjudicative body rather than through grievance arbitration.

If the organization does not have experience and expertise with union matters, the board should consult legal counsel in the event of a union organizing campaign or where a dispute arises under the collective agreement.

⁴⁰ For example, like other provincial labour relations statutes, the Ontario *Labour Relations Act* (S.O. 1995, c. 1 Sched. A) requires collective agreements to provide for "final and binding" settlement of disputes arising between the parties over the interpretation, application, administration or alleged violation of the collective agreement, including questions of whether a matter is arbitrable.

Summary

Overseeing HR issues for a not-for-profit organization can present directors with some of their greatest challenges, and also their greatest rewards. The organization's HR strategy and its effective implementation can be pivotal to the organization's ability to serve its stakeholders and advance its mandate.

In this role, the board needs to have knowledge of HR matters in general and be kept up-to-date on specific HR-related issues that the organization faces. The board also needs mechanisms to establish that the organization meets its HR-related legal requirements and minimizes risk and potential liability to the organization and the directors themselves.

More positively, this aspect of their role gives directors important opportunities to drive the organization's success. By overseeing the organization's HR strategy, and choosing and developing its executive director, the board can help create a positive, productive environment that inspires, rewards and gains more value from its most important asset — its people.

Appendices

Appendix A: Sources of potential liability for directors of not-for-profit organizations and charities

Information in the table below is current at the time of publication. Readers are advised to seek legal advice to confirm these legislative requirements.

Jurisdiction	Legislation	Liability
Wage-related Obligations		
Canada	<i>Canada Not-for-profit Corporations Act</i> , S.C. 2009, c.23	<p>s. 146: Directors of a corporation can be jointly and severally, or solidarily, liable to employees of the corporation for all debts not exceeding six months' wages payable to each employee for services performed for the corporation while they are directors.</p> <p>There is a "reasonable diligence" defence with regard to employee wages. s.149(1) provides that a director is not liable for employee wages if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance on financial statements of the corporation or a report of a person whose profession lends credibility to a statement made by that person.</p>
	<i>Canada Labour Code</i> , R.S.C. 1985, c. L-2	<p>s. 251.18: Directors of a corporation are jointly and severally liable for wages and other amounts to which an employee is entitled under this Part, to a maximum amount equivalent to six months' wages, to the extent that</p> <ol style="list-style-type: none"> the entitlement arose during the particular director's incumbency; and recovery of the amount from the corporation is impossible or unlikely.

Jurisdiction	Legislation	Liability
Ontario	<i>Corporations Act</i> , 1990, c. C.15	s.81: Directors can be jointly and severally liable to the employees of a corporation for all debts due while they are directors for services performed for the corporation, not exceeding six months wages, and for vacation pay accrued for not more than 12 months under the <i>Employment Standards Act</i> or under any collective agreement entered into by the corporation.
	<i>Not-for-Profit Corporations Act</i> , 2010 S.O. 2010, c.15 *not yet in force*	s. 40: Directors can be jointly and severally liable to the employees of the corporation for all debts not exceeding, a. six months' wages for services performed for the corporation that become payable while they are directors; and b. the vacation pay for not more than 12 months under the <i>Employment Standards Act</i> , 2000 or under any collective agreement entered into by the corporation accrued while they are directors. There is no statutory "reasonable diligence" defence under this Act (unlike the <i>Canada Not-for-Profit Corporations Act</i>), and directors of Ontario Not-for-Profit corporations are strictly liable for these amounts.
British Columbia	<i>Employment Standards Act</i> , R.S.B.C. 1996, c. 113	s. 96(1): A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee. NOTE: This section applies to directors of societies but not to directors of charities (as defined in the <i>Income Tax Act</i>) and who are only reimbursed for expenses and receive no other remuneration.
Quebec	<i>Companies Act</i> , CQLR, c. C-38	s. 96(1): The directors of the company shall be solidarily liable to its employees for all debts not exceeding six months' wages due for services rendered to the company whilst they are such directors.
Saskatchewan	<i>The Non-profit Corporations Act</i> , 1995 S.S. 1995, c. N-4.2	s. 106: Directors of a corporation are jointly and severally liable, in accordance with <i>The Labour Standards Act</i> , to employees of the corporation for all debts payable to each of those employees for services performed for the corporation while those directors are directors. [Please note however, that <i>The Labour Standards Act</i> , R.S.S. 1978, c. L-1 has been repealed.]

Jurisdiction	Legislation	Liability
Alberta	<i>Cooperatives Act</i> , S.A. 2001, c. C-28.1	s. 79: The directors of a cooperative can be jointly and individually liable to employees of the cooperative for all debts not exceeding 6 months' wages payable to each employee for services performed for the cooperative while they are directors.
	<i>Companies Act</i> , R.S.A. 2000, c. C-21	s. 91: Directors can be jointly and severally liable for the wages of employees due for services performed for a period not exceeding six months while the directors are acting as such.
Manitoba	<i>The Cooperatives Act</i> S.M. 1998, c. 52, s. 206	s. 206: Where a cooperative has failed to pay to an employee of the cooperative wages or salary for services performed by the employee for the cooperative in any period not exceeding six months, each individual who was a director of the cooperative in that period can be jointly and severally liable, together with the cooperative and the other directors of the cooperative in that period, for payment of the wages or salary payable to the employee for the period, or that portion of those wages or that salary that was earned by the employee while the individual was a director of the cooperative.
	<i>The Corporations Act</i> , R.S.M. 1987, c. C225	s. 114: Directors of a corporation can be jointly and severally liable to employees of the corporation for all debts not exceeding six months' wages payable to each of the employees for services performed for the corporation while they are directors respectively.
Nunavut	<i>Labour Standards Act (Nunavut)</i> , R.S.N.W.T. 1988, c. L-1	s. 62: Directors are liable for the unpaid wages of the employees of the corporation, not exceeding the equivalent of two months' wages for each employee who has not been paid.
Yukon	<i>Employment Standards Act</i> , R.S.Y. 2002, c. 72	s. 86(1): Despite any other provision of this or any other Act, the directors of a corporation are jointly and severally liable to an employee of the corporation for all wages due for services performed for the corporation while they are directors of the corporation, up to the total of two months wages and 12 months' vacation pay.
Northwest Territories	<i>Employment Standards Act</i> , S.N.W.T. 2007, c. 13	s. 17: Every director and other officer of a corporation is liable for the unpaid wages of the employees of the corporation in an amount not exceeding the equivalent of two months' wages for each employee who has not been paid.

Jurisdiction	Legislation	Liability
Tax-Related Obligations		
Canada	<p data-bbox="516 443 643 548"><i>Income Tax Act</i>, R.S.C. 1985, c. 1 (5th Supp.)</p>	<p data-bbox="716 443 1308 625">s. 227.1: Directors of not-for-profit corporations can be jointly and severally or solidarily liable in their personal capacities to pay all employee taxes and employee source deductions, including any related interest or penalties, that the corporation fails to deduct, withhold, and remit for two years after ceasing to be a director.</p> <p data-bbox="716 642 1198 667">s. 227.1(3) provides a due diligence defence:</p> <p data-bbox="760 684 1308 814">A director is not liable for a failure under subsection (1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.</p> <p data-bbox="716 831 1308 1251"><i>Bekesinski v. R.</i>, 2014 TCC 245 (T.C.C. [General Procedure]), considered whether a director had properly resigned within the two-year limitation period. In 2010, the CRA assessed the director \$477,546.08 for failure to remit source deductions, including income tax and employer contributions, as well as interest and penalties pursuant to subsection 227.1(1) of the <i>Income Tax Act</i>. However, the director claimed that he had resigned in 2006, that the limitation period had passed at the time of the claim, and that he was therefore not liable. The CRA was not informed of his resignation until legal proceedings commenced and believed that the resignation was backdated, inauthentic, and irrelevant. Although the TCC also believed the resignation was backdated, it found for the director due to a lack of documentary evidence to contradict his assertion.</p>
	<p data-bbox="516 1289 675 1381"><i>Employment Insurance Act</i> S.C. 1996, c. 23</p>	<p data-bbox="716 1289 1308 1394">s. 46.1: Directors can be jointly and severally, or solidarily, liable, together with the corporation, for failure to deduct and remit premiums, and to pay the amount of the penalty.</p> <p data-bbox="716 1411 1219 1436">s. 46.1(3) provides a defence of due diligence:</p> <p data-bbox="760 1453 1308 1583">A director is not liable if the director exercised the degree of care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances to prevent the act or omission for which the penalty is imposed.</p>

Jurisdiction	Legislation	Liability
<p>Ontario</p>	<p><i>Employer Health Tax Act</i>, R.S.O. 1990, c. E.11</p>	<p>s. 36: Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is guilty of the offence and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.</p>
	<p><i>Taxation Act</i>, 2007 S.O. 2007, c. 11</p>	<p>s. 139: If a corporation has failed to deduct or withhold an amount as required by subsection 153(1) of the Federal Act, as it applies for the purposes of this Act, or has failed to remit the amount, the directors of the corporation at the time the corporation was required to deduct, withhold or remit the amount are jointly and severally liable, together with the corporation, to pay the amount and any interest or penalties related to it.</p>
<p>Pension Related Obligations</p>		
<p>Canada</p>	<p><i>Canada Pension Plan</i>, R.S.C. 1985, c. C-8</p>	<p>s. 21.1(1): Directors can be liable for failure to collect and remit CPP contributions.</p> <p>s. 103(2): Where a corporation commits an offence under this Act, every officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.</p>
	<p><i>Pension Benefits Standards Act</i>, 1985 R.S.C. 1985, c. 32 (2nd Supp.)</p>	<p>S 38(5): If a corporation or other body is guilty of an offence under this section, every officer, director, agent or mandatary or member of the corporation or body who directed, authorized, assented to, acquiesced in or participated in the offence is a party to and guilty of the offence and is liable on summary conviction to the punishment provided for the offence, whether or not the corporation or body has been prosecuted or convicted.</p>
<p>British Columbia</p>	<p><i>Pension Benefits Standards Act</i>, S.B.C. 2012, c. 30</p>	<p>s. 123(3): If a corporation commits an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence commits an offence, and is liable to a fine of not more than \$100,000, whether or not the corporation has been prosecuted for the contravention.</p>

Jurisdiction	Legislation	Liability
Manitoba	<i>The Pension Benefits Act</i> , R.S.M. 1987, c. P32	<p>s. 28.0.1: If an employer that is a corporation fails to pay contributions to a pension plan when they become due, the persons who are the directors of the corporation at the time of the failure can be liable to pay employee contributions in relation to that failure.</p> <p>s. 38(3) Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the committing of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.</p>
Quebec	<i>Act respecting the Québec Pension Plan</i> CQLR, c. R-9	s. 224: Where a legal person is convicted of an offence under this Act, every officer, director or chief executive officer and every agent of the legal person who directed, authorized, assented to, acquiesced in or participated in the offence is a party to and guilty of the offence, and is liable to the punishment provided for the offence whether or not the legal person has been prosecuted or convicted therefor.
Employment Standards Related Obligations		
Ontario	<i>Employment Standards Act, 2000</i> , S.O. 2000, c. 41	<p>s. 136: A director of a corporation is guilty of an offence if the director fails to comply with an order of an employment standards officer and has not applied for a review of that order.</p> <p>s. 137: If a corporation contravenes this Act or the regulations, an officer, director or agent of the corporation or a person acting or claiming to act in that capacity who authorizes or permits the contravention or acquiesces in it is a party to and guilty of the offence and is liable on conviction to the fine or imprisonment provided for the offence.</p> <p>Note: Directors' liabilities under Part XX (ss. 79-83), including liability for wages, do not apply to directors of corporations to which the <i>Ontario Corporations Act</i> or the <i>Ontario Not-for-Profit Corporations Act</i> applies.</p>
Quebec	<i>Labour Code</i> CQLR, c. C-27	s. 145: When the offence is committed by a legal person or an association, every director, officer or manager shall be guilty of the offence who in any manner approves of the act which constitutes the offence or acquiesces therein.

Jurisdiction	Legislation	Liability
Alberta	<i>Employment Standards Code</i> , R.S.A. 2000, c. E-9	<p>s. 131: When a corporation commits an offence under this Act, every director or officer of the corporation who directed, authorized, assented to, permitted, participated in or acquiesced in the offence is guilty of the offence, whether or not the corporation has been prosecuted or convicted.</p> <p>s. 132(1): An employer, employee, director, officer or other person who is guilty of an offence under this Act is liable,</p> <ol style="list-style-type: none"> a. in the case of a corporation, to a fine of not more than \$100,000, and b. in the case of an individual, to a fine of not more than \$50,000.
Manitoba	<i>The Employment Standards Code</i> , S.M. 1998, c. 29	<p>s. 141: When a corporation commits an offence under this Code, every director of the corporation who directed, authorized, assented to, permitted, or participated or acquiesced in the offence is also guilty of the offence, whether or not the corporation has been prosecuted or convicted.</p>
Yukon	<i>Employment Standards Act</i> , R.S.Y. 2002, c. 72	<p>s. 108(1): A person who</p> <ol style="list-style-type: none"> a. contravenes any provision of this Act or the regulations, or any order made thereunder; or b. discharges or threatens to discharge or otherwise discriminates against a person because that person <ol style="list-style-type: none"> i. has testified or is about to testify in any proceeding had or taken under this Act, or ii. has given any information to the director, an employment standards officer, or the board regarding the wages, hours of work, annual vacation, or conditions of employment of any employee, <p>commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.</p> <p>s. 108(2): If an offence under this Act committed by a corporation is committed with the consent or connivance of any director, manager, secretary or official of the corporation in charge or apparently in charge of a project, that person, as well as the corporation, commits an offence and is liable on summary conviction to a sentence not exceeding three months or to a fine not exceeding \$10,000, or to both fine and imprisonment.</p>

Jurisdiction	Legislation	Liability
Workplace Safety/Occupational Health and Safety Related Obligations		
Ontario	<i>Occupational Health and Safety Act</i> R.S.O. 1990, c. O.1	<p>s. 32: Every director and every officer of a corporation shall take all reasonable care to ensure that the corporation complies with,</p> <ol style="list-style-type: none"> this Act and the regulations; orders and requirements of inspectors and Directors; and orders of the Minister. <p>s. 66: Every person who contravenes or fails to comply with,</p> <ol style="list-style-type: none"> a provision of this Act or the regulations; an order or requirement of an inspector or a Director; or an order of the Minister, <p>is guilty of an offence and on conviction is liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than twelve months, or to both.</p>
Manitoba	<i>The Workplace Safety and Health Act</i> R.S.M. 1987, c. W210	<p>s. 56: Where a corporation commits an offence under this Act, any officer, director or agent of the corporation, who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and liable, on summary conviction, to the penalty provided for the offence.</p>
Quebec	<i>Act respecting occupational health and safety</i> , CQLR, c. S-2.1	<p>s. 241: Where a legal person has committed an offence, every director, officer, employee or agent of that legal person who has prescribed or authorized the action or the omission that constitutes the offence or who has consented thereto is deemed to have participated in the offence and is liable to the same penalty as a natural person, whether or not the legal person has been prosecuted or found guilty.</p> <p>Under this Act,</p> <p>s. 99.1: A sector-based association is a legal person.</p> <p>s. 138: The Commission de la Santé et de la Sécurité du Travail is a legal person.</p>

Jurisdiction	Legislation	Liability
Workers' Insurance and Compensation Related Obligations		
Ontario	<i>Workplace Safety and Insurance Act</i> , 1997 S.O. 1997, c. 16	s. 157: If a corporation commits an offence under this Act, every director or officer of the corporation who knowingly authorized, permitted or acquiesced in the commission of the offence is guilty of an offence, whether or not the corporation has been prosecuted or convicted.
British Columbia	<i>Workers Compensation Act</i> , R.S.B.C. 1996, c. 492	s. 84(1): Directors have duties to: <ul style="list-style-type: none"> a. act honestly and in good faith, b. act with a view to the best interests and objectives of the workers' compensation system, c. exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances, and d. act in a financially responsible and accountable manner. <p>These duties under this Act is in addition to any enactment or rule of law or equity relating to the duties or liabilities of directors.</p>
Alberta	<i>Workers' Compensation Act</i> , R.S.A. 2000, c. W-15	s. 152.01: Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted for or convicted of the offence.
Manitoba	<i>The Workers Compensation Act</i> , R.S.M. 1987, c. W200	s. 109.6: When a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who authorized, permitted or acquiesced in the commission of the offence is also guilty of an offence and is liable, on summary conviction, to the penalty provided for the offence, whether or not the corporation has been prosecuted or convicted.
Newfoundland and Labrador	<i>Workplace Health, Safety and Compensation Act</i> , R.S.N. 1990, c. W-11	s. 118.1: Where a corporation defaults in the payment of an assessment under this Act, the directors of the corporation, at the time the corporation defaults, are jointly and individually liable, together with the corporation to pay the amount.

Jurisdiction	Legislation	Liability
Obligations for Charitable Corporations/Registered Charities		
Ontario	<i>Charities Accounting Act</i> , R.S.O. 1990, c. C.10	<p>A higher standard of care, akin to that of a trustee is imposed on directors of a charitable corporation indirectly through this Act and through the operation of trust law as it applies to charitable organizations.</p> <p>s. 1(2) deems the corporation to be a trustee and that any real or personal property acquired by it shall be deemed to be property within the meaning of the Act. This section would appear to apply to “charitable corporations” and registered charities, but also “any corporation incorporated for a religious, educational, charitable or public purpose”.</p> <p>s. 2(2) of the regulation under the Act states that directors may not be indemnified for liability that results in their failure to act honestly and in good faith</p>
Alberta	<i>Charitable Fund-raising Act</i> , R.S.A. 2000, c. C-9	<p>s. 55(3): When a corporation has contravened the provisions of this Act referred to in subsection 55(1) or fails to comply with a direction of the Minister under section 44, every principal, director, manager, employee or agent of the corporation who authorized the contravention or failure or assented to it or acquiesced or participated in it is guilty of an offence and is liable to the penalty provided for in subsection (2), whether or not the corporation has been prosecuted or convicted.</p>

Appendix B: Performance Indicator Checklist

This sample checklist can be employed by the board during its review of HR compliance matters.

Period Covered:

The Corporation is currently operating in compliance with relevant statutes and obligations including, but not limited to, the following*:

- Canada Pension Plan*
- Pension Benefits Act (Ontario)*
- Employment Standards Act, 2000 (Ontario)*
- Income Tax Act (Canada)*
- Corporations Act (Ontario)*
- Corporations Information Act (Ontario)*
- Excise Tax Act (Canada)*
- Retail Sales Tax Act (Ontario)*
- Occupational Health and Safety Act (Ontario)*
- Human Rights Code (Ontario)*
- Pay Equity Act (Ontario)*
- Employment Insurance Act (Canada)*

Employee Benefits	All employee benefit withholdings and premiums have been remitted in accordance with requirements.
Payroll	All staff has been paid in accordance with the <i>Employment Standards Act, 2000</i> .
Canada Revenue Agency	All income tax withholdings, Canada Pension Plan withholdings, employment insurance premiums, and federal sales taxes (including HST) have been remitted in accordance with requirements.
Workplace Safety and Insurance Board	All Workplace Safety and Insurance Board premiums and assessments have been remitted in accordance with requirements.
Privacy Obligations	All personal information has been handled in accordance with relevant privacy statutes.

Certified by: _____ Date: _____

Name: _____

Title: _____

*Please note that the fulfillment and certification of the Performance Indicator Checklist merely reduces potential liabilities, and does not extinguish them completely. The Corporation and its directors, officers and employees must act in accordance with all statutory duties and requirements.

Where to Find More Information

CPA Canada Publications on Governance
(available at www.cpacanada.ca/governance)

The Not-For-Profit Director Series

20 Questions Series

- 20 Questions Directors of Not-For-Profit Organizations Should Ask about Board Recruitment, Development and Assessment
- 20 Questions Directors of Not-For-Profit Organizations Should Ask about CEO Succession
- 20 Questions Directors of Not-For-Profit Organizations Should Ask about Fiduciary Duty
- 20 Questions Directors of Not-For-Profit Organizations Should Ask about Human Resources
- 20 Questions Directors of Not-For-Profit Organizations Should Ask about Mergers
- 20 Questions Directors of Not-For-Profit Organizations Should Ask about Risk
- 20 Questions Directors of Not-For-Profit Organizations Should Ask about Social Enterprise

Board Briefings

- Accountants on Board—A Guide to Becoming a Director of a Not-For-Profit Organization
- A Guide to Financial Statements of Not-For-Profit Organizations—Questions for Directors to Ask

- Board Oversight of Not-for-Profit Program Evaluation—Questions for Directors to Ask
- Board Oversight of Not-for-Profit Collaboration—Questions for Directors to Ask
- Governance for Not-for-Profit Organizations—Questions for Directors to Ask

Board Bulletins

- Advocacy and Political Activities—Questions for Directors to Ask
- Canada’s Anti-Spam Legislation (“CASL”): It’s the Law on July 1, 2014—Questions for Directors to Ask
- Cloud Computing for Not-For-Profit Organizations—Questions for Directors to Ask
- The New “Ineligible Individual” Provisions—Considerations for Directors of Registered Charities And Registered Canadian Amateur Athletic Associations

About the Author

Paula Pettit

Paula Pettit is an Associate in the Toronto office of Miller Thomson. Her practice focuses on Labour and Employment Law. She brings over 15 years of experience in labour relations to her practice, providing pragmatic advice with a view to achieving optimal results in a cost-effective manner. While Paula has advocated on behalf of management in a variety of settings and industries, she started her career in labour relations in film and television. In addition to the entertainment industry, she has acted for public and private sector employers, advising clients on their rights regarding labour relations, employment standards, human rights, privacy, occupational health and safety, workers' compensation, pension benefits and pay equity.

Paula has extensive experience working closely with human resources leaders, advising on executive compensation, compliance and progressive HR practices, and also conducting workplace investigations.

Over the past several years, Paula has facilitated labour and management relations courses and seminars, as well as contributed to related publications.



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