



## Session #: 111

**Reagan R. Ruslim**

**R. Ross Dunsmore**

(Dunsmore Wearing LLP)

**Moderator:**

Dietrich Sider (City of  
Ottawa)



## Boards & Legal Liability: What every board member should **consider**



# Agenda

## Fiduciary Duty

- What does this mean?

## Corporate Governance

- Key Questions To Ask

## Directors' and Officers' Liability

- Indemnification and Insurance
- I.e., When things go wrong



# Today's Rules

- Dialogue - Monologues are bad
- Questions any time –
  - don't wait to the end

## Shameless Plug:

- 211 Human Resources  
Fundamentals (215, SC)



# Agenda

## **Fiduciary Duty**

- **What does this mean?**

## Corporate Governance

- Key Questions To Ask

## Directors' and Officers' Liability

- Indemnification and Insurance
- I.e., When things go wrong



# Laws Governing Housing

## **Name some of the laws which govern a Housing Corporation?**

- Housing Services Act (“HSA”)
- Ontario Corporations Act (“OCA”)
- In 2016...?: Ontario Not For Profit Corporations Act, 2010 (“ONCA”)
- Residential Tenancies Act (the “RTA”)
- Occupational Health and Safety Act (“OHSA”)
- Labour Relations Act (if unionized) (the “LRA”)



# Laws Governing Housing

## **Name some of the laws which govern a Housing Corporation**

- Employment Standards Act (the “ESA”)
- The Employer Health Tax (the “EHT”)
- Human Rights Code (Ontario) (the “Code”)
- The Income Tax Act (the “ITA”)
- The Fire Protection and Prevention Act (the “FPPA”)

## **Other Laws (Tenants)**

Employment Insurance Act (think RGI)

Ontario Disability Support Program (ODSP) (think RGI)



# Rules Governing Housing

## **Name some rules which govern a Housing Corporation?**

Provincial Rules

Regulations of the Region

- (AIR Reports, Operational Audits, Funding)

Financial Reporting -

CICA Handbook

- Not-For-Profit Accounting Standards

## **Other Applicable Laws?**

- Common law = Judge made law



# Laws Governing Housing

- **Many laws** governing public housing
- **Many regulations**
- **Significant expectations** of Directors



# Laws Governing Housing

Must Volunteer Directors be Experts in...

- law?
- accounting & tax?
- human resources?
- operations?
- **NO: Impossible**

**How does a Director navigate all this?**



# What is a Director?

- Director: not an expert
- Director is a **fiduciary**



# What is a “Fiduciary”

## **Standard of Care:**

- “reasonably prudent person”

## **Duty of care:**

- act for another person’s benefit
- high standard managing another’s property



# What is a Fiduciary? (con't)

Duty to act for:

**“another person’s benefit”**

Who?

- MUST keep best interests of organization
  - ahead of personal interests
  - must avoid “competing fiduciary duties”



## Duty of Care?

**“owes another person a **duty of care**”**

- Duty to Act Honestly
- Duty of Due Diligence
- Duty to Exercise Power
- Duty of Obedience
- Duty of Loyalty



# Duty of Care?

- Duty to Act Honestly
  - Disclose: can't make time to be Director
- Duty of Due Diligence
  - Be informed (voting)
  - Prepare for meetings
  - Maintain Minutes!!!



# Duty of Care?

- Duty to Exercise Power
  - You are ultimately responsible
    - Organization's action & inaction
- Duty of Obedience
  - Comply with applicable laws
  - Comply with governing documents (letters patent, by-laws)





# Duty of Care?

## Duty of Loyalty

- Corporation's interest > self interest
- No Conflict of Interests:
  - in fact & appearance
  - Conflict of Interest Policy?
- Declare, Recuse, Abstain ... Resign



# Agenda

## Fiduciary Duty

- What does this mean?

## **Corporate Governance**

- **Key Questions To Ask**

## Directors' and Officers' Liability

- Indemnification and Insurance
- I.e., When things go wrong



# Corporate Governance

## How knowledgeable?

- General knowledge what laws affect the organization
- Seek professional advice when necessary

## Understand Organization's:

- governance
- structure
- purpose
- operations and beneficiaries



# Corporate Governance

What internal documents should you review regularly?

- Letters Patent (Why?)
- Supplementary Letters Patent (Why?)
- Current by-laws (Why?)
- Financial Information (Where?)
- Minutes of Meetings (What? Why?)



# Corporate Governance

What if Director breaches fiduciary duty?

- Risk: personally liable
  - if organization suffers loss
    - attributable to actions / omissions of fiduciary duty

Personal Liability = Generally, Bad!



## Real Agenda

### Fiduciary Duty

- What does this mean?

### Corporate Governance

- Key Questions To Ask

### **Directors' and Officer's Liability**

- Indemnification and Insurance
- I.e., When things go wrong



# D&O Liability

Section 80 of Ontario Corporations Act

**Director may be indemnified by NFP Corporation**



# D&O Liability

Ontario *Not-For-Profit Act (2016?)*

- *Section 46*

*NFP can indemnify directors and officers*



# D&O Liability Insurance

Complex topic - beyond scope

Three main parts:

- **Declaration**
  - list of coverages, dates, limits, deductibles, premiums
- **Insuring Agreements**
  - coverages and exclusions
- **Conditions**
  - rights and responsibilities of insurer and insured



# D&O Liability Insurance

## KEY QUESTIONS

- Does my org. have D&O Liability Insurance?
- What does it cover?
- How much coverage?
- How much deductible?



# D&O Liability Insurance

## KEY QUESTIONS

- What does it cover?
- How do we access the coverage?
- Who's the contact person?
- How often is policy and coverage reviewed by Org.?



## SUMMARY

### Fiduciary Duty

- What does this mean?

### Corporate Governance

- Key Questions To Ask

### Directors' and Officers' Liability

- Indemnification and Insurance
- I.e., When things go wrong



# Further Questions

**DUNSMORE WEARING LLP**

**BARRISTERS & SOLICITORS**

**WORKPLACE MANAGEMENT LAWYERS**

199 Bay Street, Suite 4410

P.O. Box 372

Toronto, Ontario

M5L 1G2

Tel: 416-364-7515

Fax: 416-364-9761

**R. Ross Dunsmore**

**Reagan R. Ruslim**

**[rrd@dunsmorewearing.com](mailto:rrd@dunsmorewearing.com)**

**[rruslim@dunsmorewearing.com](mailto:rruslim@dunsmorewearing.com)**

