



Fiduciary Duty and Ethics

Board of
Directors Training
2025-2026

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Fiduciary Duty

- Have **Fiduciary Duty** to the Society, Members and your constituents
- “Fiduciary”: one who stands in a special relation of trust, confidence and/or responsibility to another
- Must act in their best interests *even if it conflicts with personal views*



Duty of Loyalty

Directors must act honestly and in good faith in the best interests of the corporation – Article 322 Civil Code of Québec

- Duty owed to the corporation, not to members or any group of members

SSMU Constitution, s. 16.1:

Every Director, Councillor, Officer, and member of any committee of the Board of Directors or Legislative Council of the Society (for the purposes of this section 16, the “Representative”) in exercising their powers and discharging their duties shall act honestly and in good faith with a view to the best interests of the Society and shall exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances. [...]



Duty of Care

Directors must exercise care, diligence and skill in exercising powers and performing duties – Article 322 *Civil Code of Québec*

Must show diligence in decision-making, consideration of different options

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Duty of Knowledge

- Knowledgeable and informed about key aspects of the corporation
- Knowledgeable and informed about issues coming before the Board for decisions
 - Read meeting materials and come prepared so you can take part in decisions
- Know the Corporation's Letters Patent, Constitution, Internal Regulations, and Policies
- Have general knowledge of key provisions of governing legislation
- Periodically reflect on the mission, vision and objectives of the corporation
- Ask questions if you're unsure — it's your job to understand before voting or speaking.



Duty of Diligence

- Includes **showing up** to meetings and committees (MANDATORY)
 - If a Director has an unavoidable conflict that prevents them from attending a meeting, they must send regrets to the Speaker by email before the meeting begins.
 - Your responsibility to stay informed
 - **Failure to send regrets to the Speaker for two (2) meetings throughout the year**, even if they are not consecutive, will result in removal from Board.
 - Failure to be present **for the entire duration of a meeting** will be considered as equivalent to one half ($\frac{1}{2}$) of an absence. Two such events will be considered equivalent to failure to send regrets to the Chair.
 - **Failure to attend three (3) meetings throughout the year**, even if they are not consecutive and even if the Director has sent regrets, shall be considered delinquency of duties and shall be grounds for



Duty of Diligence

- Must participate diligently and actively in Board functions:
- Attend meetings, having reviewed agenda and supporting material
- Be prepared to discuss business
- Vote on matters that come before the Board (unless excluded due to conflict)
- Abstention does not mean dissent – still engages director liability.
 - Abstention in voting is the act of choosing not to cast a vote for or against a motion, candidate, or issue. It signifies a neutral stance, distinct from active support or opposition.



Duty to Manage/Delegate

- Permitted to delegate managerial functions to officers, employees
- Experts often used where Directors lack specialized knowledge or experience
- Delegation does not automatically relieve a director from liability
- Must maintain a supervisory role and cannot blindly delegate
- Avoid becoming directly involved in matters delegated to management



Duty to Act within the Scope of Authority

- Know the permitted activities of the corporation
 - A corporation that carries on an activity outside its permitted scope is said to be acting *ultra vires*
 - Director who permits this activity can be personally liable
- To avoid personal liability a director must oppose the activity
- Know scope of own authority
- Board acts as a whole and speaks with one voice



Confidentiality

- Fiduciary responsibility
- Maintain confidentiality of information gained through position as Director
 - Meeting materials and related documents
- Access to sensitive information
 - Health, employment, finances or other personal information
- Minutes of Board meetings (except for Public Minutes)
- In camera (confidential) sessions
 - Discuss employee discipline, an employment contract, or performance or compensation matters
- Applies to former Directors
- Potential liability for breach of confidentiality



Conflicts of Interest

- Art. 324 Civil Code of Québec
A director shall avoid placing himself in any situation where his personal interest would be in conflict with his obligations as a director.

A director shall declare to the legal person any interest he has in an enterprise or association that may place him in a situation of conflict of interest and of any right he may set up against it, indicating their nature and value, where applicable. The declaration of interest is recorded in the minutes of the proceedings of the board of directors or the equivalent.

- SSMU Constitution, s. 16.2, Conflict of Interest:
A Representative [Director] shall avoid placing themselves in a position of conflict of interest between their personal interest and that of the Society and they shall declare any conflict of interest to the Board of Directors. Any such Representative shall abstain from voting on and participating in, the deliberations on matters pertaining to such conflict of interest.



Conflicts of Interest

Fiduciary responsibility

- Cannot profit at expense of corporation
- Avoid personal conflicts
- Cannot be objective or would seem unable to be objective
 - Head of a club directly affected
 - Would affect family member or close friend
 - Putting personal beliefs or personal interests ahead of duty to Corporation

Potential liability for acting in conflict

- Avoiding liability
 - Declare personal interest in transaction
 - Do not vote or participate in decision-making process (recusal)



Liability of Directors

By law, Directors are “mandataries“ or agents of the corporation
Can be personally liable to company wrongdoings, e.g. unpaid wages, incorrect registers, wrongful acts, for decisions, etc

Luckily:

Section 16.4 of the SSMU Constitution

Subject to the Act, the Society may purchase and maintain insurance for the benefit of any individual entitled to be indemnified by the Society pursuant to section 16.3 hereof against any liability incurred by the individual

- in the individual's capacity as a director or an officer of the Society; or
- in the individual's capacity as a Director, Councillor or Officer, or in a similar capacity, of another entity, if the individual acts or acted in that capacity at the Society's request.

However - **not indemnified for own fault or breach of your duties!**



Courtesy

- All members of the Board must carry themselves with decorum to demonstrate the respect they hold for their office
- Respecting deadlines
 - Motions from the floor should be rare and only used in *urgent* circumstances
 - Submit things on time (motions, reports, etc)
- Respect fellow Directors
 - Standing rules have a list of behaviour deemed out of order
 - Don't be a jerk rule
 - Attitude of respect, no name calling or other discourteous behaviour
 - Allowed to disagree, but not allowed to be rude
 - No personal attacks
 - When in doubt, Robert's Rules are your friend