

# Fiduciary Responsibility: Why's And What's

March, 2005

All, or almost all, Boards and Board members will agree that they have a fiduciary responsibility to their organizations, though this is an area where frustrations, fears, anxieties, and conflicts abound. Yet, Boards and Board members typically cry with relief when their Treasurer says: “Don’t worry. It’s okay. I am on top of it”. If asked what fiduciary responsibility is all about and why it is important, many Board members will either shrug their shoulders and roll their eyes heavenwards, or point to the “how’s”, such as approving the annual budget, reviewing the monthly financial statements, and looking at the annual audit.

Fiduciary responsibility requires looking at the “why’s” and the “what’s”, not just the “how’s”<sup>1</sup>. Fiduciary responsibility also requires thinking about what the organization as a whole needs, not just about the specific roles and responsibilities of the Board<sup>2</sup>.

The “why’s of fiduciary responsibility are relatively straightforward. There are

- The implications, more implicit than explicit, in the provincial or federal incorporation statutes (for example the Society’s Act), that Boards have a financial stewardship role (having to do with transparency, honesty, and legal and ethical behaviour)
  
- The primary responsibilities of Boards and Board members to govern their organizations on behalf of their members, the owners, and to protect their interests (financial and otherwise)
  
- The secondary responsibilities of Boards and Board members to govern their organizations in the interests of diverse stakeholders, for example: clients, staff, volunteers, and funders (which at least means that Boards have to pay serious attention to long term financial sustainability)

---

<sup>1</sup> These thoughts on fiduciary responsibility need to be read in the broader context of what is expected of Board members: be loyal, avoiding conflicts of interest; be diligent, acting as a reasonable person and turning up (for example: at meetings); and ensure organizational integrity and legality.

<sup>2</sup> In looking at the work of, the roles and responsibilities of Boards, it always makes more sense to start with what the organization is already doing, and then ask: “What more does the Board need to do to add value?” In other words, Boards need to distinguish between “ensuring good practice in their organizations” and “carrying out work themselves”.

The “what’s” of fiduciary responsibility are more difficult to make clear, as typically they are entangled in the “how’s”. It may help to express them more in outcome language.

Boards and Board members are expected to govern their organizations, and act themselves, so that:

- 1. The organization is legal (for example: funds designated for specific purposes are used for those purposes, and funds are not stolen or mis-appropriated)*
- 2. The organization is financially transparent and honest (for example: material financial facts are made clear, and key stakeholders receive the financial information that they need and are interested in)*
- 3. There is long term organizational financial sustainability (for example: over a three year period, the financial situation balances, and there are funds set aside for contingencies)*
- 4. The mission, purposes, and strategic directions of the organization are well achieved (for example: there are sufficient funds available to carry out the work, including retaining good staff, and there are funds to invest in new directions)*

These statements of the “what’s” of fiduciary responsibility are still at a high level, far from the detailed “how’s” of fiduciary responsibility such as book-keeping, bank reconciliation procedures, and following CICA rules<sup>3</sup>.

These “what’s” also do not clarify the issue of “checks and balances”. Some people have argued that the Board, in carrying out its fiduciary role, is a “check and balance” against the work of staff, somewhat like the role of the Senate. There is a need for “checks and balances”, no one would argue against that. The questions are: “Are there already sufficient checks and balances?” (for example: those provided by an external auditor and by funders), and “Does the Board need to play a more direct role here?”

---

<sup>3</sup> The challenge that Board members face in staying at this high level, rather than becoming caught in operational details, often relates to two issues: (a) their fears of liability, and (b) their need to bring their own professional skills and experiences (for example: being an accountant or being a manager) into their work as Board members.

The “what’s” are potentially contradictory. For example, achieving long term organizational sustainability may come up against fulfilling the mission in that financial reserves need to be invested in research, development, and action, not held for a rainy day.

There is also a critical issue of sphere of influence. When an organization receives funds, under contract for example, from a particular agency, say a government ministry or department, typically that ministry or department receives at least an annual financial statement and may ask for much more. Given this level of funder involvement and oversight, what is the fiduciary responsibility of the Board? Some non profit organizations have taken the position that the fiduciary responsibility here lies primarily with the funder in relationship to the contract. The Board’s sole role is to ensure that taking on this contract fits with the organization’s mission, purpose, and strategic directions; and, does not put the organization’s sustainability and capital (for example: financial and reputational) at risk.

Finally, there is also a need for Boards and Board members, in considering their fiduciary responsibility, to not fall into the traps of false understandings of what non profit organizations are all about.

Four examples will suffice.

- ❑ Many people believe that non profit organizations cannot make profits. This is not true
- ❑ Many people believe that non profits cannot charge fees and run businesses. This is also not true
- ❑ Many people believe that Boards must, for legal reasons, approve their organizations’ annual budgets. This is also not true
- ❑ Many people believe that non profit organizations can only invest their surplus funds in very safe investments. This is also not true

In moving to a deeper understanding of the “what’s” of fiduciary responsibility, it helps Board members to look at the broad “how’s”, the overall strategies for achieving fiduciary responsibility.

Here is a short, but essential, list.

1. Ensure that there are staff with appropriate (to the size and complexity of the organization) professional financial training, experience, and competencies; or, that staff have ready access to professional advice<sup>4</sup>
2. Carry out a financial audit of the organization each year, and meet with the auditor both beforehand (to express the Board's expectations for the audit) and afterwards (to hear back any of the auditor's concerns)<sup>5</sup>
3. Create formal written Board policies regarding: revenue development, financial management, financial controls, financial spending, financial risks, and financial investments. These policies are the Board's statements of what is important (almost further descriptions of the "what's" of fiduciary responsibility), the boundaries within which staff must work, and the authorities that staff have to make decisions<sup>6</sup>
4. Monitor the implementation of these policies annually (for example: through the auditor and annual statements of compliance to the Board by management), and use this as an opportunity to review and update the policies
5. Develop a long term financial plan, focusing on organizational long term sustainability and on achievement of the mission, purposes, and strategic directions; and, establish annual financial goals for achieving this plan<sup>7</sup>
6. Establish clearly the information that the Board needs (in what format and when), and the positions (for example: Treasurer) and committees (for example: budget, finance, and audit) that the Board requires, so that the Board can efficiently and effectively fulfill its fiduciary responsibilities and roles, monitoring progress against the financial policies, and financial plans and goals. Make sure that the financial information that the Board receives is readable by all Board members, not just those with accounting and managing backgrounds.

---

<sup>4</sup> There can be a conflict between the role of the Board as governance, and the role of individual Board members in providing professional advice to staff.

<sup>5</sup> Auditors work first and foremost for the Board, and through the Board for the membership (or owners). Auditors do not solely work for management. Further, auditors are hired to serve the organization, within the context of accepted professional accounting principles. Note, however, the increasing emphasis by auditors in their overall statements that they work depends on the information provided by management.

<sup>6</sup> Policies are not the same as procedures, which are a management responsibility.

<sup>7</sup> Most non profit organizations have annual plans, called budgets, though too often these are simply developed on an incremental basis from the previous year. Fewer non profit organizations have long term financial plans. Such long term plans are critical. They create benchmarks for evaluating the performance of the Executive Director, and begin to establish the direct work of the Board itself.

7. Provide an annual orientation and training session for each Board member so that they are clear about how the organization's finances are managed, and how the Board's fiduciary responsibility is carried out

The issue of the financial information that the Board requires, in what format, and when, is essential. It is very easy for Board members to become overly anxious, and want to see all of the detailed financial information (for example: "Give us a monthly financial statement with comparisons to last year's actuals and this year's budget, with explanations of all line item variances"). Receiving information, that is often meaningless (for example: year to date information does not capture what will happen next month, or comparing this year to last year is like comparing apples with oranges), does not achieve Board fiduciary responsibility. It is the Board's responsibility to outline what information it needs, in what format, when, and why. Unless the "why" and the "for what purpose" are clear, then the information will likely be useless, Board members will not know what to do with it, and all of this will just increase the work of staff for no sound purpose.

The toughest part of these higher level "how's" is the painstaking work of developing formal Board policies about: financial management, financial controls, financial spending, financial risks, and financial investments. However, there is no getting around this task. It needs to be done. And, once done, while these policies may need to be reviewed every now and then, they typically stay solid for some years.