Board Governance Policy

June 11, 2013

The Board Governance Policy of E3 sets out a basic accountability philosophy and governing framework within which all Board and administrative activity must fall.

Essentially, the Board is responsible to its stakeholders. In this case, the term stakeholder includes: clients and their caregivers who are supported by the programs offered; the provincial and County governments; and other community service partners. The Board has a kind of "moral ownership" from which accountability stems. The Board assumes a kind of "trusteeship" for the stakeholders. In order to do this the Board must understand the needs of its stakeholders.

The Board exercises its responsibilities by representing the needs and requirements of the "stakeholders" and being accountable to them. This is done generally by delegating responsibility to the CEO and by setting explicit governing policies to guide the implementation of administrative policies and organizational goals. The "Board Governance Policy" basically outlines the following operational components:

1. E3 Governing Philosophy,
2. Statement on Fiduciary Responsibilities,
3. A Board Job Description,
4. Guidelines for Board Process.

The Board sets the broad expectations and parameters within which all program priorities, administrative policy and staff activity must fall. So the Board is accountable yet not directly responsible for implementation. When administrative policies, staff activities or agency goals do not fall within the Board Policy framework the Board must act through the CEO to bring actions back into line with expectations.

In addition to core Board policies, each year the Board decides its role on optional activities such as fundraising and advocacy or legislative action. These optional activities are typically Board functions but can be delegated if the Board so wishes.

As an overarching responsibility it is important for the Board to clearly know and communicate a sense of its governing model so that interactions with CEO, funders and stakeholders will be more clearly understood and appreciated. This process will minimize conflict and redundancy. It will enhance effective communications and provide a stable framework for all activities of the Board.

E3 Governing Philosophy

The Board will proactively approach each task in a manner which emphasizes strategic leadership and administrative detail, with a clear distinction between Board and staff roles. In this spirit, the Board will:

1. keep its major involvement focused on the intended long-term impact of the organization, not the administrative means of attaining those effects. As a manifestation of this intention the Board wishes to keep sub-committee work to a minimum so as to avoid the pitfalls of "governance by committee" or the tendency for committee work to inadvertently spill over to the administrative operational side.

2. direct, control and inspire the organization through the careful deliberation and establishment of "Board Policies". Board Policies will be statements of values or approaches which address (a) the objectives or end products desired; (b) Board governance modality; (c) the Board/CEO relationship; and (d) the boundaries of prudence and ethics to be observed.

3. enforce upon itself, whatever discipline is needed to govern with excellence. Discipline will apply to attendance, policy-making principles, respect of clarified roles, speaking with one voice, and self-policing of Board tendencies to stray from rigorous governance. The Board will engage in ongoing governance training with Board members as directed by the Board at the beginning of each Board year.

4. be accountable to the stakeholders for competent, conscientious, and effective accomplishment of its obligations as a body. It will allow no officer, individual, or committee of the Board to usurp this role or deter this discipline.

5. be an initiator of policy and responsible for its own performance. Board policies will be reviewed at least every three years or more if necessary.

Board Fiduciary Duties

Becoming an agency board member, brings with it legal and ethical duties and responsibilities. Agency board members and officers must fully understand their duties and always uphold the public trust in their role as stewards of the agency.

Essentially, directors, trustees and officers of a agency owe three fiduciary duties to the agency:

1. **Duty of Care:** requires the individual to discharge duties in good faith, in an objective manner which one could reasonably believe to be in the best interests of the organization, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. The individual must devote the time, attention and resources necessary to understand and prudently oversee the affairs of the agency.
2. **Duty of Loyalty:** requires the individual, when making a decision or acting on behalf of the agency, to set aside personal or conflicting interests and act solely in the best interest of the agency.
3. **Duty of Obedience:** requires the individual to obey all laws pertaining to the agency and act in furtherance of the agency's charitable purposes.

Meeting Fiduciary Duties

The following steps can be taken to help ensure compliance with fiduciary duties:

DUTY OF CARE

Active Participation: Board members should actively participate in the management of the organization, including attending board meetings, evaluating reports, reading minutes.

Committees: The board should ensure Board committees operate under the direction and control of the board. Board members are responsible for committees and should regularly receive committee reports and scrutinize their work.

Board Actions: Directors should understand that for purposes of determining whether a director met the duty of care, a board member who is present at a meeting when an action is approved is presumed to have agreed to the action unless (a) he or she objects to the meeting because it was not lawfully called or convened and does not participate in the meeting, (b) he or she votes against the action, or (c) he or she is prohibited from voting on the action due to a conflict of interest.

Minutes of Meetings: Written minutes should be taken at every board meeting. The minutes should accurately reflect board discussions as well as actions taken at meetings. Minutes should be distributed to board members and formally approved at a subsequent board meeting.

Books and Records: Board members should have access to, and general knowledge of, the organization's books and records (articles, bylaws, accounting records, tax returns, voting agreements, minutes, etc.).

Accurate Recordkeeping: Board members should not only be familiar with the content of the books and records, but also should make sure that the organization's records and accounts are accurate. This may require independent audits and/or the implementation of appropriate internal controls.

Trust Property: Board members should protect, preserve, invest and manage the agency's property, and do so consistent with donor restrictions and legal requirements.

Investigations: Allegations of misconduct should be investigated and addressed.

DUTY OF LOYALTY

Generally: Board members should avoid using their positions or the organization's assets in a way that would result in inappropriate financial gain for themselves or any member of their family.

Conflicts of Interest: Board members should ensure that conflicts of interest are appropriately addressed and the organization's conflicts of interest policy is followed (see Conflicts of Interest).

DUTY OF OBEDIENCE

Provincial and Federal Statutes: Board members should be generally aware of the agencies need to comply with provincial and federal statutes and laws relating to nonprofit corporations or trusts, tax-exempt status, charitable solicitations, sales and use taxes and employment matters; and members should ensure the organization complies with such laws through delegation to the CEO and by review of the agency Goals Management System (GMS).

Filing Requirements: The board must ensure that the organization complies with deadlines for tax and financial reporting, including filings with Revenue Canada.

Governing Documents: Board members should be familiar with their agency's governing documents and should follow the provisions of those documents.

Outside Help: When appropriate, board members should obtain opinions of legal counsel, accountants, appraisers or other professionals.

Board Member Liability

In general, only a corporation's own assets are at risk for actions taken by or on behalf of the corporation. Nevertheless, the act or failure to act by a board member or officer of an agency may result in personal liability. Actions or omissions that constitute a breach of fiduciary duty or breach of a personal contractual obligation, or that cause physical injury or death, may cause personal liability. Actions or omissions that are considered reckless or criminal may also give rise to personal liability. Individual directors and officers may also be held personally liable for a agency's failure to withhold and pay certain federal taxes.

Both provincial and federal laws afford some protection against personal liability to individuals serving as unpaid officers and directors of charitable organizations. Under Ontario law, such a person generally is not liable under civil law for acts taken in good faith, within the scope of the person's responsibilities, and which do not constitute willful or reckless misconduct.

Board Job Description

The job of the agency is to achieve the mission in a prudent and ethical way. The job of the Board is to make certain contributions to the agency that is requisite/necessary to its public trusteeship role and necessary for proper governance and management of the corporation.

The responsibilities of the E3 Board fall into the following fundamental framework, which when taken together form a kind of "job description". This framework needs to be followed and reviewed each and every year. In following this fundamental framework the Board shall proactively be looking forward rather than analyzing the status quo.

Assume Moral Ownership

The Board needs to get to know its member base better with the idea of developing ends or goals consistent with the needs of its stakeholders generally.

Link to Membership

The Board will seek to ascertain the views and wishes of the membership so it can more properly represent their views and reach stated objectives. Links to the membership can happen by way of surveys, meetings or other methodology. These links must remain current and be an ongoing exercise every year.

Establish Governing Policies

The Board should concentrate on establishing Board policies as opposed to administrative policies of the agency. These Board policies set the Board's accountability in a framework under which all other policies must be derived. E3 establishes four major policies as follows:

> **An Objectives Policy** to identify what the organization wishes to achieve in the broadest terms. This usually emanates from the mission statement or statement of objectives of the organization.
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> **A Policy to define Board governance modality** sets out a governing manner, job description and meeting process which helps members understand how decision are made and how staff Board relationships operate among other things.
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> **An Executive Limitations Policy** sets clear guidelines and limitations for the CEO around ethics, legalities, financial flexibility and mission focus. In this way the Board can be accountable at the highest level without having to understand and deal with every policy or issue and approve every decision. It also gives the CEO freedom to act as long as it is within the bounds of the Limitations Policy of the Board.
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> **A Board/CEO Relationship Policy** creates well defined parameters around reporting relationships, performance evaluations, decision making capacities and so on. This is a critical variable in the overall operations of an organization. The

Board through the Executive Committee will build a strong relationship with the CEO to help weather the storm of changing circumstances, staff succession, Board member succession and a plethora of other challenges which confront the company annually.

Provide Leadership and Advocacy

The Board will spend more time defining issues which present barriers to progress and then communicate (advocacy) the importance of a resolution to these issues to relevant stakeholders including government. When there are shortages of resources, political barriers or directives and policies adversely affecting the goals and objectives of the organization, the Board must identify when and where change can be affected through advocacy, negotiation, resistance or any number of other measures to promote the needs of the people supported. This is a very critical role for the Board and one which staff often cannot engage in effectively.

Develop and Review Strategic Planning (See Strategic Planning Process below)

The long term view for an organization must be a primary focus for the Board. The organization should have a strategic direction and modify it as necessary from time to time. This exercise must include stakeholders, staff and Board taking into account the need and ability to bring new resources into the service spectrum.

Assume Responsibility for Generating Discretionary Revenue

The Board will review revenue needs annually and determine the future direction of means and ends by way of fundraising and social enterprise projects. The actual work can be done each year either directly or through delegation either to committee or the CEO.

Agency Evaluation and Outcome Determination

With the help of the Goals Management System (GMS) the Board can determine whether operations are meeting the goals of the agency and its members. Agency performance is also linked to accreditation status, adherence to MCSS legislation, agency financial status, management of serious issues, "client rights" work progress and other factors as the Board may determine from time to time. A performance review template has been developed to assist the Board with this function.

Board and CEO Evaluation

Each year the Board will engage in self-evaluation in order to assess its performance of responsibilities to the "stakeholders". This self-evaluation is done through a Board member survey. Feedback is collected, summarized and recommendations for change are fed into the Goals Management System (GMS) for follow up and implementation.

The Board through the Executive Committee shall review annually the performance of the CEO as directly connected to the performance of the agency's achievement of ends or goals; and the CEO's ability to stay within the overarching policies of the Board as set out in Executive Limitations and other policies. A description of CEO Performance Evaluation is within the Board CEO Relationship Policy.

Guidelines for Board Process

E3 Board Meetings

Board meetings are for the single task of getting the Board's job done. The following are Board approved guidelines for conducting Board meetings.

1. Agenda Control: the Board is the sole authority over its own agenda. The President will exercise this control on behalf of the Board (with the help of the CEO if desired), though any board member – with a majority agreeing – can add or delete business from the agenda.

2. Agenda Content: Only those issues which are within the Board's chosen area of responsibility shall consume Board time. That is, the Board will work only on the Board's job, not on the staff's jobs; although the Board may review agency performance against Board Policies at any time it wishes. The Board may of course revise rules around agenda content, by consensus, at any time.

3. Board members are obligated to prepare for meetings and to participate productively in discussion, always within the boundaries of discipline established by the Board.

4. A full Board review of financial statements will be done only quarterly rather than monthly, but members will still receive statements by email or otherwise monthly. [QUESTION: Does this happen on a monthly basis?]

5. Approve major new initiatives and capital expenditures as brought forward by the CEO even if they are covered under the auspices of the strategic plan or current budgets.

Strategic Planning Process

The agency Goals Management System (GMS) doubles a living planning document for both operational and strategic purposes. It is reviewed, monitored and updated routinely by both management and Board and serves a repository of major goals and objectives coming out of feedback from all relevant sources.

The major agency feedback mechanisms include but are not limited to:

Consumer Surveys
Consumer Meeting Feedback
Board Surveys and Evaluation
Accreditation Recommendations
Agency Performance Review Recommendations
MCSS Compliance Reviews
Staff Ideas Change Feedback
MCSS Risk Assessment feedback
E3 Internal Compliance Reviews

Serious Occurrence Reporting
Client Rights Committee Reports and Feedback
MCSS and County Strategic Plans
Goals from the Board Job Description
Audit Recommendations

Strategic Planning and GMS development will take into account all of the above processes and combine this with an environmental scan of resources, needs and economic forecasts.

The Board uses the GMS to assess the performance of the agency and its plans going forward.

Selection and Appointment of Board Members

The agency by-laws set out rules around Board member elections and appointments. In addition the Board sets out the following guidelines in this policy to better manage Board process generally.

Board membership should be made up of a cross section of community volunteers including, but not limited to, parents and professionals from legal, medical, social, finance and business sectors. This direction serves as a guideline and often is circumscribed by volunteer availability in any given year. This approach will ensure a broad, professional community perspective on service and business related aspects given that the agency is now a relatively large business entity.

A nominations chair is selected or appointed each year by the President of the Board. The chair will solicit nomination recommendations as outlined in By-Law 6.4 of Agency By-Laws prior to the AGM. Membership recruitment in advance of the AGM will be discussed at the Executive Committee level with the CEO to ensure suitable representative candidates with demonstrated integrity are put forward for election. Each year the Board decides if the officers of the Board should be elected from within the Board or appointed by the President as prescribed by the agency By-Laws.

Nominations Committee Guidelines

The Board nominations process should be developed as a collaborative effort between the nominations chair, the President and the CEO. The relationship between these three individuals is critical to a smooth transition of responsibility and continued strong working relationships. Ultimately the membership elects new Board members, but the slate put forward is most often an exercise of the nominations committee chair in consultation with the President and CEO to achieve balanced representation of professional input, ownership, personalities and willingness to help.

Board Orientation

E3 has an extensive Board Orientation and education platform divided into training units. The Board may choose which of the units they would like to review within a given Board year. Orientation may be added on to each meeting as ongoing topics or a special day can be set aside to cover a greater amount of material at one time. Members decide on orientation process at the beginning of each Board year in September. Board Orientation units include but are not limited to the following:

Board Orientation Outline

Unit #1 - General
Unit #2 – Board Member Responsibilities
Unit #3 - Monitoring Agency Performance
Unit #4 – Quality Assurance
Unit #5 – Facts and Figures
Unit #6 – Accountability and Partnerships