

# BOARD GOVERNANCE BASICS

## BOARD LEADERSHIP LETHBRIDGE

- Understanding your Legal Landscape
- Governance Concepts
- Roles & Responsibilities of the Board
- Legal Responsibilities

# SESSION GUIDELINES

Disclaimer: not giving advice

Wisdom of all is needed for the best results

Unhinge from distractions as you are able

Ask questions

# ACTIVITY — PAIR & SHARE

- ❖ The type of organization are you?
  - ❖ If incorporated, what is the legislation under which your organization is incorporated?
- ❖ What is your organization's purpose?



# THE BIG PICTURE

**“Not-for-profit organizations operate within a framework of laws that govern what they can do and how they must do it.**

Some of these rules are made by governments and can be thought of as external rules. Other rules are made by the organization itself and are its internal rules. Your organization must follow all relevant external rules as well as its own internal rules.”

**External Rules** – “Like ordinary people, incorporated organizations must obey the law.”

**Internal Rules** – “Through their constitutions, policies, and customs, boards create their own rules. Some of these internal rules are also legally binding. **Board members are responsible for knowing and following their organization’s policies and for up-dating them from time to time as necessary.**”

# TYPES OF NOT-FOR-PROFIT ORGANIZATIONS

Unincorporated association

Not-for-profit corporation

Trust

# WHAT IS INCORPORATION?

“Incorporation is the process by which an organization gets formal legal status.

Once incorporated, an organization is considered to be a “**legal person**” and has almost the same status in law as a human being.

Societies, companies, and cooperatives are all examples of types of corporations.”

Source: Understanding your Corporate Documents, Muttart Foundation, p. 4

# CORPORATE STATUS — FROM STATUTORY LAW

Societies Act  
(Alberta)

Companies Act,  
Part 9 (Alberta)

CNCA: Canada  
Not-for-Profit  
Corporations act

Other

*What does your birth certificate say?*

# WHY IS IT IMPORTANT TO KNOW IF WE ARE INCORPORATED OR NOT?

**“The statute that enabled your organization to be incorporated sets out the powers of your board and a number of rules that your organization must follow to conduct its business and to remain “in good standing” as a corporation.**

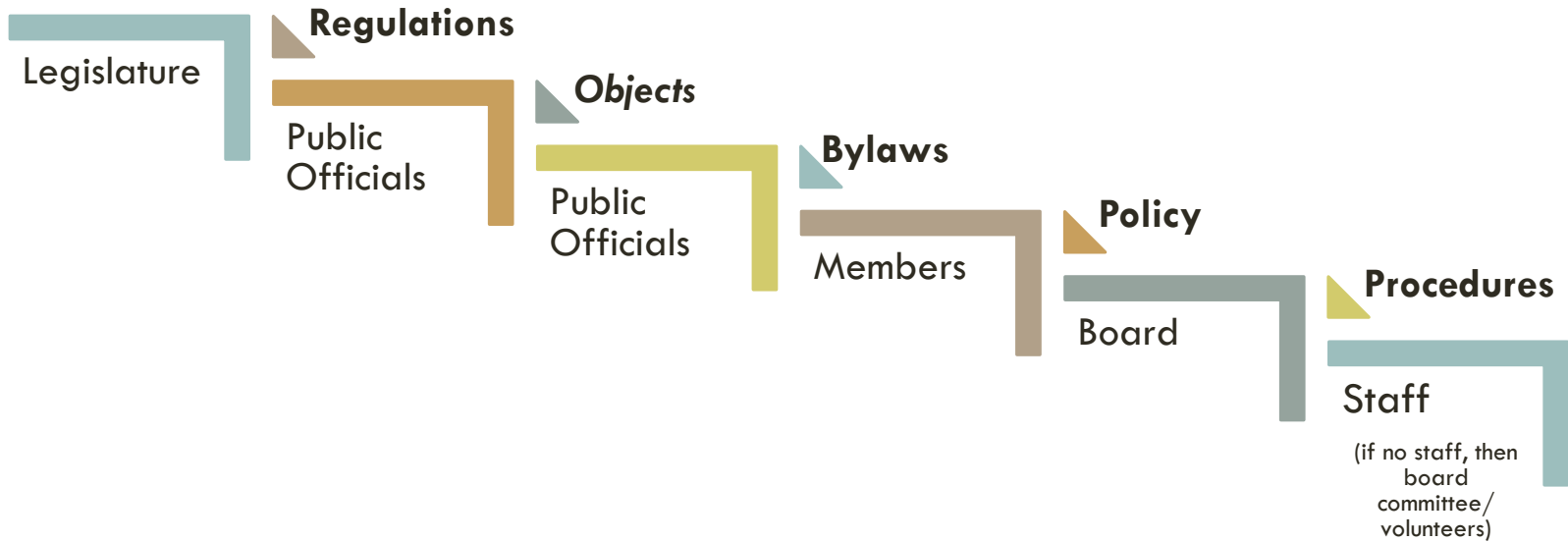
Since the duties of the directors vary depending on which statute is used, you need to read the statute that governs your organization carefully.”

*Source: Muttart Foundation, Understanding your Corporate Documents, p. 10*



# LADDER OF AUTHORITY

## Legislation



# WHAT IS OUR “CONSTITUTION”?

Varies from statute to statute

Generally speaking, an organization is required to file documents stating the general **objects** of the organization and **bylaws**

These documents form the organization’s constitution.

# CONSTITUTIONAL DOCUMENTS

Jurisdiction	Statute	Constitutional Documents
<b>Alberta</b>	Societies Act R.S.A. S-18	<ul style="list-style-type: none"> <li>• Application for Incorporation</li> <li>• Bylaws</li> <li>• Certificate of Incorporation</li> </ul>
<b>Alberta</b>	Companies Act R.S.A. 1980, c. C-20	<ul style="list-style-type: none"> <li>• Memorandum of Association</li> <li>• Articles of Association</li> </ul>
<b>Federal</b>	Canada Not-for-Profit Corporations Act S.C. 2009 c.23	<ul style="list-style-type: none"> <li>• Articles of Incorporation</li> <li>• Certificate of Incorporation</li> <li>• Bylaws</li> </ul>

Source: "Understanding your Corporate Documents", Muttart Foundation

# OBJECTS

Objects are short statements of the ultimate purpose of the corporation.

Suggested practice – Find a balance:

- It is advisable to keep the objects statement **short but broad** in nature  
*And yet*
- The objects should be sufficiently **specific** so as to avoid **ambiguity**

Source:

[https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/Not\\_for\\_Profit\\_Incorporators\\_Handbook\\_EN.html#\\_Toc435533062](https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/nfpinc/Not_for_Profit_Incorporators_Handbook_EN.html#_Toc435533062)

# OBJECTS & CHARITY STATUS

## Incorporation (as a Society)

### Permitted Purposes:

Benevolent, philanthropic, charitable, provident, scientific, artistic, literary, social, educational, agricultural, sporting or other useful purpose, but not for the purpose of carrying on a trade or business.

## CRA Registration (as a Charity)

### Permitted Purposes:

- Relief of poverty;
- Advancement of education;
- Advancement of religion; and
- Other purposes not falling under any of the above three headings but are beneficial to the community as determined by the courts.

# OTHER LEGISLATION (EXTERNAL)

## Income Tax Act

- Nonprofit tax exemption (but still need to file an annual return!)
  - NPO: a club, society or association that is not a charity but is organized and operated exclusively for any purpose except profit.
  - NPO may earn a limited profit as long as it is incidental to and arising from activities that are *directly connected* to its not-for-profit purposes
- Registered Charities

## Charitable Fundraising Act

- You must register as a charitable organization in Alberta if:
  - you intend to raise more than \$25,000 in gross contributions in your financial year from solicitations to individuals in Alberta
  - you will use the services of a fund-raising business
  - you have raised more than \$25,000 without intending to (in this case, you have 45 days after your contributions reach \$25,000 to apply for registration)

# INTERNAL RULES

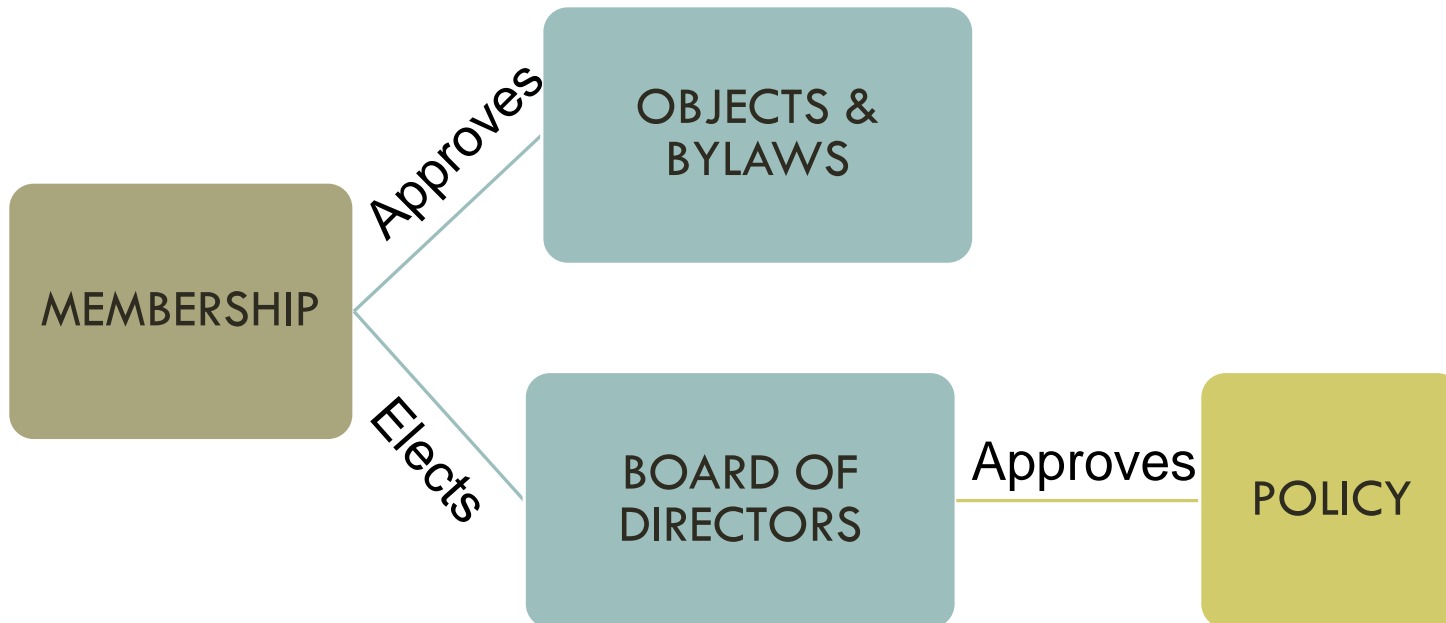
**“In addition to following the federal and provincial laws, your organization must follow its own rules.**

- ❖ The law that your founders and members have created through your constitution and the many decisions and policies that your board and members have made. Internal law must be followed until your organization uses the appropriate procedures to change it.
- ❖ Includes objects, bylaws, policies, procedures, motions passed by the board. These give your organization the authority to do what it does.
- ❖ If your organization does not follow its own rules, any decisions or actions it takes may be invalid and, may lead to claims for damages and even personal claims against directors.”

*Source: Muttart Foundation, Understanding your Corporate Documents, p. 16*

# WHO MAKES WHAT

Incorporators create the first set of objects – contained in the application.



Objects/Bylaw changes are not legal until approved by  
Corporate Registry



# BYLAWS

Governing rules and regulations

Tell your members how your organization will be managed and how decisions will be made

ARTICLE 1 - DEFINITIONS .....	2
ARTICLE 2 - INTERPRETATION .....	2
ARTICLE 3 - MEMBERSHIP .....	2
Eligibility .....	2
Withdrawing Membership .....	3
Membership in Good Standing .....	3
Initiation Fees .....	3
Dues .....	3
ARTICLE 4 - MEMBERS MEETINGS .....	3
General Meetings .....	3
Special Meetings .....	4
Emergency Special Meetings .....	4



❖ Complete the “Guide to Key Provisions” of your Bylaws worksheet. *(Understanding your Corporate Documents, pg. 22-23).*

# WHAT IS POLICY?

Form the written basis of operation secondary to legislation and the organization's bylaws

Explain the rules or laws related to the group's overall mission, goals and objectives

Provide the parameters, terms, or conditions to guide the actions of the board, committees, staff and volunteers

Prescribe limits and pinpoints responsibilities within the organization

# ACTIVITY – CHECKLIST

We are incorporated

Yes

No

Unsure

Our incorporating legislation is...

Societies Act

Companies Part 9

CNCA (federal)

Other / Not incorporated

Unsure

We are a Registered Charity

Yes

No

Unsure

I have our objects

Yes

No

Unsure

I have our bylaws

Yes

No

Unsure

Other legislation



# TAKEAWAYS & IDEAS

KEY POINTS FROM THIS SECTION

IDEAS FOR ACTION PLAN

# GOVERNANCE OVERVIEW

Concepts of Governance  
Role of the Board  
Responsibilities of the Board  
Organizational Design  
Board Effectiveness

# GOVERNANCE DEFINED

There are a variety of definitions for governance but they typically contain similar concepts. Two definitions we find helpful are as follows:

Governance is...

“a combination of both the overall processes and structures that are used in directing and managing the organization’s operations and activities.”

“the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled.”

# STEWARDSHIP

Another concept related to governance is “stewardship”

Stewardship is ....

“the responsibility of the board of directors of an organization and involves active oversight by the board of the organization’s governance.”

# THE ROLE OF THE BOARD

The board of directors is **governing body** of a non-profit organization and is the **legal authority** of the organization.

The role of the board is to “**lead the governance structure of the organization**”, oversee the organization’s affairs and govern within the applicable laws and standards.

**More specifically, the role of the board of directors is to:**

- ❖ Define and advance the organization’s **purpose**
- ❖ Ensure, develop and conserve **resources** (financial, human and property)
- ❖ Provide **oversight** (exercise effective control)
- ❖ **Engage** in outreach with stakeholders (manage relationships)

Source: Adapted from *The Jossey-Bass Handbook of Nonprofit Leadership and Management*, 3<sup>rd</sup> Edition p. 136-137



# RESPONSIBILITIES OF THE BOARD (1/2)

## **Organizational purpose and planning**

Define and advance the mission; organizational planning (setting direction)

## **Legal responsibilities**

Understand your legal framework, incorporation and registration (if a charity) and your fiduciary duties by acting in the best interest of the organization and complying with the law.

## **Create an ethical culture and practicing good governance.**

Maintaining public trust, reputation

## **Manage risk and liability**

Identify and manage risk and liability through development, implementation and monitoring of policies.

# RESPONSIBILITIES OF THE BOARD (2/2)

## **Financial responsibilities**

Financial management, distribution (budgets), reporting (financial statements) and monitoring; along with fund development to ensure sufficient resources for the organization.

## **Demonstrate leadership and work as a team**

Both formal and informal, and including how you build a strong team, make decisions, manage conflict, provide direction and offer support.

## **Relationship management**

How you engage and work with each other, staff, your members, stakeholders and the broader community.

# DISCUSSION

Reflect & Share:

**Can you think of examples that demonstrate how you are fulfilling the roles and/or responsibilities of a board?**



# DISCUSSION – PAIR & SHARE

Reflect & Share:

**What does good governance look  
like to you?**



# PRINCIPLES OF GOOD GOVERNANCE

Participation

Rule of law

Transparency

Responsiveness

Consensus  
orientation

Equity and  
fairness

Effectiveness  
and efficiency

Accountability

Strategic  
Vision  
*(Direction)*

ACTIVITY - Brainstorm specific activities you currently do or could do as a board to demonstrate these concepts in your organization.

# SKILLS OF EFFECTIVE BOARDS (1/2)

**Board effectiveness increases when boards demonstrate:**

**Contextual:** Takes into account the culture, norms and values of the organization

**Educational:** Take steps to ensure that members are well informed about the organization, the profession [sector], and the board's roles, responsibilities and performance

**Interpersonal:** Nurture the development of its members, attends to the board's collective welfare, and fosters a sense of cohesiveness (team)

Source: *The Jossey-Bass Handbook of Nonprofit Leadership and Management, 3<sup>rd</sup> Edition* p. 139-140

# SKILLS OF EFFECTIVE BOARDS (2/2)

**Board effectiveness increases when boards demonstrate:**

**Analytical:** Recognizes complexities and subtleties in the issues it faces and draws on multiple perspectives to dissect complex problems and synthesize appropriate responses

**Political:** Primary responsibilities include the need to develop and maintain healthy relationships with all key constituencies

**Strategic:** Shapes the organization's direction and ensures a strategic approach to future

Source: *The Jossey-Bass Handbook of Nonprofit Leadership and Management, 3<sup>rd</sup> Edition* p. 139-140

# QUALITIES OF A GOOD DIRECTOR

Integrity

Courage

Good  
Judgement

Perspective

Commitment  
to Learning



# SKILLS OF A GOOD DIRECTOR

Ability to present opinions

Willingness and ability to listen

Ability to ask questions

Flexibility

Dependability

Ability to think critically, creatively and strategically

Source: Adapted from 20 Questions Directors of Not-for-profits Should Ask about Governance

# DISCUSSION: LINKING PRINCIPLES, QUALITIES AND SKILLS



## Reflect & Share:

1. Where do you see connections between the Governance Principles, Qualities of a good board, and Skills of a good board?
2. How might you describe these connections?
3. What do these connections tell you about how to use Governance Principles, Qualities of a Director and Board Skills of a Director?
4. Can you think of one or two ways your board can adopt them?

# ORGANIZATIONAL DESIGN: HOW TO GET THE WORK DONE

Accomplishing the work that needs to be done, depends on:

❖ **Governance framework** as set by the board.

- E.g.: Structures such as the number and type of board positions; the type and use of committees; whether the organization has paid staff; and reporting relationships – who is accountable to whom and for what?

❖ **Systems & Policies** the board puts in place.

- E.g.: Agenda design and preparation; meeting frequency, duration and format; minute recording, storage and access; and policies and procedures.

❖ **Processes** the board uses.

- E.g.: Decision making; communication; managing conflict of interest, and, conflict resolution.

❖ **Organizational culture, mindset and skills of the board.**

# ACTIVITY - DISCUSSION

## Reflect & Share:

What structures, systems, and processes do you have in place that help you direct, manage and oversee effective control of your organization?



# TAKEAWAYS & IDEAS

KEY POINTS FROM THIS SECTION

IDEAS FOR ACTION PLAN

# LEGAL RESPONSIBILITIES

## Fiduciary Duties

- Duty of Loyalty
- Duty of Care

# SOURCES OF DUTIES & RESPONSIBILITIES

## Legal Responsibilities

- Employment Standards
  - Tax laws
  - Societies Act
  - Companies Act (Part 9)
  - Human Rights
  - Fiduciary Duties
- Fiduciary Duties
  - Duty of Care
  - Duty of Loyalty
  - Court Decisions

Written Law

Common Law

More Explicit

More Implicit

Voluntary Standards

Best Practices

- Imagine Canada Standards Program
- Robert's Rules of Order

- Position Descriptions
- Decision Making Processes/Rules of Order
- Internal controls

## Voluntary Responsibilities

*Note: this diagram is a work-in-progress, created by Community Development Unit staff*

# THE MOST FUNDAMENTAL DUTY

*A “fiduciary” is a legal term intended to refer to a person who, because of the position they hold, has a responsibility to act primarily for another’s benefit.*

## **Fiduciary duties come from:**

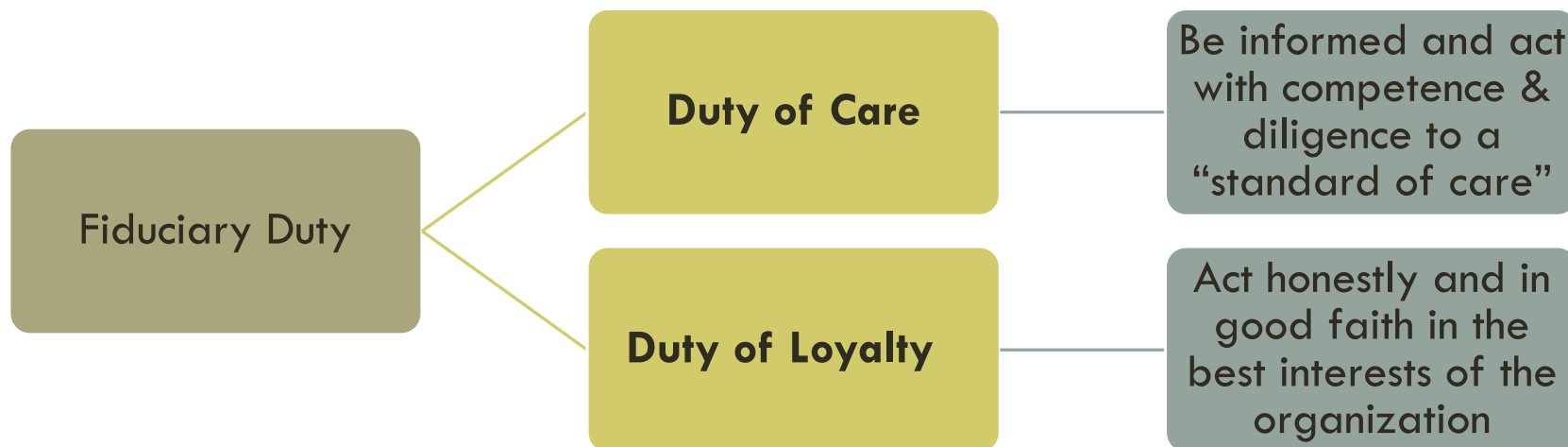
- Written law (i.e. statutes)
- Common law generated through court decisions

*Although laws vary, basic fiduciary duties of directors across Canada are substantially the same*

Source: 20 Questions Directors of Not-for-Profit Organizations Should Ask about Fiduciary Duty [www.cica.ca](http://www.cica.ca)



# FIDUCIARY DUTY



*\*Board members owe these duties to the organization itself*

<https://www.cpacanada.ca/en/business-and-accounting-resources/strategy-risk-and-governance/not-for-profit-governance/publications/questions-about-not-for-profit-fiduciary-duty>

# FULFILLING THE DUTY OF CARE

Duty to act honestly

Duty of diligence

Duty to exercise power

Duty of obedience

# STANDARD OF CARE

The **objective standard** judges all directors against the same criteria. Directors are required to exercise the degree of care and skill of a ***‘reasonably prudent person’***.

The **subjective standard** judges directors against their own personal characteristics, attributes, skill level, education, experience, and profession.

# HOW CAN A DIRECTOR FULFIL THE DUTY OF CARE?

**Pay attention and exercise ‘due diligence’**

*Due diligence refers to the level of judgment and degree of care, diligence, skill and activity that a person would reasonably be expected to exercise under particular circumstances.*

# FULFILLING THE DUTY OF LOYALTY

- Act in the best interests of the organization and not their own interests; and
  - Avoid situations in which they have competing fiduciary duties.
- 
- Two types of “Conflict of Interest”
    1. Personal conflict between duty to act in best interest of organization and your own self-interest
    2. A conflict of duties that the director owes to the organization he or she serves and to another organization

# HOW CAN A DIRECTOR FULFIL THE DUTY OF LOYALTY?

1. Be familiar with the organization's **conflict of interest policy**.
2. **Manage actual conflict of interest** and the appearance of conflict for self or another organization by immediately declaring any conflict of interest and following the process and requirements of the policy (i.e. abstain from discussion and voting).

Toolkit information on Conflict of Interest

# PERSONAL LIABILITY

Personal liability is minimized when board members are acting prudently, within their authority, and are not negligent.



Image Source: [insurance-expats.com](https://www.insurance-expats.com)

# TOOLKIT - WHAT NEEDS TO BE DONE?

## Purpose & Planning

- Incorporation & Objects & Bylaws
- Vision, Mission, Values
- Strategic Plan
- Business Plan (\$)
- Operational Plans

## Risk Management

- Risk Assessment
- Policies
- Procedures
- Implementation
- Monitoring

## Effective Meetings

- Meeting Rules & Procedures
- Agendas
- Minutes
- Chairing a meeting
- Follow Up

## Financial Mgt.

- Structure for Oversight
- Position Descriptions
- Budget
- Internal Controls (Pol.&Proc.)
- Reporting – Internal & Ext.

## Working as a Team

- Motivation & Skills & Team Dynamics
- Position Descriptions & Committees
- Communication & Decision Making
- Org. Culture & Shared Leadership

## Relationships & Accountability

- Board as Team
- Board & Staff/Committees
- Organization & Members
- Organization & Stakeholders

## Planning Your Year

- Annual Filings & AGM
- Strategic Planning & Mtg Schedule
- Succession & Recruitment
- Orientation & Training

## Fund Development

- Fund Dev. Strategy (big pic)
- Plan to Generate Income (annual)
- Position Descriptions / Role Clarity



# QUESTIONS?

*Presented by:*



**Community Development Unit**

[www.culture.alberta.ca/communitydevelopment](http://www.culture.alberta.ca/communitydevelopment)

**Kim Rowe**

Services: [communitydevelopment@gov.ab.ca](mailto:communitydevelopment@gov.ab.ca)