

FarmWorks Directors

- **Responsible for governance & management**
- **Accountable to the Shareholders**
- **May delegate functions (to officers & staff) but not ultimate responsibility**
- **Not immune from individual liability**

From Richard Bridges Presentation to NS C-op Council January 12, 2008

Duties of Directors:

- Duty of Knowledge
- Duty of Care
- Duty of Skill & Prudence
- Duty to Manage
- Duty of Diligence
- Duty to Act Within Scope of Authority
- Duty to Avoid Conflicts of Interest
- Duty of Obedience

Duties owed to:

- The organization
- Other Directors and Employees
- Shareholders
- Clients
- People and communities served
- General Public

Duty of Diligence

- Directors are responsible for all aspects of the organization:
- Must act in its best interests
- Must be well informed about the organization:
- Know what's going on
- Prepare for meetings
- Attend and participate
- Ask questions, raise concerns
- Vote

Duty to Avoid Conflicts of Interest

- A personal financial interest in a subject matter also of interest to the organization is a conflict of interest.
- Directors must place the organization's interests first.
- Directors & their families should not benefit at the expense of the organization
 - Disclose conflicts
 - Do not participate in decision-making on the issue
 - Ratification by membership if necessary

Duty of Obedience

- Directors must comply with:
 - the organization's constitution, bylaws, rules & policies
 - applicable laws

Fiduciary Duties

- Arise from a trust relationship
- Similar to the common law duties
- Must act honestly and in good faith
- Be loyal and act in best interests of the organization
- Avoid conflicts of interest
- Place interests of organization ahead of your own interests

Manage Risks

- Look out for potential harm or loss
- Take steps to prevent the harm or loss from occurring
- If problems occur, take steps to minimize or mitigate the harm or loss
- Apply good judgment

Good Governance

- Strategic planning - steering toward the goals
 - Stay within your legal powers
 - Keep it as simple as possible
 - Set measurable goals
 - Assign responsibilities
 - Follow-up on performance
- Being transparent to members & the public
 - Internal & External transparency needed
 - Email & Website tools
 - Publish just about everything
- Organizational structures
 - Board Committees? Can **either** improve governance efficiency **or** reduce cohesion
 - Executive, finance, human resources. others
 - Special committees on issues that may arise
 - Good communication essential
 - Clear written mandate and authority
- Ensuring board knows its role and avoids conflicts of interest
 - Adopt a conflict of interest policy
 - Understand what a conflict of interest is
 - Ask the question frequently – is anyone in conflict?
- Maintaining fiscal responsibility
 - Full Board must be attentive
 - Information flow critical
- Ensuring effective management team is in place

- A combination of supporting, mentoring, reviewing and challenging
- Implementing assessment and control systems
 - Primarily Financial
 - Budgeting & expenditure monitoring & reporting, etc.
 - Also relating to strategic plan
 - Measuring progress toward goals
- Planning for board succession
 - Nurture young leaders

Areas of potential director liability

- Tort – civil Liability (personal injury, abuse, wrongful dismissal)
- Directors can be personally liable if they were negligent in their oversight of the organization
- Contract
 - Lacking authority
 - Uncertainty as to whether a director is signing on behalf of the organization or personally
 - Failure to ensure organization complies with contracts
- Other Statutes
 - Federal Income Tax Act, Pension Plan Act, Employment Insurance Act – failure to remit employee taxes or premiums
 - Environmental Protection Act
- Various Provincial Acts
 - Employee wages
 - Workers compensation, health and safety, environment, building codes

Volunteer Protection Act proclaimed in 2002

Directors are protected from errors or omissions that are ordinary negligence, but not gross negligence

- Ordinary negligence: The failure to use such care as a reasonably prudent person would use under similar circumstances – an act or an omission.
- Gross negligence: The failure to perform a manifest duty in reckless disregard for the consequences to the life or property of another.

Protecting Directors

- Insurance and Indemnification
 - General Liability Insurance:
 - physical injury or property damage
 - Directors & Officers Liability Insurance:
 - errors, omissions, misstatements, breach of duty
- Ratification
 - Subsequent approval by the members of a board decision
 - If there is full disclosure of the facts, ratification can transfer potential liability from directors to the organization
- Manage risks with good management & governance