

Ringette Association of Saskatchewan (RAS) Director's Agreement and Guide

Preamble

This guide informs members of the RAS's Board of Directors about their legal responsibilities and provides practical suggestions for managing risk and minimizing personal liability. The volunteer director needs to understand these risks so that he or she can act reasonably and appropriately. The purpose of this guide is to raise awareness of the legal risks facing directors, and offer directors some practical suggestions for minimizing these risks.

Who is a director?

A director is an individual who is a member of the RAS's Board of Directors. The responsibility of the Board is to provide leadership and direction to the RAS, and to govern its affairs on behalf of its participants.

RAS directors are elected or appointed to their positions on the Board in accordance with the RAS Bylaws. Directors may also be officers, where an officer fulfills certain corporate roles and functions, such as those duties of a 'president', 'treasurer' or 'secretary'. Officers can also be senior staff persons. Directors and officers have a relationship of "trust" with the members of RAS, and it is from this trust relationship that certain important legal duties arise.

Legal duties of directors

The basic responsibility of directors is to represent the interest of the members in directing the affairs of RAS, and to do so within the law. This legal duty is described in statutes (such as Saskatchewan's *Non-profit Corporations Act* or, as amended) and has been expanded and interpreted in the common law.

In representing the members of the organization and acting as their "trustee", directors have three basic duties:

- a) The duty of diligence: this is the duty to act reasonably, prudently, in good faith and with a view to the best interests of the RAS and its members.
- b) The duty of loyalty: this is the duty place the interests of the RAS first, and to not use one's position as a director to further private interests.
- c) The duty of obedience: this is the duty to act within the scope of the governing policies of the RAS and within the scope of other laws, rules and regulations that apply to the RAS.

These three duties are discussed more fully below.

Duty of diligence

Diligent directors always act prudently and in the best interests of the RAS. When exercising their duties as directors, they are expected to exercise the same level of care that a reasonable person with similar abilities, skills and experience would exercise in similar circumstances. And, if a director has a special skill or area of expertise, such as an accountant or lawyer would have, they have a duty to achieve a higher standard of care that corresponds to their professional abilities.

Directors have a responsibility to act cautiously and to try to anticipate the consequences of their decisions and actions before they undertake them. They are honest and forthright in their dealings with each other, with members and with the public. They are well-informed about the activities and finances of the RAS. They have an obligation to foresee potential risks inherent in a situation, and to take reasonable steps to manage those risks.

Duty of loyalty

Directors are required to put the interests of the RAS first. These interests will always take precedence over any other interest, including a director's personal interests. As well, directors who are involved in more than one organization may find that they cannot be loyal to both.

Loyal directors will avoid putting themselves in a situation of a conflict of interest, and when this is unavoidable, they will act properly in disclosing the conflict and ensuring that they play no part in discussing, influencing or making decisions relating to that conflict.

Confidentiality is also an important aspect of the duty of loyalty. Directors have an obligation to keep RAS business private, and to not discuss certain matters with people outside the Board of Directors. Confidential matters may include information about personnel, clients served by the RAS, the RAS's finances, or legal matters.

A board acts as one entity. Loyal directors support the decisions of the board, even if they might not personally agree with the decision and might not have voted to support the decision in the board meeting.

Duty of obedience

The RAS is a "private tribunal" – an autonomous organization that has the power to write rules, make decisions and take actions that affect their members and participants. Legally, private tribunals are recognized as having a contractual relationship with their members. This relationship is defined in the RAS's governing documents, which include its constitution, bylaws, policies, rules and regulations.

Directors have a duty to comply with the RAS's governing documents, and to ensure that staff and committees of the RAS do as well. Over time, the RAS may move away from their legal purpose and policies may become out of date and no longer reflect the practices of the RAS. The duty of obedience extends to ensuring that governing documents remain current and accurate, and overseeing the process that is used to amend and update governing documents.

Directors also have a duty to obey external laws and rules that are imposed upon the RAS. A wide variety of laws and statutes apply to the RAS and the obedient director ensures that the RAS complies with these laws and statutes.

Liability of directors

A director who fails to fulfill his or her duties as outlined above may be liable. The term "liability" refers to the responsibility for the consequences of conduct that fails to meet a pre-determined legal standard. Usually, the term "consequences" refers to damage or loss experienced by someone, and being responsible for such consequences means having to pay financial compensation.

Liability arises in the following three situations:

1. Statute - a law is broken. The consequences are payment of a fine, having restrictions placed on one's rights or privileges, or imprisonment.
2. Contract - A contract is breached or violated, where a contract is a legally enforceable promise between two or more parties. The consequences are correcting the breach through some form of performance or service, or financial compensation
3. Tort - an act, or a failure to act, whether intentionally or unintentionally, causes injury or damage to another person. The consequences are payment of a remedy in the form of financial compensation.

Regarding statutes, there are a variety of statutes that impose liability on directors in specific circumstances relating to managing the affairs of the RAS. Thus, directors have specific statutory obligations relating to:

1. The election and appointment of directors and officers
2. Calling meetings of members
3. Paying taxes to government and submitting employment-related remittances
4. Keeping minutes of meetings of directors and members
5. Reporting and disclosing prescribed information about the RAS to authorities
6. Paying wages and salaries
7. Maintaining a safe workplace
8. Activities of the RAS that cause pollution or other environmental damage

Regarding contracts, directors are responsible for ensuring that the RAS's contractual obligations are fulfilled. This includes contracts with employees and independent contractors.

Regarding *torts*, directors are responsible for ensuring that they, as well as the RAS's volunteers and staff, do not behave negligently. Negligence refers to the duty that we all have to ensure the safety of those persons affected by our actions. Directors, volunteers and staff are at all times expected to act in a reasonably diligent and safety-conscious manner so that others affected by our actions (fellow employees, volunteers, participants, clients, the public) will not face an unreasonable risk of harm.

The concept of negligence also applies to "wrongful acts" – these are errors, omissions, actions or decisions that harm others, not through damaging their property or their physical person, but through interfering with their rights, opportunities or privileges. Wrongful acts relate primarily to how directors govern the RAS, manage its funds, supervise its staff and make decisions that affect members, clients and the public.

Avoiding liability through risk management

There is risk inherent in everything. Volunteers, employees and directors of the RAS must always be mindful of risks – this means examining situations cautiously and thinking ahead about the potential consequences of decisions and actions. Most people manage risks most of the time, and they do so instinctively. However, it is always a good idea to take steps ourselves, and to encourage others, to think about risks and risk management more systematically.

The process of risk management is a simple three-part activity. It involves:

1. First, looking at a situation and asking what can go wrong and what harm could result?
2. Second, identifying practical measures we can take to keep such harm from occurring.
3. Third, if harm does occur, identifying practical measures we can take to mitigate its impacts and pay for any resulting damage or losses.

The practical measures that can be used to manage risks fall into four categories:

1. Assume the risk – decide that the risk is minor and do nothing
2. Reduce the risk – find ways to change people's behaviour or the environment in which people work so that the degree of risk is reduced
3. Avoid the risk – choose *not* to do something
4. Transfer the risk – accept the risk but transfer the liability associated with it to someone else through a written contract

The RAS will face different risks and will plan and implement different measures to deal with these risks. The practice of risk management is based in large part on common sense and is linked to the concept of “standard of care”, because the measures that are taken to manage risks are usually those would be taken by any other prudent and reasonable person, having the same skills, knowledge and experience as ourselves. These measures will tend to revolve around training and educating staff and volunteers; enforcing reasonable rules; inspecting and maintaining facilities and equipment; screening and supervising staff; properly documenting meetings and decisions; and meeting all statutory reporting requirements.

The final section of this guide provides some practical measures that the RAS, and individual directors themselves, can take to manage the risks and liabilities faced by a director. The next section deals with insurance – a common risk management measure and one that is particularly important in minimizing with director's liability.

Directors and officers liability insurance

Insurance is one of many techniques used to manage risks – it involves transferring the liability associated with a risk to another party by means of a written contract. In the case of insurance, the party that the risk is transferred to is the insurance company, and the written contract is the insurance policy. Transferring risks through written contracts is a very common business practice.

Directors and officers insurance is like general liability insurance, and covers costs that the directors and officers of an organization might become legally obligated to pay as a result of damages to another party. However, unlike a general liability insurance policy that covers losses arising from physical injury or property damage, directors' and officers' liability insurance covers only those losses arising from the director's own “wrongful acts”.

In such an insurance policy, a wrongful act is defined as an error, misstatement, misleading statement, act, omission or other breach of duty by an insured person in his or her insured capacity. The purpose of this insurance is to provide the financial backing for the indemnity that the organization provides to its directors.

Directors and officers insurance policies vary, and there is no standard level of coverage. Importantly, many of these policies exclude coverage for:

1. Directors acting outside the scope of their duties as they are described in this handbook, including any actions that are dishonest, fraudulent or criminal
2. Breach of contract, including wrongful dismissal of employees
3. Fines and penalties under a statute or regulation
4. Complaints under a human rights code, including a complaint of discrimination, harassment or sexual harassment

Protecting yourself as a director

There is no substitute for knowledgeable governance and thoughtful risk management, and the RAS managing its affairs in a conscientious and responsible manner will reduce its directors' liability risks considerably. Nonetheless, the following practical tips will be helpful to all directors.

Before accepting a directorship with the RAS, you should:

1. Think about your reasons for becoming a director. Be sure you have the time, interest and commitment to do the job well.
2. Learn as much as you can about the RAS. What is its mission? What activities does it undertake? How is it perceived in the community?
3. Ask for a written job description for the position of director.
4. Educate yourself about your legal duties as a director.

5. Look at the composition of the entire board, and satisfy yourself that it can govern effectively and provide competent direction to committees, staff and volunteers within the RAS.
6. Confirm that the organization indemnifies its directors (either through its bylaws, through policy or by means of a written contract) and that it carries directors and officers liability insurance. Ask about the scope of coverage and any exclusion(s) to this insurance.

Once you have accepted a directorship, managing your personal liability risks is an ongoing process. The following guidelines will help you to take steps to manage these risks as they relate to issues such as policy, finances, meetings, personnel, and training.

Meetings

1. Attend meetings, be prepared to discuss the items on the agenda and participate fully in decision-making.
2. Provide your reports to the Board in written form.
3. Ensure that minutes reflect abstentions from votes, votes for and votes against motions.
4. If you have any real or perceived conflict of interest, declare it when the issue first arises and do not vote, participate in or influence the decision-making process. Have your disclosure recorded in the meeting minutes.
5. Do not rush important decisions. Ensure that board members receive meeting materials in ample time to digest them. If important information is lacking, postpone the decision until this information can be obtained.
6. Keep your own personal copies of key documentation and minutes of controversial meetings.

Finances

1. Take an interest in finances by reviewing regular financial reports, and approving and monitoring the RAS's annual budget.
2. Use a professional, independent accountant to perform an annual audit of the RAS's finances.
3. Know who is authorized to sign cheques and for what amount.
4. Don't be shy about asking questions and seeking clarification on financial matters from staff.
5. With the assistance of your auditor, develop a list of statutory reporting requirements and assign a staff person or director to monitor that these requirements are being fulfilled.

Contracts

1. Ensure that all contracts the RAS enters into are carefully reviewed by staff or by counsel.
2. When the RAS partners with other entities on joint projects, or enters into agreements, be sure that all terms and conditions are clearly expressed in a written contract and that risks and liabilities are appropriately shared.

Policy

1. Ask for a copy of the RAS's policy manual. If the RAS does not have a policy manual, develop a work plan for staff (or others, as appropriate) to prepare one.
2. Be familiar with the content of the RAS's bylaws. If they are out of date, or no longer adequately reflect the mandate and activities of the RAS, then undertake to update them.
3. On important matters and for decisions that have the potential to adversely affect someone, ensure that the RAS's policies are adhered to as written. If the policy is unsuitable for dealing with the particular circumstance, then take steps to change the policy for the future.
4. Commit staff and volunteer time and financial resources to developing risk management policies.

Personnel

1. Ensure that all staff and volunteer positions have written job descriptions.
2. Insist that organization develop a clear personnel policy and ensure that staff evaluations are performed at least annually or as required by the policy.
3. Be sure that suitable screening measures are in place for those staff and volunteer positions that involve interaction with youth or other vulnerable persons in unsupervised settings.

Insurance

1. Ask for copies of the RAS's insurance policies and become familiar with their scope of coverage.
2. Consider asking the insurance broker to meet with the Board and make a brief presentation on these policies.

Training

1. Support professional development for staff and training for volunteers.
2. Encourage the board to also engage in training. Bring in a board development instructor or a facilitator to help the board improve its effectiveness.
3. Offer board members training opportunities in association with board meetings or annual general meetings.
4. Commit resources to the development and updating of board and staff orientation materials.
5. Leave aside a short portion of every board meeting to allow the board to evaluate its effectiveness in conducting the meeting and making governance decisions.

General

1. If you suspect that something is not right, go with your intuition and check it out! Be curious. Remember, as a director you will be held responsible for circumstances and situations you ought to have known about, whether or not you actually did know about them.
2. Do not speak negatively about the RAS to the public. Publicly support the board's decisions, even if you might have voted against the majority of directors.
3. If the RAS needs to deal with a complex matter in which staff or directors lack expertise, consider the services of an outside professional (for example, lawyer, financial advisor, human resources consultant, risk management specialist, engineer)

Summary

The purpose of this guide is to inform directors of the legal dimensions of their voluntary contribution. An informed director is a more confident and competent director.

The most widely available, most effective and least expensive risk management technique is common sense. The RAS can capitalize on this common sense by recruiting capable board members and well-qualified staff, providing an orientation program for all new people, putting on paper clear job descriptions and sound policies, supporting professional development at all levels of the RAS, and creating an organizational culture that emphasizes and rewards risk management thinking and behaviour.

Director's Agreement Must be completed in conjunction with terms on the board.

THIS AGREEMENT CONFIRMS that the undersigned is eligible for nomination as a Director or has been elected as a Director of the RAS and agrees as follows:

Condition Precedent - Police Record Check

1. The Director agrees to obtain a police security check prior to performing such responsibilities as a Director and will renew such security check upon the request of the RAS. The RAS's Board, in its sole discretion, will determine whether such offences pose an unacceptable risk to the safety and security of the RAS and may terminate the Director's eligibility as a director or position as a director.
2. The Director agrees to provide notification to the RAS of any offences disclosed as a result of such police security check, or of which it becomes aware through any other means.

Responsibilities of the Director

3. The Director will comply with the Director's Duties and Responsibilities described in Schedule "A".

Duty of Diligence

4. The Director will:
 - a) Act prudently and in the best interests of the RAS
 - b) Exercise the same level of care that a reasonable person with similar abilities, skills and experience in similar circumstances
 - c) Act cautiously and try to anticipate the consequences of their decisions and actions before they undertake them
 - d) Act honestly and forthright
 - e) Take reasonable steps to manage foreseeable risks

Duty of Loyalty

5. The Director will:
 - a) Put the interests of the RAS first which will take precedence over any other interest, including their own personal interests
 - b) Avoid putting themselves in a situation of a conflict of interest
 - c) Act properly in disclosing a situation of a conflict of interest and ensure they play no part in discussing, influencing or making decision relating to that conflict
 - d) Keep the RAS's business private and not discuss certain matters with people outside of the RAS
 - e) Comply with the RAS's *Privacy Policy*
 - f) Disclose any conflicts of interest per the RAS's *Conflict of Interest Policy*

Duty of Obedience

6. The Director will:
 - a) Comply with the RAS's governing documents and ensure that staff and committees do as well.
 - b) Ensure the RAS's governing documents remain current and accurate.
 - c) Obey external laws and rules that are imposed upon the RAS.

Expenses

7. The RAS will reimburse the Director for any expenses in accordance with the RAS's usual business practices and financial policy upon receipt of an expense claim and applicable receipts.

Termination

8. This Agreement will terminate upon:
- a) Upon the Director not being elected as a Director
 - b) The expiration of the Director's term
 - c) Resignation
 - d) The Director is found by a court to be of unsound mind
 - e) The Director becomes bankrupt
 - f) The Director is removed by way of resolution in accordance with the RAS's Bylaws

Confidentiality

9. The Director will not, either during the period of their involvement as a director or any time thereafter, disclose to any person or organization any Confidential Information acquired during his or her period of involvement as a director with the RAS, unless expressly authorized to do so.
10. The Director will comply with the RAS's *Confidentiality Policy*.

Conflict of Interest

11. The Director will comply with the RAS's *Conflict of Interest Policy* and Saskatchewan's *Non-profit Corporations Act*.

Proprietary Rights

12. Copyright and any other intellectual property rights in all written material (including material in electronic format), software, databases, trademarks, patents, logos, trade names, brands and other works produced by the Director will be owned solely by the RAS, which will have the right to use, reproduce or distribute such material and works, or any part thereof, for any purpose it wishes
13. The Director will not use, reproduce or distribute such material or works, or any part thereof, without the express written consent of the RAS.

Interpretation

14. This Agreement will be interpreted in accordance with the laws of the Province of Saskatchewan.

General

15. No failure or delay by the RAS in enforcing any right or remedy in this Agreement will be construed as a waiver of any future exercise of such right or remedy.
16. The Parties have sought or obtained, or have had the opportunity to seek and obtain, independent legal advice concerning the matters in this Agreement, and execute this Agreement knowingly and voluntarily.
17. This Agreement constitutes the sole and entire agreement between the parties, and supersedes any previous agreements, understandings and arrangements between the parties. Any amendments hereto are enforceable only if in writing and signed by each of the parties.
18. If any portion of this Agreement is deemed by any court of competent jurisdiction to be illegal or unenforceable, then the remaining provisions of this Agreement will remain in full force and effect notwithstanding.
19. The Director hereby agrees to abide by the terms and conditions outlined in this Agreement. To evidence his or her agreement, the Director has signed this Agreement.

Director

Per:

Date

SCHEDULE "A"

BOARD OF DIRECTORS DUTIES AND RESPONSIBILITIES

Overview

The Board of Directors of the RAS has the responsibility to manage the affairs of the RAS in accordance with Saskatchewan's *Non-profit Corporations Act*, as amended, the RAS's Bylaws, and the RAS's policies and procedures. The basic responsibility of a Director is to represent the interests of the RAS's members in directing the affairs of the RAS and to do so within the law. Specifically, Directors will have the following additional responsibilities and duties:

General

- a) Act reasonably, prudently, in good faith and with a view to the best interests of the RAS and its members.
- b) Place the interests of the RAS first and not use one's position as a Director to further private interests.
- c) Act within the scope of the governing policies of the RAS and within the scope of other laws, rules and regulations that apply to the RAS.
- d) Keep the RAS's business private and not discuss certain matters with people outside of RAS unless with prior approval of the Board
- e) Support the decisions of the Board, even if they may not personally agree with the decisions and might not have voted to support the decision.
- f) Act as a member of a designated committee as appointed by the Board.
- g) Keep all appropriate individuals and committees informed as required through normal reporting and communication channels.
- h) Perform such other duties as may from time to time be established by the Board.
- i) Act in a manner that promotes a positive and professional public image.
- j) Devote their full time and attending during volunteers hours to the business and interests of the RAS.
- k) Schedule volunteer hours in order to accommodate the changing needs of the RAS which may require evening and weekend work.

Meetings

- a) Attend and properly prepare for meetings.
- b) Provide all required reports to the Board in written form as required.
- c) Ensure minutes of meetings are accurate and correct.
- d) Ensure that minutes of meetings reflect abstentions from votes, votes for and votes against motions.
- e) Declare any real or perceived conflict of interest with respect to an issue when the issue first arises and not vote, participate in or influence the decision-making process.
- f) Ensure any such disclosures of conflict are recorded in the meeting minutes.

Finances

- a) Review regularly the financial reports of the RAS.
- b) Approve and monitor the RAS's budget.
- c) Ensure the performance and completion of an annual audit of the RAS's finances.
- d) Inform themselves who is authorized to sign cheques and for what amount.
- e) Supervise the management and the disbursement of funds of the RAS.
- f) Comply with the RAS's *Financial Policy*.

Contracts

- a) Ensure that all contracts the RAS enters into are carefully reviewed by staff or by counsel.

Planning

- a) Develop, implement, monitor and evaluate the RAS's strategic plan.

Personnel

- a) Ensure the RAS develops a clear *Human Resources Policy* and ensure that any staff evaluations are performed at least annually or as required by the policy.
- b) Ensure that all staff and volunteer positions have written job descriptions and agreements.
- b) Ensure there are suitable screening measures in place for those staff and volunteer positions that involve interaction with youth or other vulnerable persons in unsupervised settings.

Policy

- a) Review and adhere to the RAS's Bylaws, policies and procedures.
- b) Undertake to update out of date bylaws, policies and procedures or to create new ones.

Insurance

- a) Ensure the RAS's obtains adequate insurance.
- b) Become familiar with the RAS's insurance policies and the scope of their coverage.