

# **LEADERSHIP IN THE NON-PROFIT SECTOR**

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As Karen Kain, Chair of the Canada Council for the Arts, said recently, "The arts enrich our lives. They inspire our children and promote learning. They bring our communities and cities to life. They bring us together. They are part of us." With all the talk these days about the importance of our healthcare and education systems, it is my belief that the value of our arts organizations is often overlooked. In my view, it is these very organizations which, as much as anything, give us joy and help to intensify our understanding and desire for life. Therefore today I am going to address my remarks primarily to what lawyers can do for the arts; - they are definitely in the non-profit sector.

I think we are uniquely qualified to help. We are trained to think logically, to plan ahead, to listen to both sides of an argument, and to mediate disputes. Arts groups are usually strong on volunteers who want to help in some way but are not sure how, and visionaries who know what they want to achieve but have no idea how to get there. While there are a few arts groups which can afford to pay for legal advice, most can't, so much of the work is corporate pro-bono. And I am one that believes that all lawyers should contribute to society in dollars if you can, but certainly as a volunteer. It is amazing how satisfying it is to see some small group get organized and accomplish something when you know you have got them started or helped them work through their problems. You often meet the most interesting people. And if your fellow workers see you have good ideas – they are more likely to utilize your legal services for paying work.

Lawyers are often asked to be members of the board of directors of arts organizations. We can be very helpful in this area because we should know something about what boards can and should be doing, have some understanding of financial statements, and appreciate the concepts of conflicts of interest of fiduciaries. We also know some of the legal pitfalls. It's amazing how many people have said to me over the years "Surely there can't be any director's liability since I'm not being paid." But of course a corporate director is a corporate director and has potential liability for salaries, tax withholding, etc.. One problem that the lawyer should recognize is that it is all too easy to give a quick superficial answer to what may be a complicated problem; even if not paid, the lawyer must dig down to find the facts and consider what the law truly is.

It is important to know that the Ontario Public Trustee takes the position that, without a court order or equivalent, no director of a charity can be paid by the charity, whether or not as a director. In other words, even if the director is also the founder of the organization and is the fulltime general manager, he or she can't be remunerated. Nor, presumably, can a director's law firm, if the director is a lawyer.

In the short time I have available, let me give you some examples of some of the interesting matters I have been involved with.

### **Example 1**

If you haven't been to St. John's, Newfoundland recently there is something new. High on the hill above the harbour is a gigantic box-like \$50 million structure that is supposed to look like a series of fishing huts. This complex houses a museum, an art gallery and the province's archives. Three

different independent government groups were put together as "The Rooms Corporation of Newfoundland and Labrador Inc.". There is a new company with a board of some 18 directors and the only shares are held by the Provincial Government. All this was subject to some political controversy and the opening was delayed a year – but it now is flourishing and they had over 100,000 visitors in the first year. Last year I talked to the directors and others in some seminars. The professional challenge here was to try to assist the director and staff to unify the different groups and make suggestions for corporate procedures to do so. So I advised board members of some of their new rights and responsibilities and made a suggestion as to a possible amendment to their Act of incorporation. It's always fun to work with Newfoundlanders.

## **Example 2**

I was part of a group in Banff, sponsored by the University of Waterloo Centre for Cultural Management and the Community Foundation of Nova Scotia to consider as a case study the problems of the Kitchener-Waterloo Symphony in 2004. Many of you will recall that this involved the termination of the principal conductor's contract, citizens groups objecting, a libel suit, a divided board of directors, musicians' complaints and the resignation of the executive director. At one stage, the whole board of directors resigned en masse. A new board chairman was elected (a respected lawyer) to try and calm things down. He survived attempts to force his resignation, almost a year of uproar and constant newspaper attacks. At the conference, we discussed what had gone wrong and how things could perhaps be salvaged – as has occurred. It was a particularly interesting study since much detailed research was done for a proposed

discussion at a course at the University of Waterloo. This unfortunate situation ended happily with the beleaguered chairman being able to say "People want to move forward and that is exactly what we are going to do. There will be peace now, I have no doubt about that – we'll just get on with the business at hand." And they did. The professional challenge here was to not only give good legal advice but to consider the public relations aspects of that advice and how best to present the board's decisions to the public.

### **Example 3**

Toronto's Distillery District (southeast of Front and Parliament) is being developed into an exciting shopping area of stores and boutiques. Soulpepper Theatre, which until now had only a summer season of classic plays at Harbourfront, and George Brown College, which has had an existing theatre programme, have joined forces to joint venture the building of a new theatre complex, - The Young Centre for the Performing Arts which provides various theatre space for Soulpepper and houses the full George Brown Theatre programme. The \$20 million cost has been raised and the Centre has now opened. The actual legal structure is that a new corporation GBSP Inc. has been formed with a seven person board. Each of the two partners nominated three persons and the seventh person is an independent chairman – that's me. The professional challenge here was and is to try and unite two bodies into one effective unit through careful balancing of each group's needs with the legal requirements of the situation. I have found this a very pleasant assignment and it is exciting to be part of a new venture which has already begun to make itself felt in the performing arts community.

I hope these examples are enough to show you that the performing arts non-profit sector has much to offer the lawyer who is interested in doing his or her part in a challenging field of endeavour.

"The arts are always the index of social vitality, the moving finger that records the destiny of a civilization." - **Sir Herbert Read**

We lawyers should make sure we are assisting and promoting them.