



CANADIAN BEEF CHECK-OFF AGENCY

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Quick Reference Guide Conflict of Interest, Duties and Indemnification

General Overview

- The Board of the Agency is responsible for planning and establishing the strategic, business and operational goals and objectives of the Agency and for the overall management and operation of the business and affairs of the Agency in relation to those goals and objectives.
- While the Board is permitted to delegate much of the day-to-day management of the business and affairs of the Agency, the Board retains the ultimate responsibility for the business and affairs of the Agency.
- The Board exercises its authority as a collective and no individual director, unless specifically authorized by the Board, has authority to unilaterally make decisions on behalf of the Agency.

Sources of Guidance/Regulation

- The Agency is a corporation formed pursuant to the Farm Products Agencies Act (Canada) ("FPAA") and in accordance with the Agency's Proclamation dated December 13, 2001, as amended. In addition to the FPAA and the Proclamation, the Directors are required to comply with:
 - The Agency's Bylaw #1;
 - The Agency's Code of Conduct and Conflict of Interest Policy ("**Policy**");
 - The common law (fiduciary duty and duty of care); and
 - Applicable Federal / Provincial Legislation (employment, tax, etc.).

Duties of Directors

Fiduciary Duty

- The fiduciary duty which the directors owe to the Agency requires them to: act with honesty and in good faith with a view to what the directors reasonably believe to be the best interests of the Agency. **It is important to emphasize that the directors owe a fiduciary duty to the Agency – and not the delegate(s) responsible for their appointment.**
- Specific duties include:
 - Avoiding conflicts of interest (real or perceived);
 - Refraining from abusing the position of director for personal gain (whether direct or indirect); and
 - Maintaining the confidentiality of all information obtained in one's capacity as a director of the Agency.
- Directors that are confronted with issues related to or connected with their role as a director should:
 - Refer to the Policy for guidance;
 - Seek further guidance from the Chair of the Board or the Chair of the Governance Committee;
 - If necessary, seek legal advice; and
 - Be open and honest with their fellow Board members.

Duty of Care

- Directors owe a duty of care to the Agency and, as such, must carry out their duties and obligations with an appropriate level of care and skill.
- The level of skill expected of directors of a not-for-profit is based on a subjective standard, which means, any specific expertise or knowledge that an individual director may have will be relevant in determining whether an individual director discharged his or her duty of care.
 - The duty of care is context specific, but generally, imposes the following non-exhaustive list of basic requirements:
 - Regular attendance at board meetings;
 - Seek to be fully informed;
 - Exercise independent judgement;
 - Active involvement with business and affairs of Agency; and
 - Awareness of the laws, policies and procedures affecting the Agency (internal and external).

Attached as Schedule "A" hereto are list of questions which directors are encouraged to intermittently review to assist them in self-assessing whether they are meeting their obligations as directors.

Schedule "A"

Sample Questions For Directors To Ask Themselves¹

1. Do I understand the duties of a director of a not-for-profit corporation? When faced with difficult decisions or issues with respect to my duties as a director of the Agency, do I have the necessary resources to make informed decisions?
2. Do I attend board meetings regularly? Do I prepare adequately for them? Do I read materials and consider them carefully? Do I question the content of the materials where there is a valid reason to do so?
3. Do I exercise independent judgement when voting on matters pertaining to the business and affairs of the Agency?
4. Am I alert to any potential conflicts of interest, appearance of personal gain and my confidentiality obligations?
5. If I sit on the board owing to my affiliation with a stakeholder group, do I understand that my affiliation with that group cannot determine my vote on any board decision of the Agency? Am I prepared to declare a conflict of interest, and in some cases resign, if I am unable to reconcile my role with the stakeholder group and my position as a director of the Agency?
6. Have I read and do I understand the corporation's Bylaw #1, the Policy and any other internal policy documents which the Agency has adopted from time to time?

¹ The above set of questions are largely derived from a document titled *Primer for Directors of Not-for-Profit Corporations* available on Industry Canada's website: < <http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/cl00691.html>>.