

## Ethics and the Hydra

Most of us have seen Board members learning how to separate their collective, decision-making role on the board from their individual, working role in other volunteer capacities. And we know that board members who fail to make or remember the distinction can be very problematic. Check the archives for an earlier article on Board members with many hats.

The level of potential ethical dilemmas can escalate greatly in organizations where Board members may play many related external roles as well. In amateur sports organizations, for example, some directors make their entire living within the sport the organization governs.

On a single day, your competitions chair, who is also a board member, might be in charge of drug testing, competing, coaching, officiating and running the competition at a facility they own and charge for. He or she is one of the people most likely to volunteer! And volunteers with some self-interest can be very valuable to an organization. If the success of the organization is important to your hopes and/or your business, you may be passionate about the mission and willing to work hard.

Similar situations might arise in organizations in which lines blur between participants and leadership, such as day care centres where all the directors are also parents of the children being cared for. It is standard in any member-run associations, whether a tenant council, food co-op, credit union, recreational club or condo board. Many boards have added current clients and this can create extra tensions, particularly if any of the programs they participate might be cut. Former clients are a less problematic solution but not always available.

Unfortunately, such multi-faceted volunteers can also be a Hydra – a many-headed monster – if not guided by ethics. You need people of personal integrity who are willing to abide by organizational values as well.

No, I do not have a magic test that will let you identify these virtuous people at a glance! Watch them in all aspects of their life that you can – as committee members, parents, teachers, etc. – since people who strive to be ethical do so holistically. If you see unethical behaviour in any one of their activities, try to avoid giving them any position of power.

### **Ethics Sidebar**

Ethics is about living by right principles. We adopt these principles from many sources, including our parents and our religion if any, and by learning from both good and bad role models. Some of us are lucky enough to have had mentors who helped us understand what is meant by ethical behaviour in our chosen work.

More and more professions, industries and organizations are articulating their values, so everyone can benefit from shared understanding and the learnings from those who have gone before. Good Codes come from dialogue about real situations that arise in the profession, industry or organization. They remain good only if there is continued dialogue, to help newer members fully understand and especially to make sure the Code stays relevant as the world changes. For example, fundraising codes of ethics had to be reviewed when e-philanthropy came along. Issues such as transaction fees charged for Internet donations were contentious.

Most nonprofits that I deal with have not developed their own Code of Ethics. They have often resolved to adhere to codes relating to their type of mission and also to their activities such as fundraising. And they have often stated, but not defined, their ethical values. That often means that everyone in the organization assumes that others have the same definitions as they do, an assumption that never seems to be right.

There are circumstances when personal and organization or professional ethics come into conflict. We do not have the right to impose our personal ethics on our organization in those cases, because we have no authority as individuals. Boards make decisions as a group. You have choices. You can try to influence change in the organizational or professional ethics, you can avoid the area of dispute or you can leave. It depends on how related the conflict is to the mission, and how important the issue is to you.

A common example is the acceptance of gaming monies. A director may be against all gambling, and argue against taking the cheque, but the organization decides anyway to accept a large grant from a government agency that distributes lottery revenues (or even directly from a casino). There isn't a right answer about staying or leaving; it is an individual decision.

### **Trade and Professional Associations**

In trade or professional associations, it is a given that all members make a living in the field, except for retirees and full-time students. Some members will have more than one kind of work within the field, such as being both an academic and a consultant, or part-time writer as well as an employee. Such volunteers can still serve ethically as long as the mission takes precedence. The self-interest, if present, allows them to justify the time spent on serving that mission. It is not so great when they put the mission second, or fourth. They may focus entirely on being grand-parented in when new standards are set, or for their association to put more resources into promoting a list of available consultants, or for only their type of company to get better association benefits.

Other board members may have to remind them that they are not to profit from their position on a nonprofit board. They are entitled to the same benefits as other members, but not more. There might be people who should be grand-parented, but board membership should not be part of the criteria.

The potential to skew an organization's priorities points up the importance of strategic planning, with input from many key stakeholders and careful decision-making by the board. Changes that benefit an individual or corporate member rather than the organization as a whole are then easier to reject.

Directors will receive intangible benefits in excess of those received by members who do not volunteer – greater sense of ownership, the satisfaction of giving back to the profession, the higher profile and prestige of a board role. These differences may well lead to better jobs or other direct rewards. That is very different from lobbying for them or using a board position to get a job for a relative or a contract award for a business partner.

Similarly, trade association volunteers may be executives in one company, paid board members of two others, a garage workshop inventor patenting something created on their own time, and a consultant moonlighting to run trade shows or give export development workshops. Remember that "ask a busy person" line? One just joined your board and your conference committee! This means a need for ongoing scrutiny and due diligence, particularly if the individual's personal ethics are not well known (or worse, are considered questionable).

Remember that some people will not attempt to breach organizational ethics until they are in a position of power. A committee member may toe the line then change drastically when appointed committee chair.

### **Sport Governing Bodies**

To return to sport examples, the national or international rules of the sport might require the Board of Directors to oversee quasi-legal tribunals made up of three directors. They hear appeals of decisions made at or about sporting events. The Board chair may wish to head up all the tribunals, particularly if these are rare. But what if the board chair coaches a party to the hearing, who has appealed being left off a team? Or the

chair was an official at the event and involved in the original ruling that was being appealed? What if the chair has a major financial stake in the outcome? An ethical chair would stay off such tribunals, but not all do. Unfortunately, codes of conduct rarely anticipate all forms of unethical behaviour that human beings can come up with! And if they did, the codes would be too long for anyone to read and remember.

That is why the best ethical programs focus first on aspirational ethics—the ethical values we will strive for. They allow us to challenge behaviour that violates the values even if the specific behaviour has not been described as unacceptable. General conflict of interest provisions should be helpful here – see sidebar below.

In sports where there is little money to be made, even the highest levels may be mostly volunteer. In many other sports, there is an “industry”. Most of the non-athlete volunteers at those sports associations will come from people who design and make equipment, rent space, coach for significant fees and otherwise have a major monetary interest. Therefore, avoiding all conflict of interest is not possible without rejecting this whole pool of volunteers. Only a small percentage of athletes take time to give back to their sport while active in serious competition. Besides, many athletes are minors who cannot have legal authority for an organization.

Athletes are not immune from self-interest either – you may want them on the Rules committee but not necessarily dominating it. Issues such as eligibility for long and short lists for world championships need more than one viewpoint. Donor money is often at stake, as sports organizations that serve children, people with disabilities or Olympic athletes may have the right to give tax receipts (in Canada at least).

### **Conflict of Interest - Sidebar**

Most nonprofits have a Conflict of Interest clause in their bylaws or as a board policy, saying that individuals are not to obtain undue direct or indirect benefit from their position. A related one for staff often appears in a human resources manual or employee handbook. A good wording will involve two parts.

The first is to avoid or minimize conflicts – try not to put yourself into a position where your business or personal life will affect or be perceived as affecting making decision in the best interests of your organization.

The second aspect is how one handles a real or perceived conflict when it comes up. The ethical *minimum* is:

- declaring the conflict at the earliest possible moment and having the conflict minuted
- complete avoidance any attempt to influence the decisions of others in relation to the conflict
- absence from all decision-making.

Where the conflict would be ongoing and relating to a major responsibility the minimum described above is not even close to good enough. Examples I have seen include a personal relationship between a board member and the executive director, and a chair of a nonprofit also being its biggest supplier.

The feelings of others must be considered. If other directors and senior staff are going to feel constrained in what they can say in board discussions, or what options can be considered when a problem arises, then a resignation is in order – *in advance* of any such situation becoming a reality.

### **When those without self-interest are the minority**

The few volunteers without self-interest are to be prized – grab the good ones for key volunteer roles, including as chair of the board when you can. I saw one such volunteer chair the bylaws task force in a mistrustful community, supported by a Board chair with minimal self-interest. They got 100% approval

from members for radical change. A previous attempt, without a disinterested task force chair, lost the vote at the AGM.

Generally, the ethical approach when recruiting board members is to avoid those with current or probable conflicts of interest. In some settings, you simply could not recruit a full board on that premise. You end up looking for directors with strong ethical values, so you can count on them to minimize and declare conflicts.

Judge them by their behaviour, so if at all possible choose from people on your committees and task forces, or known through other community activities. The other main way to learn about someone's ethics is to ask them to explain their reasons behind difficult decisions or recommendations. Do they speak of fairness, justice and respect – or secrecy, “getting away with it” and expediency? Their language in a setting where they feel safe to speak up will give them away.

Reporting back to funders is one area that often tests people's ethics. We apply for a grant, get one six months later, and report on it a year later – but the world changed a lot during that time and we likely did not do *exactly* what we said we would do with the monies. We can be truthful with funders (yet put what we did do in the best light) and give them the right to decide whether or not we spent their money acceptably. They do know that changes happen. Or we can fudge, and pretend – and they also know that this happens a lot, and how to spot it. Which reporting style would you be likely to reward with a future grant if you held the chequebook?

But one board member told me “once we have the money, it is ours, and they have no right to know how we actually spent it”. He wanted to divert a government grant to activities the government had told us in no uncertain terms were ineligible. He meant well and the activities would have been valuable, but it would have required fairly elaborate lying to a core annual funder. I would not recommend this sort of person as your next treasurer or chair.

Again, if you have people with self-interest on your board, please spend extra time articulating shared values for the organization, and ensuring everyone understands the conflict of interest policy. Do not just make a list of nice words and adopt a policy from some other organization to save time. Directors need better guidance than this!

The most powerful role model for your ethical values, and the one who can champion them in every meeting, is the Chair. Other directors and senior staff cannot safely speak up if an unethical chair steers the organization in unethical directions. The ethics of the chair should have been tested in prior service to the organization and community.

Remember that unethical chairs get into power when no one else will accept the workload. The Board Development or Governance committee needs to work year-round to ensure that the organization attracts and retains good directors, and ensures that they are oriented, trained and prepared to take on officer roles.

### **It even happens at the grassroots**

Even my casual recreation, horseback riding, brings me into these situations. Small local show circuits that are supposed to just be family fun events still need a board of directors. The volunteers will include breeders, coaches, horse trainers, stable operators and parents who hope their offspring will become star athletes.

Again, a strong set of ethical values around fair play, respect, equine welfare and supporting children can make such activities fully ethical, no matter who volunteers. I am lucky enough to be a good group, and watch the smiles on the littlest kids, who always are given the largest trophies at the awards banquet.

The horse industry is not usually or historically described as one of the most ethical, particularly where money is involved. My grandfather was called “an honest horse trader” in a tone that always implied that he was an exception! But not much money is at stake in local events. Most of the participants and volunteers truly love horses and are there for the children. Anyone pressuring or allowing a child to take unreasonable risks, or running an injured horse, will be spotted and subjected to peer pressure.

### **Assessing your organization**

So look around your organization. For each board member and key volunteer who is already with you, list not only the other ways they directly help the organization but also all their related involvements such as:

- Client or family member of a client or program participant
- Family or household member of an employee of your organization
- Anyone doing work for a fee for your organization, especially as a consultant or professional advisor
- Stockholder, owner or business partner of a major supplier; perhaps even an employee of a supplier
- Board member or paid staff at one of your grantors
- Board member or paid staff at an organization possibly seen as competing with yours
- Sponsor, including a small business person who gives part of the proceeds of their sales to your organization
- Business person whose work is indirectly dependent on your organization or industry (e.g., makes customized software that would have no market without your activities)
- Someone active in other tiers of a multi-level structure - international, national, regional, local

Have any real or perceived conflicts been considered in selecting volunteer roles? If not, and you have identified significant concerns, ask them to change roles for the good of the mission.

Do they all know your conflict of interest policy, and abide by its intent as well as its specific rules? Given their outside lives, would there be better ways for them to serve the mission? Almost anyone with a passion for the mission can be placed in a helpful role, unless their ego is too large to take on any role that does not have a high profile and considerable prestige. That is a fatal flaw; let some other organization find a use for their talents.

### **When an ethical dilemma arises**

Sometimes concerns arise unexpectedly. Do board members know who to turn to for ethics advice? If the chair and executive director have been selected in part for their integrity, these are obvious choices. Professional and umbrella associations often have ethics committees that will respond to questions (not always in a timely way, admittedly, if you have a crisis). Some consulting organizations (both nonprofit and for profit, like mine) help you think through an ethical dilemma and apply an ethical decision-making tool. You can also ask others in the community who they would trust to give ethics advice – trust implying both confidentiality and good judgment. And ethics organizations exist both for ethics advisors (e.g., Ethics Practitioners Association of Canada, Ethics Officers of America) and for organizations (e.g., Canadian Centre for Ethics and Corporate Policy). They may be able to help, give a referral or have an online consultant listing you can access.

If internal, is the advisor protected from retaliation if the advice is not appreciated? Powerful people with large egos are not happy with the messenger when asked to back off an area of interest because of a significant conflict. Don't put those in your organization at such risk. Make sure the advisors can point to defined values, codes and conflict of interest policies to back up their advice. Don't stay on a board that chooses to waive its ethics code – that is what Enron did. It should have raised an enormous red flag.

When I do training in ethical decision-making, I find that most people have no trouble recognizing unethical situations. If they are not accustomed to using the language of ethics, they say:

- My gut doesn't like this
- This smells bad
- I feel icky about this
- This is keeping me awake at night
- I wouldn't know how to tell my family
- I hope the newspaper doesn't find out what we did

Resolving the situation if an unethical person is involved is harder. Unfortunately, confrontation does not always feel safe, though it is likely the most effective quick solution. Get the unethical person to realize that what they are doing and why is known and unacceptable, in hopes they will back off. This takes courage. Again, it helps to have objective, advance documents to point to or read from.

Any organization striving to be ethical will support going higher in the hierarchy, or bringing the issues to a collective setting, when the organization is taking ethical risks. But it can get you fired. And it does not work when the unethical person is chair of the board.

External whistle-blowing is even more problematic, as studies show that most whistle-blowers are treated very badly even when the issue involves imminent danger to the public. Sad to say, you have to feel very strongly to do this rather than just leave.

If you are in a position of control over the unethical person, you are obligated to act. A board simply cannot tolerate unethical actions by its senior staff person, and should convey expectations that the senior staff person will not tolerate unethical actions by staff. Progressive discipline appropriate to the offense is required, and yes, that can include firing for cause if serious enough.

### **Hercules or The Hydra?**

By now, you may feel as if you have to fight the Hydra, where two heads grow after you chop off one. Welcome to my world, though I am no Hercules. But it is the world we all live in, and all too often disinterest becomes apathy. The people with the most at stake are not always just out for themselves. Most care about their industry, their community and their recreations. So use their passions well. When conflicts are severe or ongoing, these individuals may be better on a fundraising council or an awards committee rather than governing the organization

What would we do without these energetic, motivated volunteers? They are our heroes, when their ethics ensure that they put the organization ahead of themselves.