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WHAT SHOULD BE INCLUDED IN THE BOARD MINUTES



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A handwritten signature in black ink that reads "John Pellowe". The signature is written in a cursive, flowing style.

Rev. John Pellowe, MBA, DMin
CEO

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WHAT SHOULD BE INCLUDED IN THE BOARD MINUTES?



HEATHER CARD, COO

Board minutes serve as a permanent record of actions taken by a ministry's board of directors. This article provides an overview of why board minutes are important, a list of important items to include in the minutes, and suggestions for taking minutes of confidential sessions.

The board minutes serve as the official record of board discussion and decisions of a ministry. More specifically, these records detail when the meeting occurred, who was present at the meeting, and what actions were taken. Canada Revenue Agency (CRA) also requires a charity to demonstrate direction, control, and accountability for its resources. Proper books and records, including board minutes, can help satisfy this requirement.

If you've ever been in a board meeting with more than one person, you know that there can be times where people interpret the actual outcome of a discussion in different ways! Good minutes will decrease the likelihood of future misunderstandings on what was actually decided. It should be noted that when the board approves the minutes, it also has the opportunity to clarify what was recorded and ensure that everyone is on the same page.

Minutes can be helpful in providing history or the "corporate memory" of your ministry. When CCCC did its strategic review, we reviewed the board minutes since our founding in 1972. By doing this, we gained a deep sense of the original call of God on our ministry to serve the whole body of Christ and how God had lead toward that end in various ways throughout our history. The impact on our review was significant.

On a very practical level, minutes provide evidence that directors have fulfilled their responsibilities and provided the proper



standard of care. The basic responsibilities of a director are to act with honesty, loyalty, care, and diligence.

- **Honesty**—you acted in good faith and shared all information you possess that could have a positive or negative effect on the charity.
- **Loyalty**—you avoided conflicts of interest and put the interests of the ministry before your own.
- **Care**—you prepared for the discussions that will take place.
- **Diligence**—you thought about the issues to be discussed and asked appropriate questions.

Good minutes help directors demonstrate that they fulfilled their responsibilities well. Some specific examples are provided later in this article. If board members wish to make their own notes, they should compare those

to the minutes put forward for approval.

Minutes can also generate follow-up for the next agenda as well as action items for individual board members or committees.

How Long Should Board Minutes Be Kept?

The *Income Tax Act (ITA)* requires that minutes of a charity's membership and governing board meeting be kept two years after the day that the registration of the registered charity is revoked.¹ For charities that are operating on an ongoing basis, this essentially means that the minutes of the board must be kept permanently. It is also recommended that minutes of board committees be kept permanently.

Three Approaches When Recording Minutes

Mina's Guide to Minute Taking provides a helpful overview of the three approaches to minute taking: decision only minutes, anecdotal minutes, and verbatim minutes.²

- **Decision only minutes** do not include any discussion or summary of what took place at the meeting—they only record the decisions that were made. This is often the standard for in-camera or closed meetings, since recording discussion may expose the organization to risk on sensitive issues.
- **Anecdotal minutes** provide a concise summary of the discussion and thought process that led to the decision as well as the approved motions. Because this type of

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minute taking can assist in demonstrating that directors performed their duties well, it is usually the one most recommended.

- **Verbatim minutes** are a word-for-word account of everything that was said at the meeting and are only used in exceptional circumstances, such as formal public meetings of councils or government bodies.

What Should be Included in the Minutes?

Minutes should include the context for the meeting, such as the type of board meeting (regular or in-camera), date of the meeting, location of the meeting, board members present and absent, staff and guests present. A reference to the time the meeting was called to order, when the meeting ended, and future meeting dates should also be noted.

The body of the minutes should include the discussion summaries, motions, and voting outcomes. The following section provides practical examples of what should be included in the minutes.

DIRECTOR ATTENDANCE

By noting which directors were present and absent, the board is documenting that a legitimate quorum existed to conduct business. In addition, if a member arrives late or leaves early, it should be noted so that it is clear whether the director was present for a particular vote.

BOARD RESIGNATIONS

When a board member resigns at the end of their normal term, the minutes of the Annual General Meeting will normally reflect the retiring directors as well as the new directors. However, directors of federally incorporated charities are also required to submit their resignation in writing in order for it to be effective.³ Regardless of whether it is required by corporate legislation, it is a good practice to request a letter of resignation from a director. The effective date of the resignation should be included in the board

minutes as this establishes an end-date of their fiduciary responsibilities. The same practice would apply to those directors who resign before their term is complete. The key point is that the ministry's official minutes should reflect when the terms of the directors began and ended.

REVIEW OF FINANCIAL INFORMATION

The review of regular financial information as well as audited financial statements should be noted for the minutes. The minutes should reflect that the board asked questions and made appropriate inquiries as to the financial health of the ministry.

CONFLICTS OF INTEREST

When conflicts of interest exist, the nature of the conflict should be documented. At the beginning of each meeting, the agenda should provide an opportunity for any conflicts of interest to be declared. If a conflict of interest is declared, the board should follow its protocols, which typically include the member absenting themselves from the discussion and voting on the matter. Further resources on conflicts of interest are listed at the end of this article.

ITEMS RELATED TO RISK MANAGEMENT

The board wants to be able to demonstrate that it acted reasonably and that it took steps to be informed about matters that could pose risk to the charity or its beneficiaries. The following are some of the examples that a board should examine as part of its risk management activities:

- Insurance
- Policies
- Agreements related to activities outside of Canada

DISCUSSIONS RELATED TO CORPORATE DOCUMENTS AND MISSION

Making changes to incorporating documents, trust documents, bylaws, charitable purposes & objects, statements of faith, and strategic statements usually require significant discussion and debate.

Recording the main viewpoints considered can be very helpful as these reviews often occur over a period of time.

MINUTES FROM BOARD COMMITTEES

Many boards delegate work to sub-committees of the board and request that a recommendation be brought back at a later time. It is a good practice to receive minutes from board committees and note this in the board meeting minutes along with discussion and debate on the issues.

Practical Tips for the Minute Taker

It is not always easy being the minute taker! It can be a challenge to sort through all the comments, suggestions, and decisions in order to produce an objective summary of the meeting within a reasonable timeframe. The board chair can assist the minute taker by ensuring that the motion is clear and by verbally summarizing the results of a lengthy or complex discussion. This will also ensure that everyone is in agreement. The following list includes a few tips for minute takers:

- Prepare for the meeting by using the meeting agenda as a template to create a fill-in-the-blank outline for taking minutes.
- Draft the expected meeting motions in advance. As a best practice, all agenda items should have a written report that contains background information on the matter being discussed as well as the recommended motion(s).
- Read background material to gain an understanding of the material being discussed.
- Record notes of the meeting to assist in creating a summary of discussion after the meeting. Some boards also record all board teleconference calls to assist in preparing the minutes.
- Record discussion summaries that capture both supporting and dissenting views.
- Ask questions if the motion being proposed is unclear.

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- Record the results of the motion, noting by name any directors that are in opposition. This is a vital protection should the matter ever come to litigation.
- Note any follow-up items and who was assigned the responsibility to complete the work.
- Prepare the minutes as promptly as possible, before memory of the meeting fades.
- Request the board chair, lead pastor, or CEO to review the minutes before circulating to directors.

Who is Entitled to See the Board Minutes?

Corporate legislation does not typically either address the issue of who may view the board minutes or require access to them by anyone beyond the directors. Unincorporated charities are not required to distribute board minutes beyond the board members.

In ministries where there are paid staff

positions, it makes good sense that the board minutes be distributed to the CEO, Executive Director, or Lead Pastor as well as other key staff who may need understanding of board decisions in order to carry on the work of the ministry. When circulating the minutes to a wider audience (i.e., beyond those who were in attendance at the meeting), care should always be taken to ensure that the information shared is appropriate in the circumstances (e.g., it may be necessary to exclude confidential matters or issues of a sensitive nature).

In-Camera Minutes

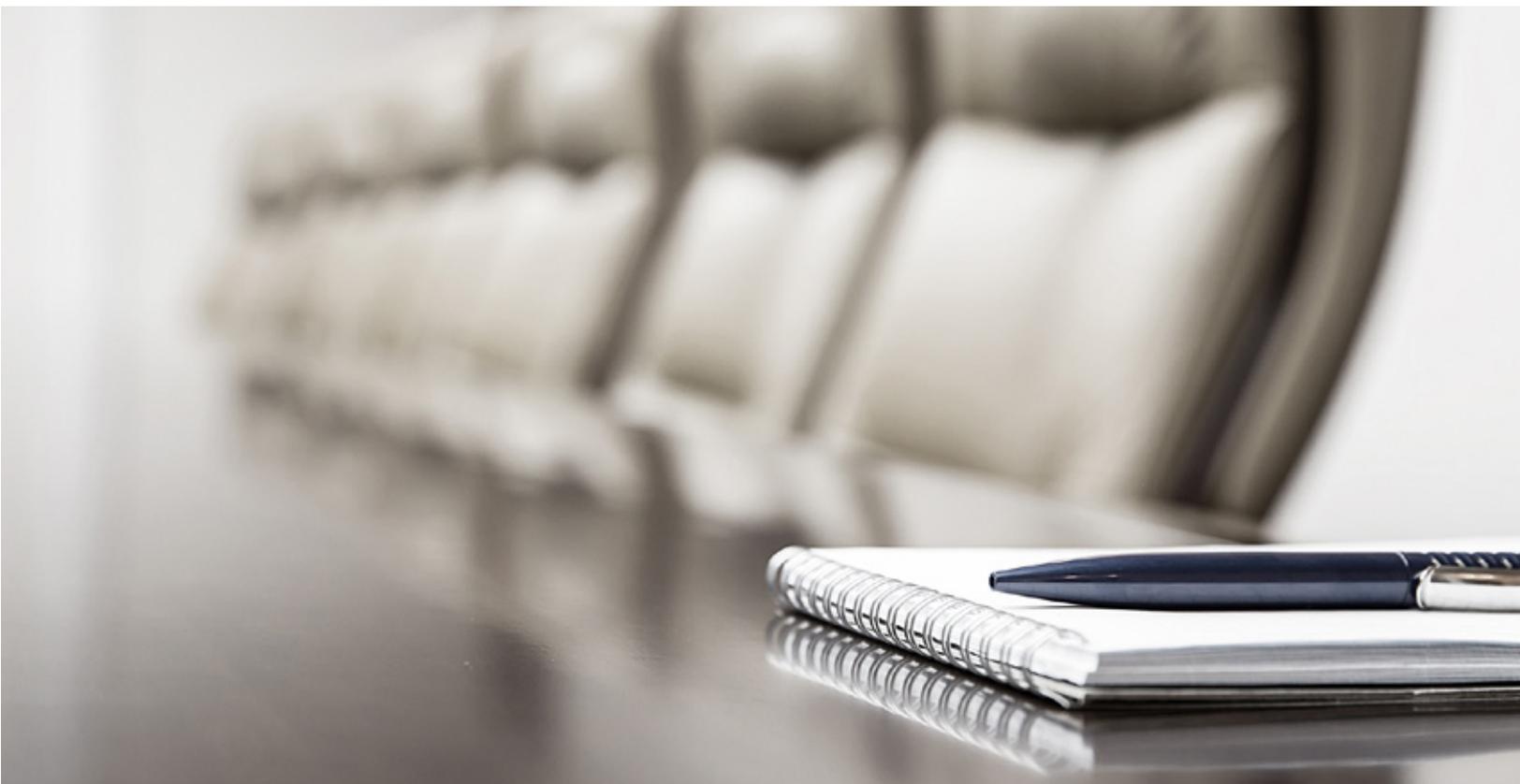
The term *in-camera* is a Latin legal term that means "in private." The in-camera meeting is confidential and is restricted to the Board of Directors and others who are asked to attend. Agenda items that are discussed in-camera include human resource and payroll issues, buying and selling property, and legal matters. Some boards do not keep minutes of their in-

camera session because of legal concerns (see the section in this article on board minutes and privilege). The main focus of the minutes for these sessions should be on decisions made. If the organization could be exposed to significant legal risk, and/or if a charity is concerned about what to record, legal counsel should be sought.

Board Minutes & Privilege

There is no special "blanket rule" that automatically protects a charity's board minutes from being disclosed in a lawsuit. Meeting minutes are like any other document in a charity's possession: they must generally be handed over if they are relevant to any issue in the lawsuit UNLESS they are subject to "privilege."

"Privilege" is a type of legal immunity that attaches to documents prepared in situations that the law views as particularly worthy of protection. Generally, there are only three types of situations in which privilege can arise:



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- Confidential communications between a lawyer and client for the purpose of obtaining legal advice (called “solicitor-client privilege”)
- Communications prepared for purposes of actual or contemplated litigation (called “litigation privilege”)
- Certain confidential communications determined on a case-by-case basis (called “common law privilege”) where a finding of privilege is at the discretion of a court and a number of factors will be considered in making the determination.

Depending on the circumstances, information contained in a charity’s board meeting minutes could potentially fall into any of one these three categories, but the charity may have to convince a court of that fact. This can be difficult to do, especially for the latter two categories.

For these reasons, a charity should be careful about the sensitive issues discussed at meetings and recorded in its minutes. Only persons who need to be involved in sensitive discussions should be present—observers or other participants whose presence is not necessary should be

excused. Similarly, copies of the minutes should generally only be disclosed to those present at the meeting and, in some instances, other limited individuals who need access to the information (such as senior staff).

A charity is required to maintain records of its board meetings, and the minutes should contain a concise and accurate record of how the board arrived at any given decision. However, the minutes do not have to contain excessive details. Thus, depending on the situation, it may be more appropriate to include a simple summary statement, such as “The Board discussed the issue of X and decided Y,” without recording every detail of what was discussed. In cases where particularly sensitive information is being discussed and the charity wishes to have a record of it, it may be best to have a lawyer present who can advise the charity on the issues and ensure that all communications are privileged.

Conclusion

Board minutes are an important tool that board members can use to demonstrate that they have met their fiduciary duties.

However, ministries need to exercise care, particularly when preparing minutes on issues of a sensitive legal nature. By following the tips outlined in this article, ministries will be able to document their meetings well while protecting themselves from legal risks.

Resources

- > *Conflict of Interest: A Matter of Integrity* (CCCC Bulletin Issue 2, 2012)
- > *For the Record: The Importance of Good Record Keeping* (CCCC Bulletin Issue 2, 2005)
- > *The Minute Takers Handbook* (book) – Jane Watson
- > *Mina’s Guide to Minute Taking: Principles, Standards & Practical Tools* (book) – Eli Mina

Endnotes

- 1 *Income Tax Regulations* (C.R.C., c. 945), 5800 (1)(d).
- 2 Eli Mina, *Mina’s Guide to Minute Taking: Principles, Standards, & Practical Tools* (Vancouver: Eli Mina Consulting, 2004), 20–24.
- 3 Canada Not-For-Profit Corporations Act, s. 129(2).

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