

Standards Program Interpretation Guide

Board Composition: A18

Standard:

The Board is comprised of no less than 3 (but preferably 5 or more) directors, a majority of whom must be at arm's length to each other, to the most senior staff person and/or other management staff. No employee may be a director.¹

Issue that causes challenges for some organizations:

The organization's most senior staff person is a voting or non-voting director on the Board.

Standard A18 includes a requirement that no employee may be a director. The Standards Council recognizes that meeting this requirement may require organizations to make changes to their by-laws.

Governance practices have been evolving over the last 10 to 20 years in both the public and private sectors. Several common historic practices have been challenged and are increasingly seen as inappropriate. The practice of having employees on the Board is one area where there has been a shift.

Both legislation governing the incorporation of organizations and common law are clear that the purpose and role of the Board is "supervising the management of the corporation". Best thinking today suggests that an employee is in a clear conflict of interest in carrying out this responsibility if they are a director. How can someone objectively and fairly be seen as supervising themselves?

To give the organization's stakeholders confidence that the Board is able to carry out its responsibilities effectively, directors must be independent of the management they hire and oversee. Some people argue that employees should be allowed to be directors in jurisdictions where the law does not prohibit this practice. The Standards Council believes that the legality of a practice does not determine whether it is good governance practice.

Others argue that the most senior staff person needs to be on the Board to provide insight into the issues being discussed at the Board table. However, the most senior staff person does not have to be a director for their voice to be heard. The most senior staff person and, as appropriate, other members of management should be invited to Board meetings. Many agenda items will involve presentations by management and Board members will have questions that can only be answered by employees involved in the day-to-day operations of the organization. To ensure the most senior staff person may attend Board meetings, some organizations have built a requirement into their by-laws that the most senior staff person shall receive notice of and have the right to attend all Board meetings, except any portion that is in-camera.

There is a common misunderstanding that the most senior staff person can be a non-voting, ex-officio director and comply with Standard A18. This practice is not allowable within the Standards Program since an ex-officio director is a member of the Board and required to meet all the responsibilities of a member. The term “ex-officio” simply means the individual becomes a director by virtue of the position they hold. Not having the right to vote doesn’t change their status as a Board member.

In some cases, the most senior staff person or other employees may hold officer positions. The rules governing the operation of the organization can be drafted to provide that officers do not need to be directors. This would allow employees to be designated as officers.

Some organizations have been created by specific legislation that provides for the inclusion of members of management on the Board. Such organizations are eligible for an exemption to this part of Standard A18 and should contact standards@imaginecanada.ca to learn about the exemption-request process.

¹ The Standards Council has made the decision that private foundations are exempt from the provision within this standard requiring a majority of directors be at arm’s length to each other, to the most senior staff person and/or other management staff. The reason for this exemption is that the Board composition of family foundation’s by their very nature are often comprised of directors who are not at arm’s length to each other by virtue of being family members and/or via similar relationships.

Interpretation Guide

This paper is one in a series that aims to provide clarity and guidance to organizations seeking to strengthen their governance practices and/or work toward achieving accreditation through Imagine Canada’s Standards Program.

Imagine Canada’s Standards Program was developed to elevate the excellence of Canada’s charitable and non-profit organizations through common standards of practice in five foundational areas; and to strengthen public confidence in the sector through a voluntary peer-review-based accreditation process. Organizations wishing to be accredited must demonstrate they comply with all standards. Visit www.imaginecanada.ca or contact standards@imaginecanada.ca for more information.

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