



# DIRECTOR'S GUIDE

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October 4, 2020

## DIRECTOR'S GUIDE

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This guide informs Judo Canada Directors about their legal responsibilities and provides practical suggestions for managing risk and minimizing personal liability. Directors need to understand these risks so that they can act reasonably and appropriately. The purpose of this Guide is to raise awareness of the legal risks facing Directors and offer Directors some practical suggestions for minimizing these risks.

### **Who is a Director?**

A Director is an individual who is a member of Judo Canada's Board. The responsibility of the Board is to provide leadership and direction to Judo Canada and to govern its affairs on behalf of its Members and stakeholders.

Directors are elected to their positions on the Board in accordance with Judo Canada's Bylaws. Directors may also be Officers, and an Officer fulfills certain corporate roles and functions such as the duties of a President, Treasurer or General Secretary. Officers can also be senior staff persons. Directors and Officers have a relationship of "trust" with the Members and stakeholders, and it is from this trust relationship that certain important legal duties arise.

### **Legal duties of Directors**

The basic responsibility of Directors is to represent the interest of the Members in directing the affairs of Judo Canada, and to do so within the law. This legal duty is described in statutes (such as the *Canada Not-for-Profit Corporations Act*) and has been expanded and interpreted in the common law.

In representing the Members of the organization and acting as their "trustee," Directors have three basic duties:

- a) The duty of diligence: this is the duty to act reasonably, prudently, in good faith and with a view to the best interests of Judo Canada and its Members and stakeholders.
- b) The duty of loyalty: this is the duty to place the interests of Judo Canada first, and to not use one's position as a Director to further private interests.
- c) The duty of obedience: this is the duty to act within the scope of the governing policies of Judo Canada and within the scope of other laws, rules, and regulations that apply to Judo Canada.

### *Duty of diligence*

Diligent Directors always act prudently and in the best interests of Judo Canada. When exercising their duties as Directors, they are expected to exercise the same level of care that a reasonable person with similar abilities, skills and experience would exercise in similar circumstances. And, if a Director has a special skill or area of expertise, such as an accountant or lawyer would have, they have a duty to achieve a higher standard of care that corresponds to their professional abilities.

Directors have a responsibility to act cautiously and to try to anticipate the consequences of their decisions and actions before they undertake them. They are honest and forthright in their dealings with each other, with Members and with the public. They are well informed about the activities and finances of Judo Canada. They have an obligation to foresee potential risks inherent in a situation, and to take reasonable steps to manage those risks.

### *Duty of loyalty*

Directors are required to put the interests of Judo Canada first. These interests will always take precedence over any other interest, including a Director's personal interests. As well, Directors who are involved in more than one organization may find that they cannot be loyal to both.

Loyal Directors will avoid putting themselves in a situation of a conflict of interest, and when this is unavoidable, they will act properly in disclosing the conflict and ensuring that they play no part in discussing, influencing or making decisions relating to that conflict.

Confidentiality is also an important aspect of the duty of loyalty. Directors have an obligation to keep Judo Canada business private, and to not discuss certain matters with people outside the Board. Confidential matters may include information about personnel, clients served by Judo Canada, Judo Canada's finances, or legal matters.

A Board acts as one entity. Loyal Directors support the decisions of the Board, even if they might not personally agree with the decision and might not have voted to support the decision in the board meeting.

### *Duty of obedience*

Judo Canada is a "private tribunal" – an autonomous organization that has the power to write rules, make decisions and take actions that affect their Members and registrants. Legally, private tribunals are recognized as having a contractual relationship with their Members. This relationship is defined in Judo Canada's governing documents, which include its, Bylaws, policies, rules and regulations.

Directors have a duty to comply with Judo Canada's governing documents, and to ensure that staff and committees of Judo Canada do as well. Over time, Judo Canada may move away from its legal purpose and policies may become out of date and no longer reflect the practices of Judo Canada. The duty of obedience extends to ensuring that governing documents remain current and accurate, and overseeing the process that is used to amend and update governing documents.

Directors also have a duty to obey external laws and rules that are imposed upon Judo Canada. A wide range of laws and statutes apply to Judo Canada and the obedient Director ensures that Judo Canada complies with all of these.

### **Liability of Directors**

A Director who fails to fulfill his or her duties as outlined above may be liable. The term "liability" refers to the responsibility for the consequences of conduct that fails to meet a pre-determined legal standard. Usually, the term "consequences" refers to damage or loss experienced by someone and being responsible for such consequences means having to pay financial compensation.

Liability arises in the following three situations:

1. Statute - a law is broken. The consequences are payment of a fine, having restrictions placed on one's rights or privileges, or imprisonment.
2. Contract - A contract is breached or violated, where a contract is a legally enforceable promise between two or more parties. The consequences are correcting the breach through some form of performance or service, or financial compensation

3. Tort - an act, or a failure to act, whether intentionally or unintentionally, causes injury or damage to another person. The consequences are payment of a remedy in the form of financial compensation.

Regarding statutes, there are a variety of statutes that impose liability on Directors in specific circumstances relating to managing the affairs of Judo Canada. Thus, Directors have specific statutory obligations relating to:

1. The election and appointment of Directors and Officers
2. Calling meetings of Members
3. Paying taxes to government and submitting employment-related remittances
4. Keeping minutes of meetings of Directors and Members
5. Reporting and disclosing prescribed information about Judo Canada to authorities and to the government
6. Paying wages and salaries
7. Maintaining a safe workplace
8. Activities of Judo Canada that cause pollution or other environmental damage

Regarding contracts, Directors are responsible for ensuring that Judo Canada's contractual obligations are fulfilled. This includes contracts with employees and independent contractors.

Regarding torts, Directors are responsible for ensuring that they, as well as Judo Canada's volunteers and staff, do not behave negligently. Negligence refers to the duty that we all have to ensure the safety of those persons affected by our actions. Directors, volunteers and staff are at all times expected to act in a reasonably diligent and safety-conscious manner so that others affected by their actions (fellow employees, volunteers, participants, clients, and the public) will not face an unreasonable risk of harm.

The concept of negligence also applies to "wrongful acts" – these are errors, omissions, actions or decisions that harm others, not through damaging their property or their physical person, but through interfering with their rights, opportunities or privileges. Wrongful acts relate primarily to how Directors govern Judo Canada, manage its funds, supervise its staff, and make decisions that affect members, clients and the public.

### **Avoiding liability through risk management**

There is risk inherent in everything we do. Volunteers, employees and Directors of Judo Canada must always be mindful of risks – this means examining situations cautiously and thinking ahead about the potential consequences of decisions and actions. Most people manage risks most of the time, and they do so instinctively. However, it is always a good idea to take steps ourselves, and to encourage others, to think about risks and risk management more systematically.

The process of risk management is a simple three-part activity. It involves:

1. First, looking at a situation and asking what can go wrong and what harm could result.
2. Second, identifying practical measures we can take to keep such harm from occurring.

3. Third, if harm does occur, identifying practical measures we can take to mitigate its impacts and pay for any resulting damage or losses.

The practical measures that can be used to manage risks fall into four categories:

1. Assume the risk – decide that the risk is minor and do nothing
2. Reduce the risk – find ways to change people's behaviour or the environment in which people work so that the degree of risk is reduced
3. Avoid the risk – choose not to do something
4. Transfer the risk – accept the risk but transfer the liability associated with it to someone else through a written contract

Judo Canada will face different risks and will plan and implement different measures to deal with these risks. The practice of risk management is based in large part on common sense and is linked to the concept of "standard of care" because the measures that are taken to manage risks are usually those would be taken by any other prudent and reasonable person having the same skills, knowledge, and experience. These measures will tend to revolve around training and educating staff and volunteers; enforcing reasonable rules; inspecting and maintaining facilities and equipment; screening and supervising staff; properly documenting meetings and decisions; and meeting all statutory reporting requirements.

The final section of this guide provides some practical measures that Judo Canada, and individual Directors themselves, can take to manage the risks and liabilities faced by a Director. The next section deals with insurance – a common risk management measure and one that is particularly important in minimizing with Director's liability.

### **Directors and Officers liability insurance**

Insurance is one of many techniques used to manage risks – it involves transferring the liability associated with a risk to another party by means of a written contract. In the case of insurance, the party that the risk is transferred to is the insurance company, and the written contract is the insurance policy. Transferring risks through written contracts is a very common business practice.

Directors and Officers insurance is like general liability insurance and covers costs that the Directors and Officers of an organization might become legally obligated to pay as a result of damages to another party. However, unlike a general liability insurance policy that covers losses arising from physical injury or property damage, Directors and Officers liability insurance covers only those losses arising from the Director's own "wrongful acts."

In such an insurance policy, a wrongful act is defined as an error, misstatement, misleading statement, act, omission or other breach of duty by an insured person in his or her insured capacity. The purpose of this insurance is to provide the financial backing for the indemnity that the organization provides to its Directors.

Directors and Officers insurance policies vary, and there is no standard level of coverage. Importantly, many of these policies exclude coverage for:

1. Directors acting outside the scope of their duties as they are described in this guide, including any actions that are dishonest, fraudulent or criminal

2. Breach of contract, including wrongful dismissal of employees
3. Fines and penalties under a statute or regulation
4. Complaints under a human rights code, including a complaint of discrimination, harassment or sexual harassment

### **Protecting yourself as a Director**

There is no substitute for knowledgeable governance and thoughtful risk management, and Judo Canada managing its affairs in a conscientious and responsible manner will reduce its Directors' liability risks considerably. Nonetheless, the following practical tips will be helpful to all Directors.

Before accepting a nomination to be a Director with Judo Canada, you should:

1. Think about your reasons for becoming a Director. Be sure you have the time, interest and commitment to do the job well
2. Learn as much as you can about Judo Canada. What is its mission? What activities does it undertake? How is it perceived in the community?
3. Read the written job description for the position of Director and the Governance Policy
4. Educate yourself about your legal duties as a Director
5. Look at the composition of the entire Board, and satisfy yourself that it can govern effectively and provide competent direction to committees, staff and volunteers within Judo Canada
6. Confirm that the organization indemnifies its Directors (either through its Bylaws, through policy, or by means of a written contract) and that it carries Directors and Officers liability insurance. Ask about the scope of coverage and any exclusion(s) to this insurance.

Once you have been elected or appointed as a Director, managing your personal liability risks is an ongoing process. The following guidelines will help you to take steps to manage these risks as they relate to issues such as policy, finances, meetings, personnel, and training.

### *Meetings*

1. Attend meetings, be prepared to discuss the items on the agenda and participate fully in decision-making
2. Provide your reports to the Board in written form
3. Ensure that minutes reflects abstentions from votes, votes for and votes against motions.
4. If you have any real or perceived conflict of interest, declare it when the issue first arises and do not vote, participate in or influence the decision-making process. Have your disclosure recorded in the meeting minutes.
5. Do not rush important decisions. Ensure that Directors receive meeting materials in ample time to digest them. If important information is lacking, postpone the decision until this information can be obtained.
6. Keep your own personal copies of key documentation and minutes of controversial meetings.

### *Finances*

1. Take an interest in finances by reviewing regular financial reports, and approving and monitoring Judo Canada's annual budget
2. Use a professional, independent accountant to perform an annual audit of Judo Canada's finances
3. Know who is authorized to sign cheques and for what amount
4. Don't be shy about asking questions and seeking clarification on financial matters from staff
5. With the assistance of your auditor, develop a list of statutory reporting requirements and assign a staff person or Director to monitor that these requirements are being fulfilled.

### *Contracts*

1. Ensure that all contracts Judo Canada enters into are carefully reviewed by staff or by counsel
2. When Judo Canada partners with other entities on joint projects, or enters into agreements, be sure that all terms and conditions are clearly expressed in a written contract and that risks and liabilities are appropriately shared.

### *Policy*

1. Ask for a copy of Judo Canada's policies. If Judo Canada does not have policies develop a work plan for staff (or others, as appropriate) to prepare them
2. Be familiar with the content of Judo Canada's Bylaws. If they are out of date, or no longer adequately reflect the mandate and activities of Judo Canada, then undertake to update them.
3. On important matters and for decisions that have the potential to adversely affect someone, ensure that Judo Canada's policies are adhered to as written. If the policy is unsuitable for dealing with the particular circumstance, then take steps to change the policy for the future.
4. Commit staff and volunteer time and financial resources to developing risk management policies.

### *Personnel*

1. Ensure that all staff and volunteer positions have written job descriptions.
2. Insist that organization develop a clear personnel policy and ensure that staff evaluations are performed at least annually or as required by the policy.
3. Be sure that suitable screening measures are in place for those staff and volunteer positions that involve interaction with youth or other vulnerable persons in unsupervised settings.

### *Insurance*

1. Ask for copies of Judo Canada's insurance policies and become familiar with their scope of coverage.
2. Consider asking the insurance broker to meet with the Board and make a brief presentation on these policies.

### *Training*

1. Support professional development for staff and training for volunteers.
2. Encourage the board to also engage in training. Bring in a Board development instructor or a facilitator to help the board improve its effectiveness
3. Offer Directors training opportunities in association with Board meetings or meetings of the Members
4. Commit resources to the development and updating of Board and staff orientation materials
5. Leave aside a short portion of every Board meeting to allow the Board to evaluate its effectiveness in conducting the meeting and making governance decisions.

### *General*

1. If you suspect that something is not right, go with your intuition and check it out! Be curious. Remember, as a Director you will be held responsible for circumstances and situations you ought to have known about, whether or not you actually did know about them.
2. Do not speak negatively about Judo Canada to the public. Publicly support the Board's decisions, even if you might have voted against the majority of Directors.
3. If Judo Canada needs to deal with a complex matter in which staff or Directors lack expertise, consider the services of an outside professional (for example, lawyer, financial advisor, human resources consultant, risk management specialist, engineer)

### *Summary*

The purpose of this guide is to inform Directors of the legal dimensions of their voluntary contribution. It is Judo Canada's view that an informed Director is a more confident and competent Director.

The most widely available, most effective, and least expensive risk management technique is common sense. Judo Canada can capitalize on this common sense by recruiting capable board members and well-qualified staff, providing an orientation program for all new people, writing clear job descriptions and sound policies, supporting professional development at all levels of Judo Canada, and creating an organizational culture that emphasizes and rewards risk management thinking and behaviour.

## **DIRECTOR DUTIES AND RESPONSIBILITIES**

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### **Overview**

The Board of Directors of Judo Canada has the responsibility to manage the affairs of Judo Canada in accordance with the *Canada Not-for-Profit Corporations Act*, as amended, Judo Canada's Bylaws, and Judo Canada's policies and procedures. The basic responsibility of a Director is to represent the interests of the Members in directing the affairs of Judo Canada and to so within the law. Specifically, Directors will have the following additional responsibilities and duties:

#### **1) General**



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- a) Act reasonably, prudently, in good faith and with a view to the best interests of Judo Canada and its Members and stakeholders
- b) Place the interests of Judo Canada first and not use one's position as a Director to further private interests
- c) Act within the scope of the governing policies of Judo Canada and within the scope of other laws, rules and regulations that apply to Judo Canada
- d) Keep Judo Canada business private and not discuss certain matters with people outside of Judo Canada unless with prior approval of the Board
- e) Support the decisions of the Board, even if they may not personally agree with the decisions and might not have voted to support the decision
- f) Act as a member of a designated committee as appointed by the Board
- g) Keep all appropriate individuals and committees informed as required through normal reporting and communication channels
- h) Perform such other duties as may from time to time be established by the Board
- i) Act in a manner that promotes a positive and professional public image
- j) Devote their full time and attending during volunteer hours to the business and interests of Judo Canada
- k) Schedule volunteer hours in order to accommodate the changing needs of Judo Canada which may require evening and weekend work

### 2) **Meetings**

- a) Attend and properly prepare for meetings
- b) Provide all required reports to the Board in written form as required
- c) Ensure minutes of meetings are accurate and correct
- d) Ensure that minutes of meetings reflect abstentions from votes, votes for and votes against motions
- e) Declare any real or perceived conflict of interest with respect to an issue when the issue first arises and not vote, participate in or influence the decision-making process
- f) Ensure any such disclosures of conflict are recorded in the meeting minutes

### 3) **Finances**

- a) Review regularly Judo Canada's financial reports
- b) Approve and monitor Judo Canada's budget
- c) Ensure the performance and completion of an annual audit of Judo Canada's finances
- d) Inform themselves who is authorized to sign cheques and for what amount

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e) Supervise the management and the disbursement of funds of Judo Canada

### 4) **Contracts**

a) Ensure that all contracts Judo Canada enters into are carefully reviewed by staff or by counsel

### 5) **Planning**

a) Develop, implement, monitor and evaluate Judo Canada's strategic plan, as applicable

### 6) **Personnel**

a) Ensure Judo Canada develops a clear personnel policy and ensure that staff evaluations are performed at least annually or as required by the policy

b) Ensure that all staff and volunteer positions have written job descriptions and agreements

c) Ensure there are suitable screening measures in place for those staff and volunteer positions that involve interaction with youth or other vulnerable persons in unsupervised settings.

### 7) **Policy**

a) Review and adhere to Judo Canada's Bylaws, policies, and procedures

b) Undertake to update out-of-date Bylaws, policies, and procedures or to create new ones

### 8) **Insurance**

a) Ensure Judo Canada obtains adequate insurance

b) Become familiar with Judo Canada's insurance policies and the scope of their coverage

*Approved by the board of director on October 4, 2020*

## DIRECTOR'S AGREEMENT

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**THIS AGREEMENT CONFIRMS** that the undersigned has been appointed or elected as a Director of Judo Canada and agrees as follows:

### **Condition Precedent - Criminal Record Check**

- 1) The Director agrees to obtain a criminal record check prior to performing such responsibilities as a Director and will renew such check upon the request of Judo Canada. Judo Canada's Board of Directors, in its sole discretion, will determine whether such offences pose an unacceptable risk to the safety and security of Judo Canada.
- 2) The Director agrees to provide notification to Judo Canada of any offences disclosed as a result of such police record check, or of which it becomes aware through any other means.

### **Responsibilities of the Director**

- 3) The Director will comply with the **Director's Duties and Responsibilities**.

### **Duty of Diligence**

- 4) The Director will:
  - a) Act prudently and in the best interests of Judo Canada
  - b) Exercise the same level of care that a reasonable person with similar abilities, skills and experience in similar circumstances
  - c) Act cautiously and try to anticipate the consequences of their decisions and actions before they undertake them
  - d) Act honestly and forthright
  - e) Take reasonable steps to manage foreseeable risks

### **Duty of Loyalty**

- 5) The Director will:
  - a) Put the interests of Judo Canada first which will take precedence over any other interest, including their own personal interests.
  - b) Avoid putting themselves in a situation of a conflict of interest.
  - c) Act properly in disclosing a situation of a conflict of interest and ensure they play no part in discussing, influencing or making decision relating to that conflict.
  - d) Keep Judo Canada business private and not discuss certain matters with people outside of Judo Canada.
  - e) Disclose any conflicts of interest by completing the **Conflict of Interest – Declaration Form** contained in Judo Canada's *Conflict of Interest Policy*

### **Duty of Obedience**

- 6) The Director will:
  - a) Comply with Judo Canada's governing documents and ensure that staff and committees do as well
  - b) Ensure Judo Canada's governing documents remain current and accurate
  - c) Obey external laws and rules that are imposed upon Judo Canada

### **Expenses**

- 7) Judo Canada will reimburse Directors for any expenses in accordance with Judo Canada's usual business practices and financial policy upon receipt of an expense claim and applicable receipts, in accordance with Judo Canada's *Financial Policy*.

### **Termination**

- 8) This agreement will terminate upon:
  - a) The expiration of the Director's term
  - b) The Director resigning
  - c) The Director is found by a court to be of unsound mind
  - d) The Director becomes bankrupt
  - e) The Director is removed by way of resolution in accordance with the Bylaws

### **Confidentiality**

- 9) The Director will not, either during the period of their involvement as a Director or any time thereafter, disclose to any person or organization any Confidential Information acquired during their period of involvement as a Director with Judo Canada, unless expressly authorized to do so.
- 10) The Director will not publish, communicate, divulge, or disclose to any unauthorized person, firm, corporation, third party or parties any Confidential Information or any part thereof, without the express written consent of Judo Canada.
- 11) All files and written materials relating to Confidential Information will remain the property of Judo Canada and upon termination of involvement as a Director with Judo Canada or upon request of Judo Canada, the Director will return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, immediately upon such request.
- 12) The Director will adhere to Judo Canada's Confidentiality Policy.

### **Conflict of Interest**

- 13) The Director will comply with Judo Canada's *Conflict of Interest Policy*.

**Proprietary Rights**

- 14) Copyright and any other intellectual property rights in all written material (including material in electronic format), software, databases, trademarks, patents, logos, trade names, brands and other works produced by the Director will be owned solely by Judo Canada, who will have the right to use, reproduce or distribute such material and works, or any part thereof, for any purpose it wishes.
- 15) The Director will not use, reproduce, or distribute such material or works, or any part thereof, without the express written consent of Judo Canada.

**Interpretation**

- 16) This agreement will be interpreted in accordance with the laws of the Province of Quebec.

**General**

- 17) No failure or delay by Judo Canada in enforcing any right or remedy in this agreement will be construed as a waiver of any future exercise of such right or remedy.
- 18) The Parties have sought or obtained, or have had the opportunity to seek and obtain, independent legal advice concerning the matters in this agreement, and execute this agreement knowingly and voluntarily.
- 19) This agreement constitutes the sole and entire agreement between the parties, and supersedes any previous agreements, understandings, and arrangements between the parties. Any amendments hereto are enforceable only if in writing and signed by each of the parties.
- 20) If any portion of this agreement is deemed by any court of competent jurisdiction to be illegal or unenforceable, then the remaining provisions of this agreement will remain in full force and effect notwithstanding.
- 21) The Director hereby agrees to abide by the terms and conditions outlined in this agreement. To evidence this agreement, the Director has signed this agreement.

**Director**

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Name (print), signature

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Date