



## Code of Conduct – Board of Directors

### Introduction

The Board of Directors of AKBA has been entrusted by the members to oversee and manage the affairs of AKBA in the interests of the members and with the objectives set out in AKBA's By-laws. This policy sets out the code of conduct expected of AKBA directors in response to the trust placed in them by the membership. It includes in Appendix 2 an annual declaration form in which each director must acknowledge that he or she has read this policy and agrees to abide by it.

### General conduct

A director:

- a) Must be familiar with and comply with the legislation under which AKBA operates<sup>1</sup> (the Act which describes the duties and legal liabilities of directors of not-for-profit corporations a synopsis of which is provided in Appendix 1);
- b) Must avoid any behaviour that would bring AKBA into disrepute;
- c) Has a duty to act with the utmost honesty and good faith and must always act in the best interests of AKBA;
- d) Must exercise the care, diligence and skill of a reasonably prudent and informed person under comparable circumstances;
- e) Must place the interests of AKBA ahead of any interest that the director's may have in another baseball activity. It is expected that a director will support the decision that benefits the sport of baseball as a whole, as represented by the position of AKBA;
- f) Must not speak publicly on baseball matters when or in such a way that the comments could be perceived to be an official representation of AKBA unless authorized to do so by the President (but directors are otherwise encouraged to speak publicly on baseball matters); and
- g) Must be aware of the identity of AKBA's sponsors, be supportive of their role as sponsors and refrain from displaying support for sponsors' competitors when involved in national baseball activities.

### Confidential information

- a) A director must maintain the confidentiality of all information and records that are the property of AKBA and that are treated as confidential by AKBA and shall not reveal or make use of such information until it becomes a matter of general public knowledge.
- b) Motions approved at Board meetings are not confidential unless the Board so decrees, in which case a director must abide by that decree.
- c) A director must treat discussion at Board meetings as confidential, as well as the number of votes cast for and against a resolution and how other Directors may have voted, except to the extent that such discussion and voting details are contained in the Board approved minutes.

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<sup>1</sup> AKBA was constituted under the Ontario Business Corporations Act. Since then the Ontario Not-for-Profit Corporations Act (ONCA) has been passed but not enacted. The ONCA contains much more detail about the behaviour and activities of directors in not-for-profit corporations.

**Outside interests**

A director must not engage in activities or accept appointments or elections to office in any organization or association whose activities are, or are likely to be, in conflict with AKBA's activities or an embarrassment to AKBA without the prior written consent of the President of AKBA.

Last approved by the Board: 23 October 2019

**Duties and legal liabilities of directors of not-for-profit corporations  
Appendix 1**

**Introduction**

The following synopsis is taken from a number of sources. For a more detailed discussion of the subject readers are referred to the Ontario Not-for-Profit Corporations Act (2010). More information may be found here: <https://www.ontario.ca/page/guide-not-profit-corporations-act-2010> and by reading the Act <https://www.ontario.ca/laws/statute/10n15/v2>

AKBA is a not-for-profit corporation incorporated without share capital under the Ontario Corporations Act. The term not-for-profit is used to indicate that such corporations are organized for a community purpose and not for profit to their individual members. They are entitled to operate on a profitable basis but are prohibited from paying dividends or other financial benefits to their members. However, as a not-for-profit corporation AKBA is exempt from income tax, an exemption that can be threatened if the corporation makes profits in excess of its needs.

**Duties of directors** - Directors and senior officers are accountable for their actions to the organizations they serve, and often to the general public as well. Primarily they owe a duty of care to their organization and its members. The Canada Non-Profit Corporations Act sets out a director's duties in plain language and prescribes the standard of care to be met in carrying out that duty. As well, the applicable standard of care is set out in common law. This standard is arguably more onerous than the one imposed on directors of business corporations whose standard of care has been expressly legislated for years. The following duties of directors are included in the ONCA (2010) s. 43 and are also embodied in common law principles summarized in the following paragraphs.

**Duty of Knowledge** – Directors must be aware of the requirements of the constitution and bylaws under which the Association operates and comply with their terms with regard to both substance and timing.

**Duty of Care** – Directors must act in accordance with the minimum standard of care that a reasonably prudent person with the same knowledge and experience would exercise under similar circumstances and may incur personal liability where their conduct falls short of this criterion. Thus, a higher standard of care is expected of those with particular expertise such as lawyers, accountants, physicians, social workers and business persons when addressing matters to which that expertise is relevant. The degree of diligence that a director must exercise may depend to some extent on the size and sophistication of the corporation. A director of an organization with professional management staff should not be expected to devote as much time and attention to everyday operations as a director of a smaller organization without the same human and professional resources. A director who acts honestly and meets the standards of conduct and care will not be liable for simple errors of business judgement.

**Fiduciary Duty** – A director is in a fiduciary relationship to the Association. A fiduciary is anyone in a position of trust, and fiduciary duties require a director to act honestly and in good faith and in the best interests of the Association. A director must avoid any situation in which this duty and self-interest come into conflict, must not take secret rewards, and must protect the corporation's confidential information.

**Duty to Avoid Conflicts of Interest** –(See also the separate Conflict of Interest Policy). A conflict of interest may arise where a person has a personal or shareholder interest in the same matter or is a director of two corporations involved in the same transaction. A director who has a direct or indirect interest in a proposed contract that requires board approval must disclose this interest to the board at the meeting at which the matter first arises and not participate in or influence the decision-making process.

### **A Director's exposure to legal liability**

A director may be held personally liable for a variety of errors, omissions and wrongful acts that may be committed by the Association. There are over 200 statutes that govern or impose obligations and duties on directors. The most common concerns relate to employee wages and

remittances; a director may be held personally liable for unpaid employees' wages and salaries and for any amount of employee income tax, EI, CPP, or HST payments, including penalties, not remitted by the Association, for a period of up to six months.

The directors of the Association are responsible for ensuring that it complies with applicable laws, its letters patent, its constitution and its by-laws. Directors who disagree with a proposed action or decision of the board should protect themselves against potential liability by voting against the action or motion and making sure that the dissenting vote is recorded in the minutes of the meeting.

Members of a Board of Directors face exposure to liability for any of their own actions that are inconsistent with the duties owed by directors to the corporation they serve. This includes:

- a) **Criminal Liability** – The Criminal Code of Canada defines criminal and quasi-criminal action of directors (e.g.: fraud or conspiracy by the director or by the organization) and includes consequences such as fines, imprisonment or both.
- b) **Civil Liability** – civil liability generally only results where a director has personal participation in the offence or has authorized the offence.
- c) **Statutory Liabilities** – Failure of directors to comply with the provisions of the Ontario Corporations Act may result in fines and/or imprisonment.

