

## Conducting a Director or Shareholder/Member Meeting

*When there is broad agreement among members/shareholders, there is often an easy working informality and a willingness to waive any procedural deficiencies and to dispense with formal meetings.*

*However, when there are sharpening differences of personality or approach among directors or members/shareholders, there develops a heightened scrutiny of procedures and often an insistence on formal meetings and the scrupulous observation of rules. In many cases, these disagreements lead to a series of skirmishes over procedures as one cause or group seeks to gain a usually temporary advantage over another. This can become a test of each side's endurance.*

*When the proper procedures are regularly observed in board meetings or meetings of members/shareholders, they are the best means to accomplish the business at hand.*

### WHO SHOULD RUN THE MEETING?

One of the most important decisions in organizing a meeting is selecting the right chairman. The chairman will maintain order in the meeting and make sure that it proceeds smoothly. Without a chairman directing the discussions, it is easy the person with the loudest voice taking over the meeting and advancing another agenda. The chairman should be a person with a firm attitude, who will not be shy to enforce the rules of the meeting and to ensure that there is no obstruction to routine or minor issues.

For board meetings, the directors should appoint one of their own to be chair of the board. For shareholder and member meetings, the by-laws will usually dictate the person entitled to act as chair.

At large or contentious shareholder or member meetings it is good practice for the chairman to appoint a scrutineer to assist in taking attendance and counting proxies and ballots.

### WHO HAS A RIGHT/ OBLIGATION TO ATTEND THE MEETING?

Every director has a right to attend and participate in board meetings. While there is no obligation for

individual directors to attend, a meeting is not valid without a quorum. Usually the by-laws or articles or a shareholders agreement will specify what constitutes a quorum; otherwise the *Business Corporations Act (Ontario)* ("OBCA") states it cannot be less than two fifths of the directors.

For shareholder/member meetings, only those people (or corporations) entitled to vote, the directors and the auditors have a right to attend.

In terms of quorum, the OBCA requires a majority of the holders of shares entitled to vote at the meeting to be present. A different quorum may be set by the by-laws or shareholders agreement.

### HOW SHOULD YOU PREPARE?

Preparation is the best way to ensure a productive and civil meeting. Although there may be a temptation to waive tedious procedural requirements in favour of an informal meeting in which discussion can unfold organically, every procedural misstep can be challenged later. A shareholder or director may appreciate informality today when relations are smooth but if a conflict arises, the same person may look for any way to invalidate actions taken .

Before any meeting, a script for the chairman should be prepared. It is an invaluable tool for addressing procedural objections before they arise. It should record all the formal steps that need to be taken and statements that need to be made, as well as account for issues which usually arise. It is prudent to anticipate questions and prepare answers, knowing and mentioning the rules that apply. Be sure to review and take note of *Robert's Rules of Order*, a guide for conducting meetings.

Rehearse your script and if you are expecting a difficult debate, consider holding a rehearsal . This may sound excessive but we have seen what happens when defiant and argumentative members dominate a meeting. If the Chairman does not know what the rules are and does not know how to redirect the discussion, the meeting can quickly devolve into a chaotic spectacle.

### **SHOULD YOU KEEP RECORDS OF THE MEETING?**

Yes, keep minutes for all meetings. These do not have to be verbatim transcripts but sufficiently detailed to record the important comments and decisions made, especially the results of votes. For contentious meetings, multiple people should take minutes and compile them immediately following the meeting. This is more efficient than attempting to reconstruct the information long after when questions about the meeting arise.

### **WHAT IS THE PROCEDURE FOR VOTING?**

Directors have a right to vote at board meetings, except on a motion to approve a material contract or transaction in which he or she has a personal interest. This prevents a conflict or the appearance of a conflict between the director's personal interests and his or her duty to advance the interests of the organization.

At shareholders/members meetings, each member has one vote and each shareholder has one vote for every registered share, unless the statute or by-laws or company's articles provide otherwise. Each of them can vote how they please, regardless of their personal interest in the outcome.

Shareholders and members also have the additional right to be represented by a proxyholder of their choosing to vote on their behalf. This is where meetings can get complicated. For one thing, the form of proxy must comply with the statute and by-laws, it must have been submitted in the proper timeframe, it must not have been revoked, it must be approved as valid by the chairman, etc. Any voter can challenge a proxy at the meeting and an improperly accepted or rejected proxy can invalidate a vote. The safest practice for an organization is to solicit proxies in the notice of the meeting and provide a form of proxy with the notice package.

The simplest way to conduct the voting is by a voice vote but this is not recommended unless there is unanimity . Instead, voting should be by show of hands except where the by-laws provide otherwise or a poll is demanded. If the motion in question requires more than a simple majority, a poll is mandatory. Polls are usually taken by ballots and it is once again a good idea to prepare a written form of ballot in advance so that there is no confusion during the meeting. The ballots must clearly indicate who the voter is and whether they are for or against the motion. It is the chairman's duty to collect them, determine their validity, count them and declare the result.

### **HOW ARE ELECTIONS AND APPOINTMENTS MADE?**

At a shareholder/member meeting one of the most important tasks is the election of the organization's directors. This starts with the chairman declaring the number of directors required and opening the floor for nominations. There is no requirement to solicit nominations in advance of the meeting, unless the by-laws indicate otherwise. Each shareholder or member may then nominate as many individuals as there are vacant positions, and for these nominations, they do not need a seconder . The chairman may close the floor after there has been a reasonable opportunity to make nominations, but a motion to close does require a seconder.

If there are only as many nominations as vacant positions, the chairman can declare the nominees elected. If there are more nominees than positions,

a poll is required and ballots should be distributed immediately. To avoid delay and confusion, it helps to prepare pre-marked ballots with the names of the anticipated nominees.

Officers are not elected, but they are appointed by the directors. At a board meeting, the chairman will call for motions to appoint a qualified person to a particular office, and a director will move to appoint someone. If there is more than one candidate for a specific office, a poll is held once again.

### **HOW SHOULD YOU DEAL WITH MOTIONS?**

The business of the meeting is carried on through motions which are approved or rejected by the voters. The chairman should keep motions to a minimum to ensure that the meeting is not delayed by voting on trivial or irrelevant matters.

Once approved, a motion becomes a resolution, which makes it critical that motions are phrased in a way that clearly reflect the wishes of the meeting. To avoid the delay of amending improperly phrased motions or rescinding a resolution, you should prepare in advance the wording for anticipated motions and include it in the script. Ideally, you would even plan which voter would propose each motion and give each of them a script.

If the chairman is hesitant to interrupt voters and rule certain motions or comments out of order, there may be no end to the issues voters may wish to address. This is where it is essential to have a script and know the rules, so that the only required response to an invalid or inconvenient motion is that it is out of order. For certain types of motions and resolutions, the statute and by-laws may require advance notice. It is the chairman's duty to enforce the rules and the voters' duty to insist on their enforcement.

When a voter is concerned that the rules of order have been violated, he or she can rise and object. This demand interrupts any other discussion and must be addressed immediately by the chairman.

A point of privilege also requires immediate consideration. These points concern safety, orderliness, comfort, or honour. Every person entitled to vote has the right to hear or be heard at the

meeting, and if someone feels insulted or abused, it is the chairman's duty to address this. As with points of order, points of privilege put a halt to the other business of the meeting until resolved by the chairman.

### **HOW SHOULD YOU CLOSE THE MEETING?**

Someone must make a motion to close the meeting. A motion to 'conclude' or 'terminate' the meeting is made to completely dissolve the meeting, with the latter applying in cases where there is still unresolved business. A motion to 'adjourn' the meeting is made where there is unfinished business that is to be dealt with at another time when the meeting reconvenes.

A motion to conclude or terminate takes priority over any motion, it must be seconded and requires a simple majority. However, given the chairman's duty to continue the meeting until all business is concluded, he or she can reject the motion if it is obstructing business. At the same time, the chairman cannot let a meeting become unruly and if it reaches a point where the chairman believes there is no hope of restoring order, he or she may adjourn the meeting. Adjourning the meeting should not be the first response to any discord because if the other members or shareholders present decide that the chairman has improperly closed the meeting or should be disqualified because of his or her actions, the voters may simply choose to replace the chairman and continue with unfinished business.

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