

Boards & Committees Orientation Handbook

Government of Yukon

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1 INTRODUCTION

1.1 Purpose of this Handbook

Boards and committees are an important feature of governance in Yukon. More than 100 government board or committees involve nearly 1,000 Yukon people in their deliberations. This guide was prepared to help people who sit on these boards, committees, councils and commissions discharge their responsibilities effectively. Throughout this guide, all of these groups will be referred to as 'boards'.

This handbook contains basic information about government boards: how they are intended to operate, and how participation in them can be both productive and rewarding. However, it is important to note two features about this guide:

- **It is introductory.** The material is not intended to be an in-depth discussion of any topic; rather, it provides an introduction to a variety of relevant topics. Any of these topics can be pursued further through the sources listed in this document including through the bibliography at the end of the guide, or through training sessions.
- **It is general.** Since this handbook is aimed at all board members, the contents are not specific to any one body. This guide should, therefore, be used in conjunction with materials specific to your board.

This handbook is intended to provide initial guidance so that board members may know more about the nature of their responsibilities and how boards work, and so they will be able to make more knowledgeable and effective decisions.

1.2 Purposes of Boards

Governments create boards so that:

- citizens may participate in governance;
- Yukon people, other than government officials, can provide advice;
- recurring problems or decisions can be managed efficiently by a trained board that is familiar with the issues to be decided upon; and
- appeals may be heard soon after a decision.

There are many kinds of boards, committees, councils and commissions in Yukon. The collective influence of these bodies is significant, but their authority is limited to powers as stated in legislation, policy or according to direction of the responsible minister.

1.3 Role of Boards in the Government of Yukon

This section outlines the different types of boards and how they relate to other workings of the Government of Yukon.

A board is an administrative body. The term administrative body should not be confused with the administrative functions carried out by government departments. Most boards do not 'administer' government programs.

Boards are usually created by a statute (law) for a specific purpose. They have powers that are expressly granted to them by the statute or an enabling act. The board must abide by the law. Boards or committees may also be established under the authority of Cabinet or the minister, to perform specific tasks or to provide specific advice.

1.4 Types of Boards

Boards conduct one or more of four functions: **advisory, regulatory, adjudicative or governing.**

1.4.1 Advisory

Advisory boards provide advice to specific ministers on certain matters. Advisory boards do not make final decisions which directly affect individuals.

Such advisory boards include:

- Health and Social Services Council;
- Fish and Wildlife Management Board; and
- Agriculture Industry Advisory Committee

When a board acts in an advisory function, it advises the minister based on the parameters of the law or ministerial authority, on matters referred to the board. The minister may choose to accept or not to accept the advice of an advisory board.

1.4.2 Regulatory

Regulatory boards administer acts of the legislature.

These boards usually have the power to make decisions. For example, the Employment Standards Board has the power to set the minimum wage rate for the Yukon. After review and acceptance by Cabinet, an Order-in Council is passed to make the minimum wage rate law.

1.4.3 Adjudicative

Adjudicative bodies make decisions which are binding on the parties involved.

A hearing is held to determine the facts and allow presentation of the case. Usually, the parties involved are a branch of government and a member of the public. These bodies act as impartial tribunals. An example is the Yukon Water Board which rules on some types of water use licenses or the Assessment Appeal Board, which rules on appeals about property taxation assessments.

1.4.4 Governing

Boards of government corporations and agencies are governing boards.

These boards are usually responsible for administering the law that governs the government corporation or agency, as well as for setting policy and acting as a management body with administrative tasks carried out by hired staff.

Governing boards work with various degrees of independence from government on a day-to-day basis and have specific decision-making authority, but are required to report annually on their activities to the Legislative Assembly through the responsible minister.

Examples of governing boards that direct government corporations and agencies include the:

- Workers' Compensation, Health and Safety Board; and
- Yukon Liquor Corporation Board.

Governing boards often perform advisory, regulatory or adjudicative functions as part of their duties, depending on their governing legislation.

- ✓ *If you are a member of a board, it is important to be clear on what type of board it is and what the function is as this will help you understand your role as a member.*

2 WORKING TOGETHER

This section lays out some basic expectations for the relationship between boards and other parts of government.

2.1 Role of Cabinet

Cabinet, or the Executive Council, is the ultimate decision making body in the Yukon government. Cabinet is responsible for making regulations necessary to carry out the purposes of legislation, and is responsible for introducing new or amended legislation in the Legislative Assembly.

In most cases, Cabinet either appoints board members on the recommendation of a minister, or confirms appointments that are made by a particular minister. Ministers may consult with stakeholder groups for nominations. In the case of school councils, board members are elected.

2.2 Role of the Minister

For most boards, the minister has the responsibility to make recommendations to Cabinet concerning appointments to the board.

For the purposes of reporting and accountability, the minister is the board's link to Cabinet and, through Cabinet, to the Yukon Legislative Assembly. The minister must, therefore, be informed about the board's activities and be prepared to answer questions concerning the work of the board as needed.

Standard protocol is for boards to communicate with the minister through the deputy head or secretariat.

2.3 Role of Board Staff or Secretariat

Departmental staff may help with the work of the board. In these cases there may be a formal secretariat, a named departmental contact person, or the board may have a direct relationship with a senior public servant responsible for the department (deputy head).

The relationship will vary depending on the legislation. For example, departmental or secretariat staff may organize meetings, prepare minutes, and generally support board activities. There may be an official designated in the legislation to work with and be accountable to the board (usually reserved for

governing boards). Unless designated in legislation, staff members do not report to the board and are not employees of the board.

Regardless of the specific relationship, YG staff has the right to a respectful work environment. Training sessions are available to boards on how to cultivate a respectful work environment and deal respectfully with government employees.

- ✓ *How does the board you are involved in relate to the minister or staff?*

2.4 Reporting

The board reports to the person named in the legislation or policy which establishes the board. Members must be clear about their responsibilities and the person or group to whom they report.

An advisory board, for example, should recognize that, as well as their own perspectives, a deputy minister's comments have an important influence on an issue. As the minister's chief public service resource, this person is delegated certain responsibilities and may provide advice to both the minister and the board. These comments should be considered carefully by advisory board members.

- ✓ *Do you know who your board reports to and how? What is the role of the deputy minister in the reporting relationship?*

2.5 How are Board Members Appointed

Board members are usually appointed by either a Minister alone or by Cabinet on the recommendation of a Minister. Some boards are appointed by the legislative assembly through a standing committee.

<http://www.legassembly.gov.yk.ca/standing/chap9.html> School council members are elected in accordance with the *Education Act*.

Further information is available from the Yukon government employees that support your board.

3 ROLES AND RESPONSIBILITIES OF BOARD MEMBERS

The role of a board member is set out in various sections of the law. This section outlines the basic responsibilities of being a board member and how

that role relates to others in government such as Cabinet, the minister and the department.

The board has many powers and duties under the enabling Act or in policy, which may include:

- conducting meetings;
- conducting other proceedings before the board;
- establishing forms to be used;
- certifying and publishing decisions;
- approving policies;
- conducting appeals;
- reporting to the minister on board operations; and
- making orders, within the scope of the board, concerning effective administration of the act.

3.1 Responsibilities of Board Members

It is important to remember that the role of a board member, whether advisory, regulatory, adjudicative and/or governing, is limited by the enabling act. Members have a responsibility to make sure they understand the act, regulations, terms of reference and accountability of the board. This includes an understanding of:

- To whom does the board report?
- What are the consequences of an improper decision?
- What are the legal/political/social/financial implications of a decision?
- What resources are available to help the Board discharge its responsibilities?
- What degree of freedom does the board have in making decisions or recommendations?
- When should issues be referred, and to whom?

In addition, a responsible board member will:

- Take a positive approach;
- Respect the opinions of others;
- Oppose a point of view without opposing the person who holds that point of view;
- Keep an open mind;
- Listen to all the facts and points of view;
- Accept the will of the majority;
- Offer alternatives or a better plan if opposing what is proposed; and
- Maintain the confidentiality of information and discussions.

3.2 Conflict of Interest

The highest standard of conduct among Government of Yukon board members is essential to maintain and enhance the public's trust and confidence in the decisions made.

The Government of Yukon supports the rights of board members to be involved in activities as citizens of the community; however, conflict must not exist or be perceived to exist between members' private interests and the discharge of their duties as board members.

This section provides two working definitions of "conflict of interest," and outlines steps that members can take to avoid being in a conflict of interest. "Conflict of interest" may be defined in some enabling legislation, and the following are suggestions only.

- Conflict of Interest - *Acting When in Conflict*

If the board member:

- Makes a decision in the performance of their board duties;
- Participates in the making of a decision by the board;
- Makes representations to another member about what decision that member should make; or
- Discharges any other official function in the performance of their duties

AND at the same time knows or ought to know that, in the decision or function, there is the opportunity or the reasonable appearance of an opportunity for the member to further their own private interest.

- Conflict of Interest - *Abuse of Office Rules*

If a board member:

- Uses information that they acquire because of their position on the board (and which is not available to or accessible by the general public) to further their own private interest; or
- Uses their position on the board to further their private interest by influencing a decision to be made by another person, regardless of whether that person is a public official; or
- Accepts a fee, benefit, or gift in connection with the performance of their public duties as a board member.

If an item comes before the board that a member has, or may be perceived to have, a private interest in its outcome, this conflict should be self-declared immediately. In such cases, members should absent themselves and not participate in the discussion or decision about the item. This action should be reflected in the board minutes.

3.2.1 Apparent Conflict of Interest

The appearance of conflict of interest may exist when, in fact, there is no conflict. These results can be as damaging to the board and the board member as if there were an actual conflict, particularly if public funds are involved. Apparent conflicts of interest should be disclosed and managed in the same manner as actual conflicts of interest.

3.2.2 Protection Against Conflict of Interest

Boards rely on three sources for protection against conflict of interest:

- Legislation or terms of reference which may specify certain actions by board or staff members, such as disclosure requirements before taking office;
 - Policies or guidelines established by the board; and
 - The common sense and ethical standards of each individual.
- ✓ *Are you aware of your roles and responsibilities as a board member and what your specific board has outlined in terms of conflict of interest rules?*

3.3 Trusteeship

Board members do not represent themselves. They are representatives of the community who volunteer to ensure the accountability of government boards and committees and the quality of the programs and services they deliver.

A board member is a trustee responsible for any funds which the board accepts and gives out. Some boards, such as advisory boards, do not have this responsibility.

If financial losses or hardship occurs, board members are accountable and cannot claim ignorance of the transactions or claim that they were unaware of the implications of their actions. Board members are legally obligated to exercise judgment that reasonable prudent people would exercise.

3.4 Liability and Indemnity

If board members have legal responsibilities, they may be liable or bound by law to pay for costs associated with not carrying out their duties in a reasonably prudent manner.

Although legal action involving board members is extremely rare, board members should understand the extent of liability of the board and its individual members. For example, advisory boards are not normally held liable for giving bad advice because the minister is not obligated to accept the advice.

In most cases, individual board members will not be liable if they act:

- as a fair, reasonable and prudent person would act;
- within the terms of reference set out for the board; and
- within the law.

Such terms are set out in most legislation authorizing a board. Through this process, board members are indemnified or saved from any personal liability for the decisions the board makes.

3.5 Fiduciary Duties

Board members placed in a position of trust are called fiduciaries.

A fiduciary is an individual (or corporation or association) that has a duty to act for any other's benefit in a specific area of responsibility.

Therefore, fiduciary duties often mean the proper use, management or investment of property or other assets placed in the fiduciary's trust. An example is the Compensation Fund that is managed by the Yukon Workers' Compensation, Health and Safety Board which ensures the financial integrity of the Fund and approves important financial decisions so that funding is available to support injured workers.

Three potential violations of fiduciary duties are mismanagement non-management, and self-dealing.

3.5.1 Mismanagement

Mismanagement occurs when someone makes decisions that a reasonable, prudent person would not make when given the same information, such as:

- failing to plan;
- not setting up adequate controls with reasonable reporting systems;
- failing to review reports of problems;
- drawing clearly improper conclusions from available information and/or acting in contrast with such information; or
- failing to seek professional or expert advice on technical issues affecting the organization.

3.5.2 Non-management

Non-management occurs when people do not use existing opportunities for good management, such as:

- failing to make decisions;
- failing to consider information when making decisions;
- failing to use available control systems;
- failing to attend board or committee meetings; or
- failing to set necessary policies.

When management resources are provided to support a board, the responsibility for control systems and policies will usually rest with officials such as an executive director or manager.

3.5.3 Self-Dealing

Self-dealing concerns board members who vote on a decision when they may gain personally as a result of the decision. The question of motive arises: did the member vote that way because it was in the best interest of the parties involved, or for self-serving reasons?

It is a breach of fiduciary duty to take advantage of inside information for personal gain, or to use information gained in carrying out board duties in any manner inconsistent with the best interests of the public, government, department or program as a whole.

- ✓ *Do you understand the liability and fiduciary duties that come with being a board member?*

3.6 The Reasonable Prudent Board Member

As discussed in this handbook, we are guided in most of Canada by common law, a system of law based on decisions or precedents from previous cases. This forms a basis upon which we draw conclusions for future behaviour.

Many legal decisions and precedents are helpful in establishing the principle of the reasonable prudent person, whose behaviour is used as the standard for judging the behaviour of others in similar situations. Very few jurisdictions in Canada spell out this principle in legislation, but the following interpretation is drawn by inference from other areas of law:

Board members or directors are people who discharge their duties in good faith, with the degree of diligence, care and skill that an ordinary prudent person would exercise under similar circumstances in like positions.

3.7 The Principle of Good Faith

In addition to being a prudent person, a board member must act in good faith toward the government and in carrying out board duties. The principle of good faith appears to be critical to any interpretation of a board member's liability.

To show good faith, board members must:

- have a thorough knowledge of the duties and provisions within the enabling act and/or within the terms of reference;
- avoid any semblance of self-dealing or enrichment;
- record policies and practices in writing; and
- attend board meetings, or have a valid reason if unable to attend.

4 BOARD PROCEDURES

A board may establish and adopt its own operating procedures as long as they are consistent with the enabling act or specified terms of reference.

The enabling legislation or terms of reference may allow boards to set their own operating procedures and scope such as the:

- process for appointments to the board;
- term of office for board members;
- frequency of meetings;
- management of meeting minutes;
- requirement of reports to the responsible minister or department; and
- honoraria, if any, for Board member service.

✓ *Does the board that you are involved in have terms of reference, operating guidelines or procedures manual?*

4.1 Confidentiality

Members of a board must not disclose information they hear in the course of their duties.

Board members should decide which matters are in the 'public domain'. Board members collectively should ask and then decide on the confidentiality of the different types of issues or information, rather than deal with each issue when it arises.

Matters discussed in camera are usually deemed to be confidential unless and until the board authorizes the release of information. When the enabling act or terms of reference for the board do not prescribe closed meetings or hearings, the board should consider carefully when and if it will meet in camera. The right of the public to know what decisions are taken or to make presentations during board meetings needs to be weighed against sound arguments for restricting this type of access.

A reasonable approach for some boards could be meetings that are open to the public and interest groups, unless the board is dealing with matters it has deemed to be confidential, or that are confidential under the enabling legislation or under the *Access to Information and Protection of Privacy Act*.

Confidential topics could include personal information of applicants to various programs such as public housing, legal aid, or worker's compensation, financial statements, and salary negotiations.

4.2 Records Management

The legal requirements for handling records are set out in the *Access to Information and Protection of Privacy Act* which requires the government to be open and accountable to the public by providing a right of access to records and by protecting the personal privacy of individuals. An effective records management program is an essential tool in fulfilling the government's responsibility of being accountable to the public.

Since board records may contain sensitive and restricted information, preventing unauthorized access to these records is a significant responsibility for board members. Systems for the storage, retention, active use and transmission of these records must be planned carefully. Members are encouraged to discuss records storage and management with their departmental staff contact.

- ✓ *If you are a member of a board how are confidentiality and records handled?*

4.3 Effective Meetings

As well as the board members, many board meetings include departmental or secretariat staff as resource people.

There are three types of board meetings: regular, special and in camera.

- Regular meetings are scheduled.
- Special meetings are those called to deal with urgent issues.
- In camera or closed meetings are held in private to address matters that are confidential.

The three keys to successful board meetings are:

- the agenda;
- an effective chairperson; and
- effective participation by board members.

4.3.1 The Agenda

For most meetings of most boards, other than appeal bodies, a set way for members to place items on the agenda is identified and communicated. Board procedures will direct how board packages will be circulated to members.

4.3.2 An Effective Chairperson

A good chairperson:

- keeps the meeting moving in an orderly fashion;
- remains calm at all times;
- allows members to be heard in a fair and impartial manner;
- allows both sides of a question to be heard;
- keeps the attention of the board on one matter at a time;
- knows the basics of parliamentary procedure and uses rules of order when necessary;
- allows for visitors' comments when appropriate;
- provides opportunities for appropriate staff members or resource people to offer information;
- does the homework necessary to be knowledgeable about agenda items and encourages other board members to do the same;
- clarifies and summarizes the discussions, particularly prior to a vote, to ensure everyone has the same understanding of the matter;
- acts as spokesperson for the board; and
- delegates appropriate responsibilities to other board members.

4.3.3 Effective Participation of Board Members

Effective participation in board meetings requires members' commitment to:

- do their homework and come prepared for meetings, including reviewing agenda material and gathering other information which may help the board;
- represent clients or constituents honestly and fairly, and refuse to surrender responsibilities to special interest or partisan groups;
- recognize that an individual board member has no legal authority (except if assigned through legislation), and that decisions within the board's scope can only be made by a majority vote at a board meeting;
- take no private action that may compromise the board or administration.
- respect the confidentiality of privileged information;
- never speak for the board, or give that impression, outside of established board policies or decisions. The public may not know that individual board members have no formal authority to speak on behalf of the board and may take one member's opinion as that of the board;
- abide by the majority decision of the board while retaining the right to seek changes in decisions through ethical and constructive channels;
- encourage and respect the free expression of opinion by other board members and by others who seek a hearing or make presentations before the board;
- have the courage to ask difficult questions;
- have some familiarity with the rules of order if they are to be used during board meetings; and
- understand when they do not have the experience or expertise to respond to an issue.

Board members can play an important role in making sure that complex information and data can be easily understood. If board members cannot understand the information it is also unlikely that members of the public or those affected by the board's decision will understand the information; thus making it difficult to justify the board's decision. Board members should feel free to contact department staff when they need information or clarification on matters impacting their decisions.

4.4 Cost of Meetings

One factor which board members may want to keep in mind is the cost of board meetings. These costs may include travel, facilities, per diem payments, advisors' or consultants' fees, secretarial services, and salary costs of public servants attending the meeting, over and above honorariums. These items can add up to considerable sums.

Board members may want to examine these costs from time to time, to consider the efficiency of meetings and whether any economies can be achieved.

4.5 Getting Help

Board members will often need more information or help other than what is available during board meetings. The chairperson, staff contact person or board secretariat can help members get the information they need.

While not a comprehensive list, these are some other sources that board members may wish to consult:

- **Board Minutes** - Boards keep minutes of meetings. Minutes are a summary of the meeting, not a word-for-word transcript. They cover attendance, status reports, motions and decisions, and disposition of key issues. They are a record of the board's work, as well as a useful way for you to keep up-to-date on board activities.
- **Manuals** - Most government departments and agencies have policy and procedure manuals to guide their activities and decisions. There are general government policies dealing with topics such as travel, purchasing and contracting. These may help members to understand more about the department or Government Corporation associated with their board, and the policies that affect board administration.

4.6 Help with Public Relations

The board's roles and duties in public relations or media relations are based on the board's enabling act or terms of reference.

Some boards have responsibilities to advertise and promote their activities, programs or events. In this case, they should:

- get advice, support and expertise that may be available through the responsible department or secretariat; and
- as part of their strategy, consider using free or low cost opportunities to advertise activities and upcoming events on social media, radio, in newspapers, and on community billboards and bulletin boards.

As well, boards may occasionally be asked to discuss or explain their roles or decisions in media interviews. Effective boards consider public relations as part of their ongoing duties and may have a formal or informal way to deal with the following issues or tasks:

- Identify the board member(s), often the chairperson, responsible for public relations and/or speaking on behalf of the board;
- Prepare for media, presentations, or interviews as time allows (be prepared to state the board's position, explain reasons and give examples);
- Present the board's position on issues or questions, along with appropriate information about options or alternatives that were considered and do not present the position or opinion of individual board members (i.e. speak with one voice);
- Establish positive relationships with the media, based on goodwill and honesty;
- Encourage invitations for media representatives and community reporters to attend public meetings or special events;
- Maintain the confidentiality of personal or personnel information relating to any board member, employee or client, regardless of what these individuals might say about themselves; and
- Get advice, especially if in doubt about whether a piece of information can be released.

Remember that individual rights to privacy protect the confidentiality of any information on personal, personnel or performance questions, unless disclosure is part of a public hearing.

Members of the media know that this type of information is confidential and protected, and understand an answer such as: "I'm sorry, but I am unable to answer questions about a specific/individual situation."

If the board is conducting public business, it must decide how to publicize the meetings. The board may also need to establish processes that allow members of the public to take part by asking questions or presenting submissions.

4.7 Getting Started

Here are some suggested best practices to help newly appointed Board Members to become familiar with current issues or problems facing the board.

- Talk to your staff contact person in the government department or corporation responsible for your board. Find out when the board will meet next. This will tell you how much time you have to prepare.
- Ask about training sessions which might be available for new board members.
- Read the written material supplied by the department, such as legislation, policies or manuals. This should include a copy of the enabling act which creates the board, and any other acts or regulations which you will be using (examples are described in this guide).

- Read the minutes of recent board meetings. Depending on how often the board meets, you might review up to one year's minutes.
- Obtain a list of names, addresses and telephone numbers of other board members and the board chairperson.
- Meet with the board chairperson and/or other members.

5 A BASIC POLICY FRAMEWORK

This section provides a very brief description of the various types of mechanisms that form government policy. Policy instruments range from the very prescriptive, such as legislation, regulation and formalized government policies, to more informal instruments such as guidelines or traditions.

Legislation refers to Acts, or statutes, which are passed by the Yukon Legislative Assembly. Statutes follow a certain format and generally include specific definitions of terms that are to be used when interpreting an act. Statutes can be amended only by the Legislative Assembly.

Regulations are made by Cabinet and are sometimes referred to as Orders-in-Council. Regulations can only be made when the statute authorizes Cabinet to make regulations.

5.1 Some Important Pieces of Legislation to Keep in Mind

Board members must abide by the law when carrying out their duties. Board members must perform according to the enabling act for the board and must also consider whether any particular provision has been enacted properly.

5.1.1 Access to Information and Protection of Privacy Act

The [Access to Information and Protection of Privacy Act ATIPP](#) requires the government to be open and accountable to the public by providing a right of access to records and by protecting the personal privacy of individuals. The Act does not apply to all boards and committees, and each board or committee should review the Act and its regulations to determine if it applies to them.

If the Act applies to a particular board or committee, it is important that board records are well managed and maintained in one location.

5.1.2 Financial Administration Act

Where departments support boards directly, department officials are accountable for expenditures supporting the board. Department officials must follow policies and procedures pursuant to the [Financial Administration Act](#).

5.1.3 Human Rights Legislation

It is important for board members to have a basic knowledge of the [Charter of Rights and Freedoms](#) and the Yukon [Human Rights Act](#) to ensure their decisions or advice do not infringe on the rights and freedoms outlined in the legislation.

5.1.4 Legal Advice

If a board believes that an act of the Yukon legislature infringes a right that someone has under the [Charter](#) or the Yukon [Human Rights Act](#), members have a responsibility to not support a violation. Decisions should be consistent with the *Charter* and human rights legislation. Questions or concerns of legal infringement should be directed to senior management (department head) who should then direct the issue to legal services in the Department of Justice.

Although legal concepts and interpretations can be complex and precedents can change over time, it is not necessary to be a lawyer to serve on a board. In fact, most quasi-judicial boards deal with legal issues on a regular basis using legal advice. This can be further explained by the departmental Staff Contact.

6 CLOSING NOTE

Thank you for your service and contributions to Yukon government boards and committees.

If you have any questions with respect to the administration of your board, you can contact the department responsible or go to the [boards and committees website](#).