



National Gallery of Canada Musée des beaux-arts du Canada

GOVERNANCE POLICY

This policy was approved by the Board of Trustees on December 8, 2015

TABLE OF CONTENTS

1. INTRODUCTION	1
2. OBJECTIVE.....	1
3. SCOPE	1
4. POLICY GUIDELINES	1
4.1 Role of the Board of Trustees.....	1
4.1.1 Duties of Trustees.....	2
4.1.2 Responsibilities of the Board.....	3
4.2 Functioning and Structure of the Board of Trustees	8
4.2.1 Role of the Chair.....	8
4.2.2 Board meetings.....	8
4.2.3 Board committees	8
4.2.4 Assessing the effectiveness of the Board and its committees	9
4.3 Role of Management.....	9
4.3.1 The Management	9
4.3.2 The Director and CEO	10
5. INQUIRIES.....	10

1. INTRODUCTION

Corporate governance refers to the structure and processes used to direct and manage the business and affairs of an organization as it fulfils its mandate. Good corporate governance contributes to the achievement of both public policy and the organization's objectives. An organization with fully functional governance is:

- responsive to the present and future needs of the organization;
- prudent in setting policy and making decisions; and
- able to take the best interests of all stakeholders into account.

Canadians expect their governments and public institutions to govern themselves in a manner that embodies the highest standards of efficiency, effectiveness and accountability. The National Gallery of Canada ("the NGC" or "the Gallery") is committed to fulfilling its mandate in a way that reflects best practices in corporate governance. By doing so, it can be fully accountable for the public assets entrusted to it.

As a Crown corporation, the Gallery is a distinct legal entity owned by the Crown. The NGC's mandate is "to develop, maintain and make known, throughout Canada and internationally, a collection of works of art, both historic and contemporary, with special but not exclusive reference to Canada, and to further knowledge, understanding and enjoyment of art in general among all Canadians" (*Museums Act*, 1990, c. 5).

Like other Crown corporations, the NGC has greater managerial autonomy than a government department. To balance its autonomy with accountability to both Government and Parliament, the Gallery is required to comply with Part X of the *Financial Administration Act*, which outlines the control and accountability framework for Crown corporations.

2. OBJECTIVE

The purpose of this policy is to define the corporate governance practices to which the Gallery is committed as it pursues its mandate.

3. SCOPE

This policy applies to members of the Board of Trustees as well as to NGC employees. Primary responsibility for implementing this policy and for ensuring compliance with it rests with the Board of Trustees, under the leadership of the Chair, and with Management, under the direction of the Gallery's Director and CEO.

4. POLICY GUIDELINES

4.1 Role of the Board of Trustees

The *Museums Act*, 1990, c. 18, s. 1, establishes Board of Trustees ("the Board"), consisting of a Chair, a Vice-Chair and nine other Trustees. The Board is accountable to Parliament through the Minister of Canadian Heritage. A strong Board of Trustees is essential for the fulfilment of the NGC's objectives. The Gallery's eleven-member Board, selected from various regions of the country, is responsible for ensuring that the resources provided to the institution are administered in such a manner that the Gallery's legislative mandate, as set by Government, is carried out in the best way possible.

According to the *Museums Act*, 1990, c.18, s.3, “the Board is responsible for the fulfilment of the purposes and the management of the business, activities and affairs of the museum.”

As per the NGC’s *General By-Law No. 1* (the Gallery’s By-Laws),

“The Board has all the powers and duties granted to it under the *Museums Act*, the *Financial Administration Act* and any other applicable act or regulation, and shall exercise those powers and perform those duties, except where the Board deems it appropriate to delegate them through a By-Law or resolution”.

4.1.1 Duties of Trustees

The following sections describe the duties of the Board of Trustees:

a) Fiduciary duty

Board members are fiduciaries in whom the Government has placed the utmost trust and confidence to manage and protect the Gallery’s assets. Each member must act honestly, in good faith, and solely in the best interest of the Gallery. In doing so, Board members are prevented from taking advantage of their positions for their own benefit. Each member has a duty to avoid placing themselves in a conflict of interest; they must also avoid promoting any personal interests or the interests of any one stakeholder or stakeholder group. The obligations of Board members in respect of conflict of interest are outlined in the following documents:

- Annex A of *Accountable Government: A Guide for Ministers and Ministers of State – 2011 Ethical and Political Activity Guidelines for Public Office Holders*;
- The Gallery’s *General By-Law No. 1*; and
- The Gallery’s *Code of Conduct*.

b) Duty to disclose conflicts of interest

The NGC’s *Code of Conduct* is based on principles and procedures adopted by the Government of Canada for all federal public office holders. The code requires that Trustees disclose annually any situation that may place them in a real or perceived conflict of interest. Trustees must also withdraw from any discussion or vote when they are, or may appear to be, in a conflict of interest with the Gallery.

The Trustee is responsible to bring information on any such actual or potential conflict of interest to the attention of the Board Chair or the Chair of the Governance and Nominating Committee for his/her consideration.

c) Duty of care and the duty to exercise due diligence

Duty of care requires that members of the Board and officers of a corporation, in exercising their powers and discharging their duties, “exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances” (*Canada Business Corporations Act*, 1985, c. 122, s. 1(b)).

Related to the duty of care is the duty to exercise due diligence, which requires Board members to demonstrate that they have exercised reasonable and appropriate duties of care and loyalty in discharging their responsibilities for organizational governance. Trustees are expected to use good judgment in decision-making, keep abreast of current and relevant issues, attend meetings regularly and come to meetings prepared to participate and contribute.

Familiarity with various documents such as:

- The general parameters of the *Museums Act*;
- Legislation applicable to Crown corporations;
- Part X of the *Financial Administration Act*; and
- The Gallery's bylaws.

complemented by a more thorough understanding of the annual reports, corporate plans and various policies will assist Trustees in discharging their responsibilities related to duty of care and the duty to exercise due diligence. Each Board member should also acquire the following specific knowledge about the Gallery:

- how it is organized;
- how it is financed;
- its products and services;
- its major suppliers and customers; and
- the arts and education communities with which the Gallery interacts.

For most Trustees, participation in Board meetings and the experience of working with other Trustees will prove to be the most effective means of acquiring the necessary knowledge of the Gallery.

Specific responsibilities of Trustees related to attending meetings, avoiding conflicts of interest, voting and performing duties assigned to them by the Chair are defined outlined in the Gallery's By-Laws.

4.1.2 Responsibilities of the Board

Stewardship of the institution is the most important responsibility of the Board of Trustees. To fulfil this obligation, the Board establishes the Gallery's strategic direction, safeguards its resources, monitors its performance and reports to the Crown. The Board is also involved in stakeholder strategies and communications, and succession planning for the institution. The Board ensures that the Gallery is managing its: collections; intellectual, capital and other assets; installations and exhibitions; and its human and financial resources in accordance with best management practices and professional museum standards.

In fulfilment of this responsibility, the Board delegates day-to-day operations of the institution to the Director and CEO who, along with senior management team, is held accountable for the Gallery's performance, its long-term viability and the achievement of its objectives. It endeavours to ensure that all major issues affecting the business and affairs of the Gallery are given proper consideration.

The Board, in conjunction with the Director and CEO, strives to ensure an appropriate delineation of responsibilities between itself and Management. An effective relationship between the Board and Management is key to how well Trustees fulfil their responsibilities and to how well the Gallery achieves its mandate. The ability of the Board to work closely with Management and, at the same time, function with a perspective that is independent of Management's is central to good corporate governance. Trustees are called upon to exercise their judgement and independence when considering the proposals brought forward by Management and contributing to the Board's decisions.

The Board, in cooperation with Management, should determine the quantity, timing, frequency, and the usefulness of the information it receives. As the Board's information needs may change over time and with experience, the usefulness of distributed information should be reviewed periodically.

The Board should also be satisfied that the Gallery's information systems and management practices meet its needs and instil confidence in the integrity of information produced.

The subsections that follow describe the Board's responsibilities in detail.

a) Establishing the Gallery's strategic direction

The Board's primary function is to set the Gallery's strategic direction. In doing so, the Board works closely with Management to formulate strategic objectives. It fulfils this responsibility largely through its active role in corporate planning and by periodically assessing the relevance of the Gallery's mandate.

i. Corporate planning

The Corporate Plan is the centrepiece of the accountability regime adopted by Parliament for Crown corporations. It is through this Plan that the Gallery's objectives, priorities, strategies and performance measures, as approved by the Board of Trustees, are documented and communicated to Government. The document commits the Gallery to a planned strategic direction over a five-year period and to that end, guides the actions of the Board, Management and staff towards that strategic end. Once approved, the plan also provides a basis for evaluating corporate performance. It is the Board's responsibility to ensure that the Gallery's strategic direction is consistent with the organization's legislated mandate, as well as its legal and ethical responsibilities.

In addition, the Corporate Plan provides a vehicle for bringing issues to the attention of the Minister and the Treasury Board, and for identifying opportunities and signalling change. The Corporate Plan also authorizes the release of Government-appropriated funds for capital and operating budgets.

Once approved by the Board, the Gallery's Corporate Plan, along with the proposed capital and operating budgets, is submitted to the Minister, who tables it for approval by the Governor-in-Council on an annual basis.

Following the approval of the Corporate Plan by the Governor-in-Council, Management prepares a summary for the Minister to table in Parliament. Coherent and transparent, the summary officially communicates the Gallery's strategic direction to the public, stakeholders and staff.

ii. Assessing the relevance of the mandate

Intimately linked to the Gallery's strategic direction are the Gallery's public policy objectives, which are rooted in its legislative mandate. Treasury Board *Guidelines on Corporate Governance in Crown Corporations* recommend a periodic assessment of the corporation's public policy objectives and legislated mandate, a responsibility that is assigned to the Board of Trustees. Due regard for the government's general objectives should also be considered. In rare cases, the Board may find that the legislated mandate of the Gallery is no longer relevant in the current economic and/or social context. If so, the Board should advise the Minister of the situation and recommend an appropriate course of action.

b) Safeguarding the Gallery's resources

The Board must ensure that the principal risks of the Gallery's business have been identified and that appropriate systems to monitor and manage these risks have been implemented. With due regard for the delegation of authorities established by the Board and set forth in various corporate policies, major decisions involving the Gallery's assets and their financing must be reviewed and approved by the Board.

To this end, the Board is responsible for:

- ensuring that clear delegation of authority for decision-making related to financial and human resources management is in place;

- reviewing and approving the Gallery's annual capital and operating budgets, major new project proposals and all significant decisions involving the Gallery's assets;
- ensuring that strategically important risks have been identified and that appropriate risk-mitigating strategies have been implemented;
- ensuring the integrity of the Gallery's internal control and management information systems, and the quality of its management practices;
- assessing financial results, ensuring the integrity of financial reporting and approving the year-end audited financial statements;
- ensuring appropriate ethics and values are maintained; and
- ensuring compliance with laws and regulations, audit and accounting principles and the Gallery's By-Laws and policies.

In managing financial risk, the Board must ensure that an appropriate balance is struck between incurring an acceptable level of risk and operating within the financial resource parameters established by the Government. The Crown's position should be protected, and the financial exposure of the Gallery should be contained within the limits approved in the Corporate Plan.

c) The audit regime

To validate the integrity of the information it receives and the internal control systems of the Gallery, the Board relies on the Gallery's audit system. Part X of the *Financial Administration Act* requires all Crown corporations to:

- establish an Audit Committee composed of directors of the corporation (Trustees);
- conduct internal audits;
- prepare quarterly and annual financial statements;
- ensure that an annual auditor's report on the financial statements and on any quantitative information required to be audited as determined by the Treasury Board is prepared by the Office of the Auditor General; and
- ensure that a special examination is carried out at least once every 10 years.

The audit regime - consisting of external annual audits and a special examination, along with internal audits - provides the Board with an independent opinion on the extent to which:

- the assets of the Gallery are being safeguarded and controlled;
- the financial, human and physical resources are managed economically and efficiently; and
- the Gallery's operations are carried out effectively.

In support of good governance of the audit regime, government departments and Crown corporations designate a Chief Audit Executive (CAE) who is mandated to assist the Board's Audit and Finance Committee in carrying out internal audit responsibilities. Appointed by the Board of Trustees, following consultation with the Director and CEO, the CAE is responsible for the internal audit function across the Gallery.

To assure the independence of the internal audit function from management, the Gallery's CAE has a dual reporting relationship; he/she reports directly to the Board of Trustees on all audit-related matters and administratively (i.e., day-to-day operations) to the Director and CEO.

d) Establishing accountability

Establishing a clear accountability relationship for the Director and CEO to the Board is a key Board responsibility. A set of corporate objectives the Director and CEO is accountable for achieving should be established on an annual basis.

It is important to note that many of the Board's responsibilities for the management of the Gallery's business are delegated to the Director and CEO and management team. For this delegation to work effectively and without confusion about respective responsibilities, the Board should avoid participating in the day-to-day management of the business of the Gallery.

The Board should be concerned less with transactions than with setting the corporation's direction and objectives and with ensuring that the Gallery's systems and practices support the Board in its role of monitoring and evaluating management's progress.

e) Board independence

The ability of the Board to function independently of Management is paramount. Appropriate structures, processes and procedures should be in place to allow Trustees to maintain this independent perspective. Examples include: the annual audit of financial statements by the Office of the Auditor General (OAG); in-camera sessions between the Board and the OAG; audits, which are conducted by independent third party firms; and the appointment of external advisors to the Board's Acquisitions Committee who provide an independent advice and guidance to the Board on proposed art acquisitions.

f) Monitoring and reporting on the Gallery's performance

The Board has an oversight role that requires regular monitoring of corporate performance, assessment of the Director and CEO's performance, and annual reporting to Parliament. Regular monitoring of corporate performance assists the Board in formulating positions on current and upcoming decisions. It helps Trustees learn about the Gallery, its management and the overall appropriateness of the Gallery's strategic direction. Regular monitoring also alerts the Board to new developments inside the Gallery and in its external environment.

To this end, the primary monitoring and reporting responsibilities of the Board are:

- ensuring that the information provided by Management meets the Board's requirements;
- monitoring the Gallery's performance against the objectives set forth in the Corporate Plan, including assessing operating results to evaluate whether the Gallery's business is being properly managed;
- ensuring that the information provided to the Government is sufficient for evaluation of how well the Gallery has fulfilled its objectives;
- ensuring that the Annual Report to Parliament provides comprehensive, relevant and timely information on actual performance;
- setting objectives and performance measures for the Gallery's Director and CEO and annually assessing the Director and CEO's performance; and
- assessing the Board's own effectiveness in fulfilling its responsibilities, including monitoring the effectiveness of the Chair and individual Trustees.

g) Stakeholder strategies and communications

The Board is responsible for ensuring that the Gallery has policies in place to enable Management and the Board to communicate effectively with the Crown, stakeholders and the public. In addition, the Board is at liberty throughout the year to instruct the Chair to inform the Minister of any matter it believes deserves the Minister's attention.

While the main tools for communicating with Parliament and stakeholders are the Gallery's Annual Report and the Summary of the Corporate Plan, the Gallery will also develop appropriate plans and strategies to communicate with the general public on an on-going basis. Additionally, the Board should:

- ensure key stakeholders, including the Minister and/or key government officials are identified and, as necessary, appropriate communications strategies are developed and implemented; and
- contribute to strategies aimed at strengthening the image of the Gallery with the public and key stakeholders.

Treasury Board guidelines caution Trustees about public statements concerning the Gallery. Depending on the circumstances, the spokesperson for the Gallery is usually the Director and CEO or a designated representative, the Chair of the Board or the Minister. Before an individual Trustee acts as a spokesperson, clearance to do so should be received from the Chair of the Board.

h) Succession planning

The Board has a role to play in ensuring the smooth succession of Trustees and key management positions at the Gallery.

i. Board Succession

Notwithstanding the fact that it is the Government's prerogative to appoint Trustees, the Board is expected to propose suitable candidates for the Minister for the Government's consideration. To that end, the Board identifies the knowledge, skills and core competencies required by individual Trustees and the Board as a whole in a "Board Competency Profile." The profile articulates to the Minister and other stakeholders the desired mix of attributes that the Board requires that may play a role in the appointment process. As the requisite skill sets may change over time, the Board should regularly update the competency profile to ensure its continuing relevance.

Historically, Trustee appointments have been limited to two terms. An appropriate justification should be provided whenever a current Trustee is proposed for reappointment.

The Board should pay particular attention to the orientation of new Trustees. Ongoing orientation sessions should be provided to increase familiarity with the unique responsibilities of a Trustee of a federal Crown corporation, the mandate, core programs and issues of the Gallery.

The Board is also expected to plan for the succession of the Chair by establishing criteria for the role and providing nominations to the Minister.

ii. Management Succession

The Board appoints the Director and CEO of the Gallery, based on criteria it has established, with the approval of the Governor-in-Council.

The Board should take steps to ensure that the Gallery has appropriate succession plans in place for its senior officers. In this way, it can ensure that the pool of skilled management talent will be available for the ongoing and long-term fulfilment of the Gallery's mandate.

i) Corporate policies

The Gallery has a number of corporate policies that govern the institution's operations and clarify expectations related to Management's authority and responsibilities. The Board of Trustees regularly reviews corporate policies to ensure they provide the needed direction in areas critical to the delivery of the Gallery's legislated mandate and to the sound management of its human and financial resources. The policies are developed (or revised) by Management and submitted to the Board for review and approval.

Once approved, Management establishes the specific guidelines and procedures for the policy's implementation.

4.2 Functioning and Structure of the Board of Trustees

The *Museums Act* specifies that the Board be composed of nine Trustees, a Chair and a Vice-Chair.

4.2.1 Role of the Chair

Both the *Museums Act* and the Gallery's By-Laws provide the Chair's terms of reference.

Appointed by the Governor-in-Council on a part-time basis, the Chair provides leadership and presides over the activities of the Board. In consultation with Management, the Chair determines Board meeting agendas and ensures that the Board fulfils its governance responsibilities.

The Chair must ensure that the relationship between the Board, Management and Minister furthers the Gallery's best interests. In performing this role, the Chair works in close partnership with the Director and CEO and ensures effective relations with the Minister, other stakeholders and the public are maintained.

4.2.2 Board meetings

Board meetings are the main forums through which Trustees fulfil their responsibilities. Trustees should prepare well and actively participate in these meeting, as they provide an opportunity for Trustees to receive information, develop their understanding of important issues and influence the decisions of the Gallery.

The *Museums Act*, 1990, c.21, requires the Board to meet at least once each year. In practice, the Gallery's Board meets four times a year in person, supplemented with numerous teleconferences throughout the year. The Board also holds in-camera meetings without Management's participation to discuss various topics (i.e. the evaluation of the Director and CEO's performance).

The agenda, minutes of previous meetings and the relevant information concerning matters requiring the Board's attention and/or approval are sent to Trustees in advance. Materials provided for Board meetings are accessible under the *Access to Information Act*, subject to the provisions of that act, as well as the *Privacy Act*.

It is customary to assume that the affairs of the Gallery are deliberated in confidence and that their disclosure only follows from authorized decisions and according to agreed procedures. The frankness of the discussions at Board meetings requires that both the nature and the content of these discussions remain confidential. Formal communication of Board decisions is the responsibility of the Chair and the Director and CEO.

Members of the Board should ensure that a contact with management or employees outside of the context of committee and Board activities is limited. Any such contact should be directed through the Director and CEO.

4.2.3 Board committees

Although the full Board of Trustees is ultimately accountable for the fulfilment of Board responsibilities, certain functions are delegated to Board committees for more in-depth deliberation. The creation of such committees, as well as the establishment of their terms of reference, requires a formal resolution of the

Board or an addition to the Gallery's By-Laws. Generally, committees examine issues and prepare recommendations for consideration by the full Board. Unless explicitly stated in the committee's terms of reference, authority to act on behalf of the Board is normally reserved for specific circumstances, and this requires prior approval by the Board.

There are six standing committees of the National Gallery's Board of Trustees:

- Acquisitions Committee
- Audit and Finance Committee
- Executive Committee
- Governance and Nominating Committee
- Human Resources Committee
- Programmes and Advancement Committee

On the recommendation of the Governance and Nominating Committee, the Board appoints members to committees based on their interests, expertise and availability. The Chair of the Board is a member of all committees with a right to vote. The Director and CEO is an *ex officio* member of all committees without voting rights.

4.2.4 Assessing the effectiveness of the Board and its committees

The Board assesses its own performance and that of its committees on an annual basis. These appraisals cover the planning and preparation of meetings as well as how they unfold. Participation and follow-up are assessed, as are the individual contributions of members to the Gallery's governance throughout the year.

The Board delegates its Governance and Nominating Committee to develop and monitor the National Gallery of Canada's overall approach to corporate governance issues. Subject to approval by the Board, this committee also implements and administers the governance system.

The committee recommends, establishes and administers the Board's annual performance review. At least once a year, the committee also reviews the following governance-related matters with the Board:

- the terms of reference and membership of each of the committees of the Board;
- the methods and processes by which the Board assesses its performance; and
- the Board's information needs and the extent to which they are being met.

Periodically, the Board also reviews its own roles and responsibilities to ensure they reflect best practices and address the challenges facing the Gallery. It may also wish to review its responsibilities relative to those of Management to ensure an appropriate delineation of responsibilities.

As recommended by the Government, the National Gallery's Annual Report includes assessment of the Gallery's corporate governance policies and practices.

4.3 Role of Management

4.3.1 The Management

The operations and the handling of the day-to-day business and affairs of the NGC are functions of Management. As such, the competence, skill, integrity and prudence of Management are key requirements that are important to the effective delivery of the Gallery's mandate. The NGC's *Code of Conduct* applies equally to Management, staff and to the Board of Trustees. Managers are expected to

function, and be seen to be functioning, in an ethical, transparent manner in all their endeavours. This conduct enhances the public trust and confidence in Canada's national institutions.

As per the Gallery's By-Laws, the Director and CEO proposes the organizational structure of the Gallery and its periodic updating. A detailed organizational chart is presented annually to the Board for information, giving Trustees an opportunity to review the structure of the Gallery.

4.3.2 The Director and CEO

Both the *Museums Act*, and the Gallery's By-Laws provide the fundamental basis for the terms of reference for the Director. The *Museums Act*, 1990, c. 23, s. 1 states:

"There shall be a Director of each museum, who shall be appointed by the Board of the museum, with the approval of the Governor in Council, to hold office during pleasure for a term not exceeding five years."

The Director is the Gallery's Chief Executive Officer (CEO) and is accountable to the Board for the institution's organizational and procedural controls. Director and CEO facilitates the interaction between Management and the Board, and brings the needed support to the Chair to ensure that the Board fulfils its governance responsibilities.

The Director and CEO is responsible for the Gallery's general orientation and for providing the leadership necessary to realize the institution's mandate, vision and strategic objectives.

The Director and CEO is in charge of the daily management of the Gallery's activities and ensures that the Gallery's achievements align with the Corporate Plan. The individual occupying this position must respect the strategic framework and the policies approved by the Board. The Director and CEO sees to:

- the optimum allocation of resources;
- the appointment and direction of the Management team;
- the professionalism and development of the Gallery's staff in a climate conducive to excellence; and
- the Gallery's good relations with key stakeholders and the general public

The Director and CEO ensures that the Corporate Secretary is appropriately resourced to support the planning and management of the work of the Board and its committees. With the guidance of the Corporate Secretary, the Director ensures that Management has prepared the requisite briefing materials for all sessions of the Board. Additionally, the Director and CEO submits the Corporate Plan, Annual Report and any recommended policy revisions to the Board, and keeps the Board updated on important issues affecting the Gallery's ability to realize its strategic objectives.

The Director and CEO works with the Board to develop an information system that meets the Board's needs. The information provided to the Board should assist with the timely evaluation of the Gallery's progress and the appropriateness of its strategic direction.

5. INQUIRIES

Questions concerning the interpretation of this policy should be addressed to the Director, Corporate Secretariat and Ministerial Liaison.

References

Canada Business Corporations Act (1985)

Canadian Deposit Insurance Corporation, *Proposed Practices for Internal Control*

Office of the Auditor General, *Governance of Crown Corporations* (December 2000)

The Crown Corporation Directorate of the Department of Finance and Treasury Board Secretariat in collaboration with The Conference Board of Canada and the Canadian Centre for Management Development, *Directors of Crown Corporations: An Introductory Guide to Their Roles and Responsibilities* (Ottawa: The Conference Board of Canada, 1993)

The Financial Administration Act

The Museums Act

The Toronto Stock Exchange Committee on Corporate Governance in Canada, Where Were the Directors? Guidelines for Improved Corporate Governance in Canada (December 1994)

The Treasury Board Secretariat, *Corporate Governance in Crown Corporations and Other Public Enterprises – Guidelines* (June 1996)