

# Duz Cho Group of Companies Ltd

## Volunteer Board of Directors

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The Chief and Council of McLeod Lake Indian Band require 2 Directors to join the Board of Directors to act on Council's behalf regarding the affairs of the Duz Cho Group of Companies Ltd. These Directors have accepted this responsibility.

There are a number of reasons why Chief and Council want a Board of Directors:

- The Corporate Act of British Columbia requires that an incorporated company have appointed persons in charge.
- The Board of Directors of a company could be the owners (Band Council on behalf of the Membership) but Council is busy. They prefer to have others, who have time to specialize and concentrate on the activities of the company, be in charge.
- Council wants the Board of Directors to be empowered to direct the activities of a company. This does not mean that the Board will intervene in operational matters but will give direction where such is needed. The Council does not want a Board that just does cheerleading or rubber stamping.

Although a nominal honourarium is paid, we consider this Board to be a public service or volunteer board. The responsibilities and liabilities are diminished as compared to that of a professional board of directors as the scope of work and terms of reference are limited. The Band will accept the reports and actions of the Board and will indemnify the Directors for any decisions that they have made during the previous year.

Never the less, together as a Board, as well as individually, directors owe a duty of care to the Council, to each other as Board members, to members of the organization, and to anyone who may be affected by the acts of the organization.

The general duties of care and of trust are often divided into six basic duties for clarity.

### **BASIC DUTIES**

#### **1. Duty of Honesty**

Directors must act honestly at all times when dealing with or on behalf of the organization.

#### **2. Duty of Loyalty**

Directors must give their undivided loyalty to the organization and must not let matters of personal interest or profit come into conflict with the interests of the organization.

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### **3. Duty of Care**

Directors must look after the affairs of the organization with as much care, good sense and good judgment as a reasonable person would in the same circumstance.

### **4. Duty of Skill**

Directors are not required to be experts. They are required to use as much skill in making decisions for the organization as any similarly skilled reasonable person. This means that someone with no training in accounting, for example, would be expected to use as much care in looking after the organizations finances as any reasonable person with no special training would. However, if the director also happened to be an accountant, then she would probably be held to a higher standard and expected to take as much care as a reasonable trained accountant would.

### **5. Duty of Diligence**

Directors must be diligent about their work as directors. For example, they need to attend meetings regularly, read all the minutes and reports from committees, look at all the available facts including expert recommendations on issues, but then make up their own minds on decisions.

### **6. Duty of Prudence**

This is very much like the duty of care. It means that Directors are expected to exercise caution and common sense on behalf of the organization.

## **DUTIES TO THE ORGANIZATION**

The duties of care, diligence, and prudence suggest that a director should take care to know the constitution and bylaws of the organization thoroughly in order to make certain, for example, that the Board only authorizes actions that fit within the organization's purposes or objects. A director must act strictly within the scope of her authority and must not instruct the organization to carry out activities that are not permitted by the organization's objects.

These duties also suggest that directors have a clear Operating Policy outlining things such as proper notice of meetings, quorum for meetings, rules of order, and that the directors follow these policies carefully.

The duties of honesty and loyalty require that directors put the interests of the organization ahead of their personal interest. A volunteer director should avoid even the appearance of a conflict of interest by not voting in such situations. In case of doubt, the director with the possible

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conflict should explain it to fellow directors, and then abstain or be absent from involvement in discussion or voting on that issue.

The duty of skill has to do with the standard of care that the volunteer director owes to the organization. The standard is that of a reasonable person in comparable circumstances. The court will give some weight to the particular director's experience and expertise. Thus, a lawyer who sits on a volunteer board would probably be held to a higher standard of care on legal matters than a fellow board member with little experience with the law.

### **DUTIES TO OTHERS**

#### **Civil Liability**

Where the organization has caused damage to a third party, the general rule is that, provided the volunteer director was acting within the scope of his/her authority, the director will not be found personally liable for damages, provided there is no evidence of gross negligence or fraud. If the director was acting outside his/her authority (for example, the Board of Director had not passed a motion authorizing the action) and the organization caused the damage as a result of his/her actions, then director may be liable to the organization for the amount it was required to pay to the third party.

Note that McLeod Lake Indian Band has purchased director's liability insurance up to \$10,000,000.

#### **Criminal Liability**

Where the organization is charged with an offence under the Criminal Code, a director may also be charged as a party to the offence if the director actively participated in, assisted in, or encouraged the crime. If the director is in a position to stop the commission of the offence and omits to do so, he may be found guilty under the Criminal Code.

### **DUTIES TO EMPLOYEES**

Boards of Directors have a duty to ensure that the organization meets its responsibility as an employer.

Employer responsibilities are detailed in many federal and provincial statutes. For example, some employer duties include:

- Duty to pay full wages, including overtime and vacation pay;
- Duty to provide paid days off for statutory holidays;

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- Duty to make employee deductions (CPP, EI, and Income Tax) and to send these deductions to Canada
- Duty to provide a safe workplace, and
- Duty to protect employees from discrimination.

Directors should ensure that appropriate measures are made to comply with employer responsibilities — this duty cannot simply be delegated to administrators. In some cases, directors may be held personally liable for the organization's failure to meet its obligations to employees. An employee who has been mistreated or wrongfully dismissed may sue the Corporation and, in some situations, directors may be personally liable (for example, if they haven't put proper hiring and firing procedures in place). If an organization becomes insolvent, directors may become personally liable for the unpaid wages of employees or unpaid employee deductions to CCRA.

### RESPONSIBILITIES OF THE ORGANIZATION TO THE BOARD OF DIRECTORS

The company's management has responsibilities to the Board of Directors. These include:

#### 1. **Duty of Honesty**

Management must not hide negative news but must provide an accurate description of the activities of the company to the board.

#### 2. **Duty of Loyalty**

Management must give their undivided loyalty to the organization and must not let matters of personal interest or profit come into conflict with the interests of the organization. If Management has made errors, they must be open and honest with the Board, and be prepared to take consequences.

#### 3. **Duty of Care**

Managers must be professional in their management of the company. To be professional, managers must have the training and experience required for their position in the company.

#### 4. **Duty of Skill**

Managers must provide the information required for lay people to make financial decisions. The accounting must be accurate and provided to the Directors in a timely manner. Financial analysis, such as return on investment, liquidity, debt to equity, aging of receivables and payables, and other information should be prepared for the Board.

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### 5. Duty of Diligence

The organization, with the help of Directors, should ensure that there is expertise in finance, personnel, and other key positions. Reports should be provided to Directors on a regular basis and in a timely manner.

McLeod Lake Indian Band provides assurance to the Board of competency by hiring persons with skill and experience:

- Comptroller, Bachelor of Commerce, CPA designation
- Manager of Economic Development, Bachelor of Planning
- Human Resources, 20 years of HR experience, partial Canadian Human Resources Professional
- Consultant, Bachelor of Commerce, Masters of Business Administration
- Auditor, Deloitte LLP, Jane Newman, Chartered Accountant