

Directors & Officers
Handbook

Approved by BUSAC and
BUSU Board Of Directors
December 2000

Revised:
February 2006
October 2, 2006

Table of Contents

1. Preamble
 2. Hierarchy within our Organization
 3. Composition of the Board of Directors
 4. Governing Rules and Regulations
 5. Meetings
 6. Duties & Responsibilities of Board Members
 7. Types of Business
 8. Liability Awareness
 9. Insurance Coverage
 10. Summary
 11. Checklist
-
- | | |
|------------|--|
| Appendix A | Liability Awareness |
| Appendix B | Events with high risk factors |
| Appendix C | Article on "When Office festivities pose a risk" |
| Appendix D | List the hazards |
| Appendix E | BUSU Organizational Charts |

1. Preamble

This handbook is designed as a guide to what the Board of Director is all about and what the role of a Director involves. It does not detail every scenario and every piece of legislation that may arise in the day to day operation of our organization. It will give you a feel for what is required of a Director.

Other areas of reference should be studied by members of the Board; this handbook is not to replace those sources. You are encouraged to gain as much knowledge as you can. Should you have to deal with a particularly difficult issue, it is incumbent on YOU to acquire whatever information you need to make an appropriate decision.

An additional source that is not specifically referenced here is the BUSU Lawyer. If the issue warrants, someone from the Board (usually the Chair or the Business Manager) should call the lawyer for assistance. In the event that the issues are of a particularly sensitive nature, consideration should be given to bringing the lawyer into a Board meeting.

It is important to realize that our organization is an incorporated not-for-profit corporation without share capital. We are a separate legal entity that has some attributes in common with business corporations.

It does not necessarily follow that an entity which is not-for-profit, cannot make a profit. The main difference is that when a not-for-profit organization makes a profit the individual members of the corporation do not personally benefit as is the case of shareholders in a business corporation. The profits in our set up accrue to the corporation itself. There are some issues revolving around amounts of accumulated profit and what is prudent by way of retained earnings and what may be considered inappropriate. Discussions with BUSU accountants reveal that we should aim for approximately ten (10) percent of total sales as a guideline. BUSU total revenues at the present time are over \$6 Million. Therefore, we should aim to accumulate retained earnings of approximately \$150,000 to \$200,000. As of April 2005, we have an accumulated loss of around \$165,000.

2. Hierarchy within our Organization

BUSU is a multi-leveled organization. It has a number of areas that have defined responsibilities and areas of authority.

The order of hierarchy is as follows with the most influential group listed at the top:

The Student Body meeting at an AGM with appropriate quorum.

The Student Body voting at a referendum.

The Board of Directors.

BUSAC.

BUSU Executive.

BUSU Management.

BUSU Full and Part Time Staff.

Each group listed above has specific responsibilities and a level of delegated authority within which they must act at all times. For more information or clarification please refer to Appendix E (BUSU Organizational Charts).

3. Composition of the Board of Directors

The Board of Directors is comprised of eight (8) members who are elected or selected as outlined below:

The President of the Student Union is a member of the Board by holding the office of President of BUSU (1). The President will hold the position of Chair of the Board.

BUSAC elects one member of the BUSU Executive to the Board. (The President will often nominate one of his/her Executive for the position and BUSAC confirms this nomination) (1).

BUSAC elects (3) three of its own eligible voting members.

Two (2) Student at Large positions are elected by the student body.

The BUSU Business Manager will serve ex-officio as a non-voting member of the Board (1).

From within their members the Board will select a Vice-Chair.

The Board can, if it so desires, seek the services of a non-Board member (Speaker or Executive Assistant) to take minutes at the meeting; or it can appoint a Secretary; or it can rotate the taking of minutes.

4. Governing Rules and Regulations

The Board will act in accordance with the framework of activity of the BUSU Constitution, By-laws and Policy and Procedures. In addition to these very important rules and regulations, the Board is also bound by the laws of the land. BUSU is governed by Provincial Corporate legislation, the Canadian Criminal Code, and other applicable legislation.

Full knowledge of these laws is not a requirement for a member of the Board of Directors. It is important that Board members act in accordance with what appears to be fair and what is deemed to be appropriate action.

Due diligence is an expression that is often mentioned. Due diligence requires one to think through a situation, try to determine potential risks or problems and then affect the correct and most appropriate action that can be taken. Each member of the Board is responsible for ensuring that the Board, in its decision, is acting in a correct and ethical manner.

A judge in his/her deliberations will try to determine if the Board had taken into account the best interests of everyone involved.

“Had the Board done all that a prudent person could be expected to do?”

The Board’s job is to make sure that in a situation where a judge is called upon to make an assessment, he/she will determine that the BUSU Board of Directors had done all a prudent person would have done.

Voting Procedures

As a Director of the Board, you are charged with legal responsibilities for the decisions and actions taken by the Board. As such, you have a responsibility to carefully consider your vote on motions made at the Board, and to ensure your vote is fully informed. Following is a brief explanation of what it means to vote in favour, against, and abstain.

In favour: a vote in favour of a motion indicates your support and approval of the noted action or decision. You should vote in favour of a motion when you are satisfied that you have enough information available to make a decision and you are comfortable with the possible outcome of the motion.

Against: a vote against a motion indicates you do not support or approve of the noted action or decision. You should vote against a motion when you do not believe the Board has enough information at its disposal to make a properly informed decision and you are not comfortable with the possible outcome of the motion. If you strongly oppose a motion, ask that your vote be noted in the minutes. In the event of any legal action, the court will only accept the minutes of the meeting as evidence of your culpability in the situation. If you strongly oppose a motion, you may also wish to lodge a letter of opposition with the minutes explaining your position and indicating you do not support the action of the Board.

Abstention: an abstention indicates that you are waiving your vote on the motion in question. Abstentions should not be used as a means of not making a decision. As a Director of the Board you are responsible for decision-making and should not hinder this process by abstaining when you should be voting no. Be mindful of the fact that if a motion is defeated, it cannot be presented for a vote again without undergoing substantial change; if you are tempted to vote no on a motion because you do not have enough information available but do not want to defeat the motion, an abstention is the most appropriate vote. You should also ask to have your abstention and an explanation noted in the minutes.

You should abstain from a vote if and/or when:

- You were not present for the events being discussed and voted upon (i.e. If you did not attend the 2nd meeting of the Board, you should abstain from the vote to ratify the minutes of that meeting).
- You, as a Director, are directly involved in the motion presented (i.e. If you are standing for a nomination to the Ethics Committee, you should abstain from voting on your ratification to that committee).
- You require more information to vote on the motion.

Finally, when voting on a motion, you must always indicate your vote by the method dictated by the Chair, or by the Director of the Board who requests a specific method of voting. Silence or inaction will not be assumed as a vote for, against, or an abstention. You must make your vote clear when the Chair calls for it. It will be at the discretion of the

Chair whether the Board votes by hand, by voice; by role call, or by secret ballot, unless a Director requests that an alternative method be used. In any case, be sure to follow the procedure to ensure your vote is properly recorded in the minutes. Similarly, ensure that both the Chair and the minute-taker acknowledge and record an abstention, or a vote you want specifically recorded.

5. Meetings

Minutes of all meetings must be recorded and kept in an appropriate file/binder. It is the responsibility of the Chair to make sure that these very important corporate records are kept and are in good order. There is a legal requirement that minutes of all Board meetings be kept with the corporate minute book (this is held by legal counsel for the BUSU).

No meeting can take place unless quorum has been attained, quorum being half the eligible voting members plus one (1).

If a meeting goes "In-Camera" no minutes shall be recorded concerning the discussion on the motion. Only the motion may be recorded and whether it passes or fails.

Most meetings will be easy to run as there are only seven voting members on the Board. In the event that discussion becomes heated or complicated the Board can operate the meeting using Robert's Rules of Order.

Ideally, meetings should take place every two weeks during the school year and it would probably make sense to rotate weekly with BUSAC meetings. During the summer it would be prudent to meet less frequently, perhaps on a monthly basis depending on the amount of business at hand.

6. Duties & Responsibilities of Board Members

There are a number of duties that must be followed/completed by each member of the Board at all times. Some of these are covered in detail in other parts of this handbook. They are:

Duty of Knowledge, Duty of Care, Duty of Skill and Prudence, Duty of Diligence, Duty to Manage, Fiduciary Duty, Duties as Trustees, Investment Powers, Delegation by Directors, Duty to avoid Conflicts of Interest, Duty to Act within Scope of Authority.

The Board must act in a manner that maintains the best interests of students at all times. As well as acting within the BUSU Constitution, By-laws, Policies and Procedures, and the laws of the land, the Board must interpret each situation separately and do the right thing. A common sense approach to issues/situations will be the best approach to have.

Personal positions and agendas have no place in the Board meeting. It is the responsibility of each member to evaluate each scenario, and where necessary, declare any potential conflict of interest.

Directors must act within the scope of their authority and in the best interests of the corporation. Sometimes this will call for the directors to seek independent advice, particularly where knowledge is needed in a field where directors do not have any expertise. Where independent advice is sought, directors should ensure that properly qualified individuals are asked for their expertise.

Each Board member must not only be accountable for their position/decision on each issue but they are also accountable for the joint decisions that the Board makes. A Board member may feel that an issue is not receiving the correct response from the Board as a whole. In addition, the member may feel that such action could limit the role of the Board or could potentially put the Board (and its members) in a situation that would be detrimental to the Board or its members individually. In such circumstances, that member must speak up at the meeting and declare their opposition to the action being taken. They could also have their opposition noted in the minutes. The minutes must record such events, since at a future date they could be the only records that would be deemed admissible as evidence.

7. Types of Business

BUSU administers a whole array of services and businesses. The types of issues that the Board will have to deal with are equally diverse.

Working in food or the administering of a liquor license brings in a number of areas for potential problems and challenges. There are also a number of agencies that must be referred to including but not limited to the Public Health Department, Alcohol and Gaming Commission of Ontario, the Niagara Regional Police, Campus Security etc.

Human Resources issues have a particularly sensitive edge to them and must be afforded the appropriate confidentiality and humane approach that they deserve.

Decisions that are made at the Board level must take into account the variety of scenarios that could potentially present themselves. Board members are all students and may not have the necessary expertise involved with any particular situation. The Board can, at its discretion, seek out/make consultation with appropriate experts in the field.

In particular, consultation with the BUSU lawyer is strongly encouraged on particularly sensitive or contentious issues. Decisions should be made on an informed basis only. Board members must be totally satisfied with each decision and the outcome that ultimately arises.

8. Liability Issues

Trying to be aware of everything that will/can happen before it happens is not possible. Trying to be aware of the potential for problems and recognizing the elements of risk involved with an event/situation is fundamental to success.

The Board of Directors will need to be mindful of the following types of issues:

- Civil Liability
- Criminal Liability
- Statutory Liability
- Employee and Workplace Liability
- Income Tax Liability
- Health/Procedures
- Cleanliness/Procedures
- General Safety
- Fire Safety/Procedures
- Fire Code/Fire Manual
- Proper Human Resources Practices
- Workers Compensation Practices
- Payroll responsibilities
- Environmental Liability
- Financial Responsibility
- Fiscal Responsibility
- Confidentiality
- Business Practices

These and many other issues are contained in the appendix "Liability Awareness".

9. Insurance Coverage

The safety net for any organization is the knowledge that there is in fact some insurance coverage for events/situations that occur in the day to day business transacted by that organization.

Knowledge of that coverage is especially important for Board members. To what extent the BUSU will be exposed and to what extent is the BUSU covered in the event of an incident/situation and subsequent claim by an aggrieved party, are questions the Board must be able to answer.

The more common knowledge of liability risk is liquor liability. This has received a great deal of press and therefore has a fairly heavy profile. There is no question that liability issues could primarily revolve around the administration of the student bar. Settlements in cases relating to accidents occurring where alcohol has been a contributing factor have been in the multi-million dollar range.

BUSU carries a large amount of liability insurance; however should it ever be determined that the BUSU is found liable for an amount in excess of that liability insurance amount, the Board of Directors would be held responsible personally to make good any shortfall. BUSU holds Directors and Officers (D & O) insurance to offset liability issues that are outlined in Chapter 8 but not covered under the general Liability policy. In the event that the organization has acted outside the Criminal Code of Canada, the Board members may be held responsible and accountable.

10. Summary

Having read through this package and the appendices attached thereto, you will have gained some insight into the role and responsibilities of a member of the Board of Directors.

It should be stressed again that this handbook does not cover every eventuality but it does lay out the role in basic terms. This handbook is designed for those who are contemplating running for a position within the BUSU either as an Executive or as a Board Member. Further information can be gained from the BUSU Business Manager and the BUSU Constitution, By-laws, and Policies and Procedures.

Protection from personal liability flowing from the activities of the organization may have been the initial motivation for incorporation. Members of the Board of Directors still face exposure to liability for any of their own actions that are inconsistent with the duties owed by Directors to the corporation that the Director serves.

Everyone within the BUSU organization is charged with responsibilities and levels of accountability. Along with these levels of accountability and responsibility, there is a chain of command. This chain of command is the key to the success of our organization. Members of the Board of Directors "serve" the Board collectively. Individually the Board has no power in day to day matters. The Board should not be involved one on one with the staff and management of the organization. A member of the Board would clearly be acting outside of their mandate if they did and could be subjected to severe criticism and/or possible censure. The chain of command has to be respected at all times by all members of the BUSU. (Please refer to Appendix E for the BUSU Organizational structure and the proper Chain of Command).

Collectively, the Board of Directors has supreme control of the organization. The power that comes with such control needs to be administered very carefully and fairly. Board members also have responsibilities and are accountable. It is very important to note here that it is possible to delegate responsibility but it is not possible to delegate accountability.

That is to say; a Board member may delegate some specific tasks or duties and oversee them. However, if their position is "accountable" for the overall carrying out of that group of tasks and duties, then they (the Board member) are "still accountable" to make sure that the tasks and duties are carried out appropriately.

11. Checklist

We have listed below a quick reference guide to some of the key things to do/ remember. This list is not an exhaustive one and is given only as a guideline.

A member of the Board of Directors should:

- ~ know the corporate mandate; its mission, vision and objectives; its operations; and its by-laws
- ~ always act objectively and in the best interests of the corporation
- ~ prepare for all Board meetings, and all committee meetings of which the Director is a member by reviewing all agenda material including reports.
- ~ attend, and participate in, all Board meetings, and all committee meetings of which the Director is a member
- ~ keep careful notes at meetings, and review the minutes of all meetings
- ~ insist on the establishment and regular review of operating policies, and monitor staff adherence to them
- ~ obtain outside expert advice whenever necessary
- ~ disclose all personal dealings as early as practical
- ~ refrain from voting only where necessary
- ~ record, and ensure that minutes record, Directors' disclosures, dissent or refrain from voting
- ~ ensure that there are effective internal systems in all areas of corporate activity, particularly accounting
- ~ deal with potential Human Resource difficulties
- ~ maintain proper record-keeping system

APPENDIX A

Liability Awareness

The occupier of a property, not just the owner, has to take reasonable care that the property is safe. The person who has the right to supervise and control the premises – the right to permit or deny entry to other people, is the occupier. Therefore, in rented premises, the tenant is responsible. The reason for this is that some potentially unsafe conditions can happen very quickly and need immediate attention. If the owner is absent, it is up to the person on site to take whatever action is needed.

Areas of Responsibility under the Occupiers Liability Act

Four categories for responsibility for the safety of premises

~ physical condition of the property

It is up to the occupier to maintain the property/premises in a safe condition for lawful users in all circumstances. For example, if a slippery substance is spilled it should be cleaned up immediately. The occupier cannot simply put up a notice warning that a danger exists. If there is a problem steps must be taken to correct it immediately.

~ safety of customers from attacks by others

The premises must be maintained in a physical condition that is safe for customers. The occupier is also responsible for making sure that those customers are not likely at risk of harm from other users of the premises. This is particularly important in businesses where the sale of alcohol takes place. Customers are entitled to assume that they can use business premises without the risk of being attacked/harassed by other customers. With regard to the sale of alcohol, adequate staff must control and evict troublesome customers.

- ~ safety of people injured as a result of the business selling alcohol, and who injure themselves or others on the premises, or after they leave.

Two areas of responsibility are:

1. when an intoxicated individual sustains injury to themselves
2. when the intoxicated person leaves the premises and either suffers injury or causes harm to a stranger.

Pubs/bars that have allowed patrons to leave in a severely intoxicated condition have been held liable for injuries after they have left the pub/bar. The pub/bar may also be liable to strangers who are injured after the intoxicated individual leaves the premises. This whole area is very involved and all Officers and members of the Board of Directors as well as management and staff of any pub/bar that is operated by BUSU must undertake Smart Serve Training within three weeks of the start of the new school year.

- ~ Dispensing of products or services in a safe manner

A manufacturer (someone who takes a number of base products and enhances them for resale – in our environment; create a meal, mix a drink etc) is liable to a consumer even though there is no contract between them, if fault can be established. A manufacturer is liable for all component parts from outside suppliers included in its product. All companies involved in a chain-like fashion from point of origin to the consumer can be liable to the consumer. The companies must prove that they were not responsible for the defect. Defects in manufacturing, negligent design and failure of duty to warn, are all grounds for a lawsuit.

Defects in the manufacturing process include not only the manufacturing, but also defects in testing, packaging and distribution of goods. A standard of care must be applied in all of these areas. If the product could have been designed more safely to start with, no wording will exempt the manufacturer from liability.

A meal prepared from purchased materials is a manufactured product. It is therefore incumbent on food preparation staff that they are aware of their responsibilities.

Duty to Warn

Manufacturers must warn customers about any dangerous properties of their product, including the components that make up that product. The manufacturer cannot use the cheaper way of making their product and rely on warning customers of the danger. For example, all food and drink containing nut products or nut extracts should be made known to the public at the point of purchase. Such products need to be clearly marked so that no unsuspecting customer purchases and consumes something to which they may have a serious allergic reaction.

Manufacturers must also warn of dangers discovered after the product has been sold and distributed. The warning must be reasonably communicated. The warning should be printed on the label, clearly noticeable, and must describe the specific danger.

Standard of Care

A standard of care is imposed on businesses to ensure safety and protect consumers from harm, but it also makes the business bear the responsibility for paying for injury that it caused in the process of earning profits. An individual must do what is reasonable under the circumstances. Reasonable does not mean average, but careful or prudent; in other words, above average. In situations where an individual requires certain qualifications, the standard of care expected is that of a reasonable person with those qualifications.

There are certain factors that the courts will take into account in deciding whether the sponsor of an event will be held in breach of the standard of care.

These factors are as follows: -

- ~ Age – the younger the participant(s), the more supervision that is required.
- ~ Approved Practice – the usual and tried practices should be followed for the specific activity.
- ~ Danger – the more dangerous the activity, the greater amount of supervision is required.
- ~ Adequacy of Instruction – the supervisor must be certain that each participant has received instruction in how to undertake the activity safely.
- ~ Qualifications of Instructors – the instructors must be qualified to instruct on the activity in question.

- ~ Sufficient Number of Supervisors – the number of supervisors required if in any will depend on the nature of the activity. But a sufficient number must be present both for the training and for immediate supervision.
 - ~ Unexpected Acts – the supervisor must follow normal practice but will not be responsible for the unexpected acts of the participants.
- Disclaimers and Waivers

The use of written waivers or disclaimers is becoming more and more common in business, especially in activities involving public participation. There are some limitations on waivers and they are of doubtful value if signed by a minor or persons of limited mental capacity. The best use of a waiver form is to give notice to participants, or the parents of minors, of the dangers of the activity.

Tort Law

The best definition of tort is “wrong,” or “to carry out an action that is wrong.” There are two main categories of torts: intentional and unintentional. Intentional tort is when one individual intentionally causes wrong to another (i.e. assault, trespass, and defamation). Unintentional torts are when someone acts carelessly or without thought and causes unintentional harm to another person or to property. This is called the tort of negligence; tort law of negligence is based on fault. The number of situations to which negligence applies is open-ended.

Negligence

To establish negligence the courts will ask three questions:

- ~ was it reasonably foreseeable that the plaintiff (injured person) would be injured by the defendant’s (individual to which fault is attributed) act or omission. (Duty Owed)
- ~ did the defendant fail to do what a reasonable person would have done in the circumstances?
- ~ did the failure to act reasonably (carefully) cause the plaintiff injury? (causation).

To whom is a duty owed? The scope of duty is very wide especially for businesses that deal with the public. A duty is owed to those whom it was reasonable to foresee could be injured as a result of a negligent act. Some cases in court have resulted in findings that people owe a duty to others with whom they had no direct dealings.

Risk management

One of the goals of tort law is accident prevention through making the action that caused the injury bear the cost. If a business knows that it is going to have to pay a serious amount of money as a result of injuries, it is far more likely to take preventative measures to stop those injuries from occurring. Vicarious liability (injury done by an employee of the company while conducting company business) comes into play and risk management addresses many problems that may arise.

Some of the basic concepts of risk management relevant to activities are:

- ~ educate people who have responsibility for the activities in the types of accidents that occur (inherent risk involved).
- ~ make participants aware of the dangers of disobeying the rules and taking chances.
- ~ make certain that there are properly qualified and trained supervisory staff.
- ~ have policies about the supervision, installation, and maintenance of equipment and premises.
- ~ have well rehearsed and clear procedures on what to do when an accident happens, particularly on how to obtain medical assistance.
- ~ ensure that there is proper and adequate insurance coverage.
- ~ use waivers where possible, not only to limit liability, but to give notice to the participants of the dangers of the activities (inherent risk). Note: Waivers are of doubtful value if signed by minors or persons with diminished capacity (i.e. intoxicated or mental deficiency).

Contributory Negligence

The injured party (plaintiff) can be held partially responsible. The injured party may not have observed warnings or instructions on use or that the defect in the product was obvious and the plaintiff should have inspected it.

Voluntary Assumption of Risk

The circumstances of a case may be that the plaintiff received notice of the defect or notice of the risk and should not have used the product or participated in the activity. If this is the case then the plaintiff has voluntarily assumed the risk of participating and may be denied any

recovery.

Trespass to Land

Business premises are private property and no one has the automatic right to enter. By implication, businesses that deal with the public give the public permission (license) to enter. A business can revoke that permission without any reason, subject to human rights legislation. This revocation makes the customer a trespasser. A business can use reasonable force to eject a trespasser, but must first ask the trespasser to leave.

Business Agreements/Contracts

A handshake agreement can be a contract (verbal). Most of us think of a contract as a formal document, full of incomprehensible language that has been written by a lawyer. But we all make contracts on a regular basis, every time we buy a pen, accept a new job, or have the television repaired, we have entered into a contract.

A contract is an exchange of promises between two or more people that will be upheld in court. In other words, a contract is an agreement that is enforceable by law; but not every agreement is a contract.

For an agreement to be considered a contract, and thus legally binding, it must contain certain factors:

- ~ Capacity. The participants have to be legally capable of understanding and entering into the agreement. Some individuals, such as minors and mentally incompetent or intoxicated persons, are not seen in law as having the capacity to enter into a contract.
- ~ Legality. The purpose must be neither criminal nor against the public good.
- ~ Consensus. There must be complete agreement, or consensus, among the participants.
- ~ Intention. The intent must be that legally enforceable obligations will result from the agreement.
- ~ Consideration. All parties must offer something of value, known as consideration.

Before any contract is finalized, there must be general agreement, or consensus. There can be several stages in the process before consensus is reached: bargaining or negotiating, offer, counter offer (this stage does not always take place) and acceptance. An offer must contain all of the terms that will be included in the contract, so that the other party need merely say "I accept".

Even though an offer is made, it can be withdrawn or revoked at any time before it is actually accepted.

With conditional offers, all parties must act in good faith in trying to fulfill the conditions. When an offer is rejected it is put to an end. When a counter offer is made, it ends the previous offer. An acceptance that includes any changes in terms is a counter offer.

Acceptance of an offer must be communicated to the other party. Silence can be acceptance of an offer only if it is agreed as part of the deal. Acceptance can be by word
- "I'll take it" or by conduct. Acceptance by conduct might be as simple as using a product rather than returning it immediately.

Defamation (Libel and Slander)

Businesses are liable for torts (wrongs) committed by their employees in the normal course of their employment. Newspapers, newsletters, web sites and radio stations (the media) are often involved in lawsuits because of libel or slander issues.

The making of untrue statements that harm the reputation of an individual or a business is known as defamation. The test of whether harm has been done is the question, "does it cause others to think less of the person or the business?" An insulting comment that injures only pride can be unpleasant and annoying, but it is not defamation. The right to freedom of expression and freedom of reputation often conflict.

Defamation can be divided into two categories:

- ~ Libel: in which the harmful statement is written. However, libel also includes harm to an individual's reputation that is caused by the conduct or actions of another person (including broadcasting, movies, pictures, film and computer technology).
- ~ Slander: in which the statement is spoken, and additionally, monetary loss was suffered by the individual or business claiming defamation. The exception to the above statement would apply in the instance that the wronged party: had committed a crime; suffered a loathsome disease (such as AIDS); a woman has been unchaste; or an individual was unfit to practice a specific profession or calling. That is to say that in these instances, slander has occurred despite the fact that the injured party suffered no monetary loss from the slanderous statement.

Note: Harm can be caused by innuendo. The statement must be published, (i.e. communicated to a third party); defamation can be libel or slander.

Damages for defamation contain a unique element. Not only is there compensation for ordinary loss, money is also given for injured feelings, such as humiliation, and to show that the defamed person is innocent.

An action for defamation will only succeed if the statement is untrue. The onus is on the person who made the claim to prove it is true, not the defamed party. The responsibility for the wrong of defamation rests with everyone who publishes the statement. The journalist who writes a defamatory statement might not be the person who first uttered it – but is just as liable under law as is that individual.

The media liability for damages will be restricted to actual monetary loss if:

- ~ the information was published in good faith
- ~ it was published by mistake and a misunderstanding of fact
- ~ a full and fair retraction was published at the first reasonable opportunity

Discrimination and Harassment

A business must take reasonable steps – short of causing the business undue hardship – to modify any work that would discriminate against an employee (i.e. religious holidays).

Note: Please see Brock University's policies on harassment and sexual harassment, which BUSU has adopted.

Fiduciary Duty

A fiduciary relationship means that a party must act in good faith, and owes a standard of conduct above the ordinary business practices (business ethics). A fiduciary relationship may be created by a trust or confidence. Directors and employees owe the corporation a fiduciary duty and must act competently.

Breach of Fiduciary Duty: Some of the most common types of the breaches of fiduciary duty include:

- ~ Misuse of Confidential Information/Disclosure and Conflict of Interest
- ~ Conflict of Interest

~ Director's Liability

Misuse of Confidential Information/Disclosure

This is the use of confidential information for the benefit of the individual not necessarily the business.

Conflict of interest

This arises when directors', agents' or employees' interests are at odds with those of the corporation. They must not use a corporate opportunity for personal benefit. They must disclose any interest in a contract made with the corporation by an outsider and refrain from voting. Secret commissions, secret profits and kick backs are just a few examples of conflict of interest.

Director's Liability

Directors may be personally liable under various Provincial Corporations Acts for six months unpaid wages for employees if the company goes bankrupt. If the corporation deducts amounts for income tax, employment insurance, and Canada pension plan from employee salaries and does not forward the monies to the relevant government agency, the directors will be personally liable for those sums. Directors may become personally liable on contracts if they give outsiders the impression that they are undertaking personal responsibility for that contract. Many public welfare statutes make directors personally liable for any corporate action that violates these laws. This includes human rights and environmental protection legislation.

APPENDIX B

Some of the more common situations that need particularly close scrutiny:

Contracts/agreements

Human resources issues: hiring, firing, discipline, benefits

Finances/budgeting/cash management

Orientation week/event

Pubs (licensed events in general)

Trips off campus (licensed or unlicensed)

Affiliated clubs, groups and sanctioned events

Entertainers, vendors and outside groups in general

Student newspapers, radio stations, web sites

Public Documents; handbooks/day planners/ newsletters/posters/flyers

Union (CUPE) Negotiations

Acknowledgements

Note:

Excerpts taken from:

Critical Concepts of Canadian Business Law
Addison-Wesley Publishers

Jan D Weir, BA LLB Barrister and Solicitor

Shane A. Ellis, BA LLM, Faculty of Business, Ryerson Polytechnic University

Duties and responsibilities of Directors of Non-Profit Corporations
Canadian Society of Association Executives.

Other Contributors:

Carol Bieser, General Manager, Seneca Student Federation, (Newnham
Campus) Incorporated.

BUSU Lawyers, Lancaster Mix & Welch (Mr. Robert Welch)

BUSU Insurance Agents, Rose Horne & Stevenson (Mr. James Henry)

Development Team:

BUSU Executive 2000/2001
(Robert Gilmour, Darren Fox, Duncan Small, Chris Brewer)

BUSU Board of Directors 2000/2001
(Matt Hinton, Jeff Hinchcliffe, Mark Baseggio, Marion Zlomslic, Kabir
Abdurrahman, Robert Gilmour, Darren Fox)

BUSU Business Manager 2000/2001
(Ron Gourlay)

Ratified by BUSAC 2000/2001 January, 2001

BUSU Board of Directors Hand Book - Ratified by BUSAC on January 12,
2001