

## **Equity Statement**

The NWT Judo Association commits to fostering an inclusive environment by ensuring that the Director's Guide and processes reflect a diverse range of perspectives, including considerations of gender, intersectionality, and indigenous viewpoints. This inclusivity aims to promote equity, respect, and a sense of belonging among all stakeholders, thereby contributing to the broader social responsibility goals of the NWT Judo Association.

## **Purpose**

This guide informs Directors of the NWT Judo Association about their legal responsibilities and provides practical suggestions for managing risk and minimizing personal liability. Directors need to understand these risks so that they can act reasonably and appropriately. The purpose of this Guide is to raise awareness of the legal risks facing Directors and offer Directors some practical suggestions for minimizing these risks.

## **Scope**

The scope of the Director's Guide is:

- **Board of Directors:**
  - All members of the Board of Directors
  - Officers (e.g., President, Director – Administration, Director – Marketing and Communication)
  - Elected or appointed directors
- **Staff:**
  - Senior staff persons who may also be officers
  - Employees involved in managing the association's affairs
  - Staff responsible for implementing and adhering to policies and procedures
- **Volunteers:**
  - Volunteers who interact with youth or other vulnerable persons
  - Volunteers involved in activities governed by the association

## **Roles and Responsibilities**

- **Board of Directors:**
  - The Board of Directors is responsible for the overall governance and strategic direction of the NWT Judo Association. Directors are expected to act in the best interests of the association, adhering to the principles of diligence, loyalty, and obedience. They must comply with the association's governing documents and relevant laws, manage risks, oversee financial matters, participate in meetings, and ensure transparency and accountability in decision-making. Directors must also manage conflicts of interest, maintain confidentiality, and engage in continuous learning and development to enhance their governance capabilities.
- **Officers:**
  - Officers, such as the President, Director – Administration, and Director – Marketing and Communication, have specific corporate roles and functions. They must fulfill their duties with a high standard of care, especially if they possess special skills or expertise. Officers are responsible for executing the Board's decisions, managing daily operations, and ensuring the implementation of policies and procedures. They also play a critical role in risk management and compliance with statutory obligations.
- **Senior Staff:**
  - Senior staff members, who may also be officers, are responsible for the operational management of the association. They must ensure adherence to the association's policies, manage contracts, oversee financial reporting, and support the Board in strategic planning and risk management. Senior staff must also facilitate staff evaluations, maintain up-to-date job descriptions, and ensure proper screening for roles involving vulnerable persons.

- **Volunteers:**
  - Volunteers, especially those interacting with youth or other vulnerable persons, must adhere to the association's policies and procedures. They are expected to act in a manner that promotes safety, compliance, and the best interests of the association. Volunteers should be aware of their responsibilities regarding confidentiality and conflict of interest, and participate in any necessary training and development activities.
  
- **General Staff**
  - All staff members are expected to comply with the association's policies and procedures, participate in regular evaluations, and contribute to a safe and efficient working environment. They must support the association's strategic goals, maintain confidentiality, manage risks, and ensure proper documentation and reporting.

## **Policy**

### **Who is a Director?**

A Director is an individual who is a member of the NWT Judo Association's Board. The responsibility of the Board is to provide leadership and direction to the NWT Judo Association and to govern its affairs on behalf of its Members, registrants and stakeholders.

Directors are elected or appointed to their positions on the Board in accordance with the NWT Judo Association's By-laws. Directors may also be Officers, and an Officer fulfills certain corporate roles and functions such as the duties of a 'President', 'Director – Administration' or 'Director – Marketing and Communication'. Officers can also be senior staff persons. Directors and Officers have a relationship of "trust" with the Members and stakeholders, and it is from this trust relationship that certain important legal duties arise.

### Legal duties of Directors

The basic responsibility of Directors is to represent the interest of the Members in directing the affairs of the NWT Judo Association, and to do so within the law. This legal duty is described in statutes (such as the *Societies Act*) and has been expanded and interpreted in the common law.

In representing the Members of the organization and acting as their “trustee”, Directors have three basic duties:

- a) **The duty of diligence:** this is the duty to act reasonably, prudently, in good faith and with a view to the best interests of the NWT Judo Association and its Members and stakeholders.
- b) **The duty of loyalty:** this is the duty to place the interests of the NWT Judo Association first, and to not use one’s position as a Director to further private interests.
- c) **The duty of obedience:** this is the duty to act within the scope of the governing policies of the NWT Judo Association and within the scope of other laws, rules, and regulations that apply to the NWT Judo Association.

### Duty of diligence:

Diligent Directors always act prudently and in the best interests of the NWT Judo Association. When exercising their duties as Directors, they are expected to exercise the same level of care that a reasonable person with similar abilities, skills and experience would exercise in similar circumstances. And, if a Director has a special skill or area of expertise, such as an accountant or lawyer would have, they have a duty to achieve a higher standard of care that corresponds to their professional abilities.

Directors have a responsibility to act cautiously and to try to anticipate the consequences of their decisions and actions before they undertake them. They are honest and forthright in their dealings with each other, with Members and with the public. They are well-informed about the activities and finances of the NWT Judo Association. They have an obligation to foresee potential risks inherent in a situation, and to take reasonable steps to manage those risks.

### **Duty of loyalty**

Directors are required to put the interests of the NWT Judo Association first. These interests will always take precedence over any other interest, including a Director's personal interests. As well, Directors who are involved in more than one organization may find that they cannot be loyal to both.

Loyal Directors will avoid putting themselves in a situation of a conflict of interest, and when this is unavoidable, they will act properly in disclosing the conflict and ensuring that they play no part in discussing, influencing or making decisions relating to that conflict.

Confidentiality is also an important aspect of the duty of loyalty. Directors have an obligation to keep the NWT Judo Association business private, and to not discuss certain matters with people outside the Board. Confidential matters may include information about personnel, clients served by the NWT Judo Association, the NWT Judo Association's finances, or legal matters.

A Board acts as one entity. Loyal Directors support the decisions of the Board, even if they might not personally agree with the decision and might not have voted to support the decision in the board meeting.

### **Duty of obedience**

The NWT Judo Association is a "private tribunal" – an autonomous organization that has the power to write rules, make decisions and take actions that affect their Members and registrants. Legally, private tribunals are recognized as having a contractual relationship with their Members. This relationship is defined in the NWT Judo Association's governing documents, which include its By-laws, policies, rules and regulations.

Directors have a duty to comply with the NWT Judo Association's governing documents, and to ensure that staff and committees of the NWT Judo Association do as well. Over time, the NWT Judo Association may move away from its legal purpose and policies may become out of date and no longer reflect the practices of the NWT Judo Association. The duty of obedience extends to ensuring that governing documents remain current and accurate, and overseeing the process that is used to amend and update governing documents.

Directors also have a duty to obey external laws and rules that are imposed upon the NWT Judo Association. A wide range of laws and statutes apply to the NWT Judo Association and the obedient Director ensures that the NWT Judo Association complies with all of these.

### **Liability of Directors**

A Director who fails to fulfill his or her duties as outlined above may be liable. The term "liability" refers to the responsibility for the consequences of conduct that fails to meet a predetermined legal standard. Usually, the term "consequences" refers to damage or loss experienced by someone, and being responsible for such consequences means having to pay financial compensation.

Liability arises in the following three situations:

1. **Statute** - a law is broken. The consequences are payment of a fine, having restrictions placed on one's rights or privileges, or imprisonment.
2. **Contract** - A contract is breached or violated, where a contract is a legally enforceable promise between two or more parties. The consequences are correcting the breach through some form of performance or service, or financial compensation
3. **Tort** - an act, or a failure to act, whether intentionally or unintentionally, causes injury or damage to another person. The consequences are payment of a remedy in the form of financial compensation.

Regarding statutes, there are a variety of statutes that impose liability on Directors in specific circumstances relating to managing the affairs of the NWT Judo Association. Thus, Directors have specific statutory obligations relating to:

1. The election and appointment of Directors and Officers
2. Calling meetings of Members
3. Paying taxes to government and submitting employment-related remittances
4. Keeping minutes of meetings of Directors and Members
5. Reporting and disclosing prescribed information about the NWT Judo Association to authorities and to the government
6. Paying wages and salaries
7. Maintaining a safe workplace
8. Activities of the NWT Judo Association that cause pollution or other environmental damage

Regarding contracts, Directors are responsible for ensuring that the NWT Judo Association's contractual obligations are fulfilled. This includes contracts with employees and independent contractors.

Regarding *torts*, Directors are responsible for ensuring that they, as well as the NWT Judo Association's volunteers and staff, do not behave negligently. Negligence refers to the duty that we all have to ensure the safety of those persons affected by our actions. Directors, volunteers and staff are at all times expected to act in a reasonably diligent and safety-conscious manner so that others affected by their actions (fellow employees, volunteers, participants, clients, and the public) will not face an unreasonable risk of harm.

The concept of negligence also applies to "wrongful acts" – these are errors, omissions, actions or decisions that harm others, not through damaging their property or their physical person, but through interfering with their rights, opportunities or privileges. Wrongful acts relate primarily to how Directors govern the NWT Judo Association, manage its funds, supervise its staff, and make decisions that affect members, clients and the public.

### **Avoiding liability through risk management**

There is risk inherent in everything we do. Volunteers, employees and Directors of the NWT Judo Association must always be mindful of risks – this means examining situations cautiously and thinking ahead about the potential consequences of decisions and actions. Most people manage risks most of the time, and they do so instinctively. However, it is always a good idea to think about risks and risk management more systematically.

The process of risk management is a simple three-part activity. It involves:

1. First, looking at a situation and asking what can go wrong and what harm could result?
2. Second, identifying practical measures we can take to keep such harm from occurring.
3. Third, if harm does occur, identify practical measures we can take to mitigate its impacts and pay for any resulting damage or losses.

The practical measures that can be used to manage risks fall into four categories:

1. Assume the risk – decide that the risk is minor and do nothing
2. Reduce the risk – find ways to change people's behavior or the environment in which people work so that the degree of risk is reduced
3. Avoid the risk – choose *not* to do something

4. Transfer the risk – accept the risk but transfer the liability associated with it to someone else through a written contract

The NWT Judo Association will face different risks and will plan and implement different measures to deal with these risks. The practice of risk management is based in large part on common sense and is linked to the concept of “standard of care” because the measures that are taken to manage risks are usually those that would be taken by any other prudent and reasonable person having the same skills, knowledge, and experience. These measures will tend to revolve around training and educating staff and volunteers; enforcing reasonable rules; inspecting and maintaining facilities and equipment; screening and supervising staff; properly documenting meetings and decisions; and meeting all statutory reporting requirements.

The final section of this guide provides some practical measures that the NWT Judo Association, and individual Directors themselves, can take to manage the risks and liabilities faced by a Director. The next section deals with insurance – a common risk management measure and one that is particularly important in minimizing with Director's liability.

#### **Directors and Officers liability insurance**

Insurance is one of many techniques used to manage risks – it involves transferring the liability associated with a risk to another party by means of a written contract. In the case of insurance, the party that the risk is transferred to is the insurance company, and the written contract is the insurance policy. Transferring risks through written contracts is a very common business practice.

Directors and Officers insurance is like general liability insurance, and covers costs that the Directors and Officers of an organization might become legally obligated to pay as a result of damages to another party. However, unlike a general liability insurance policy that covers losses arising from physical injury or property damage, Directors and Officers liability insurance covers only those losses arising from the Director's own “wrongful acts”.

In such an insurance policy, a wrongful act is defined as an error, misstatement, misleading statement, act, omission or other breach of duty by an insured person in his or her insured capacity. The purpose of this insurance is to provide the financial backing for the indemnity that the organization provides to its Directors.

Directors and Officers insurance policies vary, and there is no standard level of coverage. Importantly, many of these policies exclude coverage for:

1. Directors acting outside the scope of their duties as they are described in this guide, including any actions that are dishonest, fraudulent or criminal
2. Breach of contract, including wrongful dismissal of employees
3. Fines and penalties under a statute or regulation
4. Complaints under a human rights code, including a complaint of discrimination, harassment or sexual harassment

### **Protecting yourself as a Director**

There is no substitute for knowledgeable governance and thoughtful risk management, and the NWT Judo Association managing its affairs in a conscientious and responsible manner will reduce its Directors' liability risks considerably. Nonetheless, the following practical tips will be helpful to all Directors.

Before accepting a nomination to be a Director with the NWT Judo Association, you should:

1. Think about your reasons for becoming a Director. Be sure you have the time, interest and commitment to do the job well
2. Learn as much as you can about the NWT Judo Association. What is its mission? What activities does it undertake? How is it perceived in the community?
3. Read the written job description for the position of Director
4. Educate yourself about your legal duties as a Director
5. Look at the composition of the entire Board, and satisfy yourself that it can govern effectively and provide competent direction to committees, staff and volunteers within the NWT Judo Association
6. Confirm that the organization indemnifies its Directors (either through its By-laws, through policy, or by means of a written contract) and that it carries Directors and Officers liability insurance. Ask about the scope of coverage and any exclusion(s) to this insurance.

Once you have been elected or appointed as a Director, managing your personal liability risks is an ongoing process. The following guidelines will help you to take steps to manage these risks as they relate to issues such as policy, finances, meetings, personnel, and training.

***Meetings***

1. Attend meetings, be prepared to discuss the items on the agenda and participate fully in decision-making
2. Provide your reports to the Board in written form
3. Ensure that minutes reflect abstentions from votes, votes for and votes against motions.
4. If you have any real or perceived conflict of interest, declare it when the issue first arises and do not vote, participate in or influence the decision-making process. Have your disclosure recorded in the meeting minutes.
5. Do not rush important decisions. Ensure that Directors receive meeting materials in ample time to digest them. If important information is lacking, postpone the decision until this information can be obtained.
6. Keep your own personal copies of key documentation and minutes of controversial meetings.

***Finances***

1. Take an interest in finances by reviewing regular financial reports, and approving and monitoring the NWT Judo Association's annual budget
2. Use a professional, independent accountant to perform an annual audit of the NWT Judo Association's finances
3. Know who is authorized to sign cheques and for what amount
4. Don't be shy about asking questions and seeking clarification on financial matters from staff
5. With the assistance of your auditor, develop a list of statutory reporting requirements and assign a staff person or Director to monitor that these requirements are being fulfilled

***Contracts***

1. Ensure that all contracts the NWT Judo Association enters into are carefully reviewed by staff or by counsel
2. When the NWT Judo Association partners with other entities on joint projects, or enters into agreements, be sure that all terms and conditions are clearly expressed in a written contract and that risks and liabilities are appropriately shared

***Policy***

1. Ask for a copy of the NWT Judo Association's policies. If the NWT Judo Association does not have policies develop a work plan for staff (or others, as appropriate) to prepare them
2. Be familiar with the content of the NWT Judo Association's By-laws. If they are out of date, or no longer adequately reflect the mandate and activities of the NWT Judo Association, then undertake to update them.
3. On important matters and for decisions that have the potential to adversely affect someone, ensure that the NWT Judo Association's policies are adhered to as written. If the policy is unsuitable for dealing with the particular circumstance, then take steps to change the policy for the future.
4. Commit staff and volunteer time and financial resources to developing risk management policies.

***Personnel***

1. Ensure that all staff and volunteer positions have written job descriptions.
2. Insist that the organization develops a clear personnel policy and ensure that staff evaluations are performed at least annually or as required by the policy.
3. Be sure that suitable screening measures are in place for those staff and volunteer positions that involve interaction with youth or other vulnerable persons in unsupervised settings.

***Insurance***

1. Ask for copies of the NWT Judo Association's insurance policies and become familiar with their scope of coverage.
2. Consider asking the insurance broker to meet with the Board and make a brief presentation on these policies.

***Training***

1. Support professional development for staff and training for volunteers.
2. Encourage the board to also engage in training. Bring in a Board development instructor or a facilitator to help the board improve its effectiveness
3. Offer Directors training opportunities in association with Board meetings or meetings of the Members
4. Commit resources to the development and updating of Board and staff orientation materials
5. Leave aside a short portion of every Board meeting to allow the Board to evaluate its effectiveness in conducting the meeting and making governance decisions.

***General***

1. If you suspect that something is not right, go with your intuition and check it out! Be curious. Remember, as a Director you will be held responsible for circumstances and situations you ought to have known about, whether or not you actually did know about them.
2. Do not speak negatively about the NWT Judo Association to the public. Publicly support the Board's decisions, even if you might have voted against the majority of Directors.
3. If the NWT Judo Association needs to deal with a complex matter in which staff or Directors lack expertise, consider the services of an outside professional (for example, lawyer, financial advisor, human resources consultant, risk management specialist, engineer)

**Summary**

The purpose of this guide is to inform Directors of the legal dimensions of their voluntary contribution. It is the NWT Judo Association's view that an informed Director is a more confident and competent Director.

The most widely available, most effective, and least expensive risk management technique is common sense. The NWT Judo Association can capitalize on this common sense by recruiting capable board members and well-qualified staff, providing an orientation program for all new people, writing clear job descriptions and sound policies, supporting professional development at all levels of the NWT Judo Association, and creating an organizational culture that emphasizes and rewards risk management thinking and behaviour.

**Review**

The Director's Guide shall be reviewed biennial (2Y) by the applicable document owner as assigned on the Document Control Board and when changes are made to applicable operational process, standards and regulations.

**Record of Revision**

Revision Number	Revised by: Revisor Title	Revision Date (DD- <i>MMM</i> -YYYY)	Approved by: Title(s)	Approval Date (DD- <i>MMM</i> -YYYY)
0				