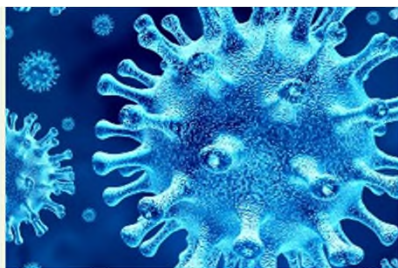


COVID-19: Philanthropy Emergency Response Reference Guide

Timely and relevant information on mitigating the impact of COVID-19 through philanthropy and how to best support clients through the process.



Introduction: Empowering Your Clients Through a Time of Crisis

As we all adapt to this unprecedented climate and consider how to best support our clients through the process, the [STEP Philanthropy Advisors Special Interest Group \(SIG\)](#) has developed this reference guide for STEP members containing timely and relevant information on mitigating the impact of COVID-19 through philanthropy. Global society is in a great time of need, and the opportunity to engage with clients on how they can support the response effort is critical. In times of considerable uncertainty, people often find solace in their ability to contribute meaningfully. For STEP members looking to engage with clients on the subject of philanthropy, the reference guide includes information on:

Please note that the purpose of this reference guide is for guidance only; please do not base any legal reliance thereon.

☐ Why Is It Important To Give Now And In The Longer Term?

☐ Identifying Current Needs – Vulnerable Populations

☐ How To Support Clients Who Want To Help

☐ Critical Principles For Emergency Response

☐ How To Support Fiduciaries Of Charities

Many of our clients act as board directors or trustees of operating and grantmaking charities. They should seek independent legal advice on their fiduciary responsibilities during a time of crisis. Some issues facing board members of charities this time include ensuring:

1. That the objects or purpose of the charity are properly carried out;
2. The financial stability of the charity;
3. The operational performance of the charity; and
4. Proper management and protection of staff and volunteers.

In light of physical distancing, practical matters such as whether a board may hold meetings via telephone or other electronic means need consideration. For a look at this issue from the Canadian perspective, [click here](#) for Holding Directors' and Members' Meetings Virtually to Discharge Fiduciary Duties During the COVID-19 Crisis.

Click here

☐ Giving Through Wills

☐ Legal Developments Impacting Charities

Holding Directors' and Members' Meetings Virtually to Discharge Fiduciary Duties During the COVID-19 Crisis

by Daniel Frajman, TEP

In light of the COVID-19 crisis, the federal government in Canada issued a timely reminder on March 26, 2020 (see the government's reminder notice, titled, "Annual meetings of federal corporations during the COVID-19 outbreak", (at <https://corporationscanada.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs08611.html>) that in effect highlights to all non-profit corporations and charities the following: as board members work on an ongoing basis to discharge their fiduciary duty with regard to the organization, and as annual and extraordinary members' meetings are contemplated, meetings of directors and members must continue by way of a virtual method if necessary, given that physical meetings would usually no longer be possible because of the social distancing brought about by the coronavirus outbreak.

In light of the government's reminder, it strikes me that all non-profits and charities should be checking the corporate statute that governs them, and also very importantly, the by-laws of the organization which often would contain rules as to how meetings are held. In many jurisdictions, including at the federal level in Canada, rules set out in the by-laws as to how meetings are held will often be able to override default rules contained in the governing corporate statute.

In essence, the general feeling in Canada is that it is prudent for an organization's by-laws to allow for virtual participation in directors' or members' meetings so long as participants are able to speak or communicate with each other during the meeting by way of a virtual channel. (Note that in the context of the meetings being discussed in this article, a virtual meeting includes one held by conference telephone call.) Use of the by-laws in this way usually brings clarity, as it is a reflex to check the by-laws on this point given that an important default rule on this issue at the federal level in Canada states that virtual participation at a meeting is possible so long as the by-laws do not state otherwise (see sections 136(7) and 159(4) of the *Canada Not-for-profit Corporations Act*). Some feel that the federal Canadian corporate statute additionally requires that all of the directors of the organization must for each particular board meeting consent to digital participation.

For non-profits and charities incorporated under the law of the Canadian province of Ontario, Ontario has dealt with virtual directors' and members' meetings in a prudent way, through a March 31, 2020 emergency order that allows for virtual directors' and members' meetings during the current crisis period even if the organization's governing documents say otherwise. (See the Ontario government order at <https://www.ontario.ca/laws/regulation/200107>).

As indicated in the abovementioned notice issued on March 26, 2020 by the Canadian federal government, it would also be proper practice (and respectful of federal regulations on virtual voting) for the organization to assure that it gathers votes from the meeting in a way that allows them to be verified, tallied and presented while maintaining the anonymity of the votes. I would think that at a minimum, voting could possibly be kept anonymous by way of votes by secure email directly to a person such as the corporate secretary, who will act with proper discretion and properly delete the votes afterwards. (Certainly one could not expect the average non-profit or charity to process votes through the kind of virtual platform sometimes put into place at the annual meeting of a publicly traded corporation.)

Again, the watchword is to check for local corporate statutory rules, and to check the organization's by-laws (and to amend the by-laws if necessary). Generally, a word to the wise is, in cases of doubt, to have all participants regarding the meeting confirm (at least by email) that they consent to the holding of the meeting virtually, and that will hopefully be of assistance later should the holding of a meeting held virtually be challenged. Relevant notice requirements for meetings should also be respected.

As non-profit organizations and charities around the world seek during the COVID-19 crisis period to continue their important work for the benefit of our communities, the abovementioned general review of some of the corporate niceties that apply for meetings should not be forgotten.

Daniel Frajman, TEP is a partner with Spiegel Sohmer Attorneys of Montreal, Canada. His practice focusses on non-profit, charity, philanthropy, trust, corporate and business law. Daniel is a member of the STEP Philanthropy Advisors Global SIG Steering Committee. He also sits as a volunteer director on charity boards.