

Board Responsibilities & Director Duties in a Changing World

Directors' Forum "*Excellence in Governance: The Next 40 Years*" Conference
October 27, 2024 8:45 - 10:00am EST

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WHAT WE WILL COVER

Board responsibilities in a changing world

Role of the board vs Role of management

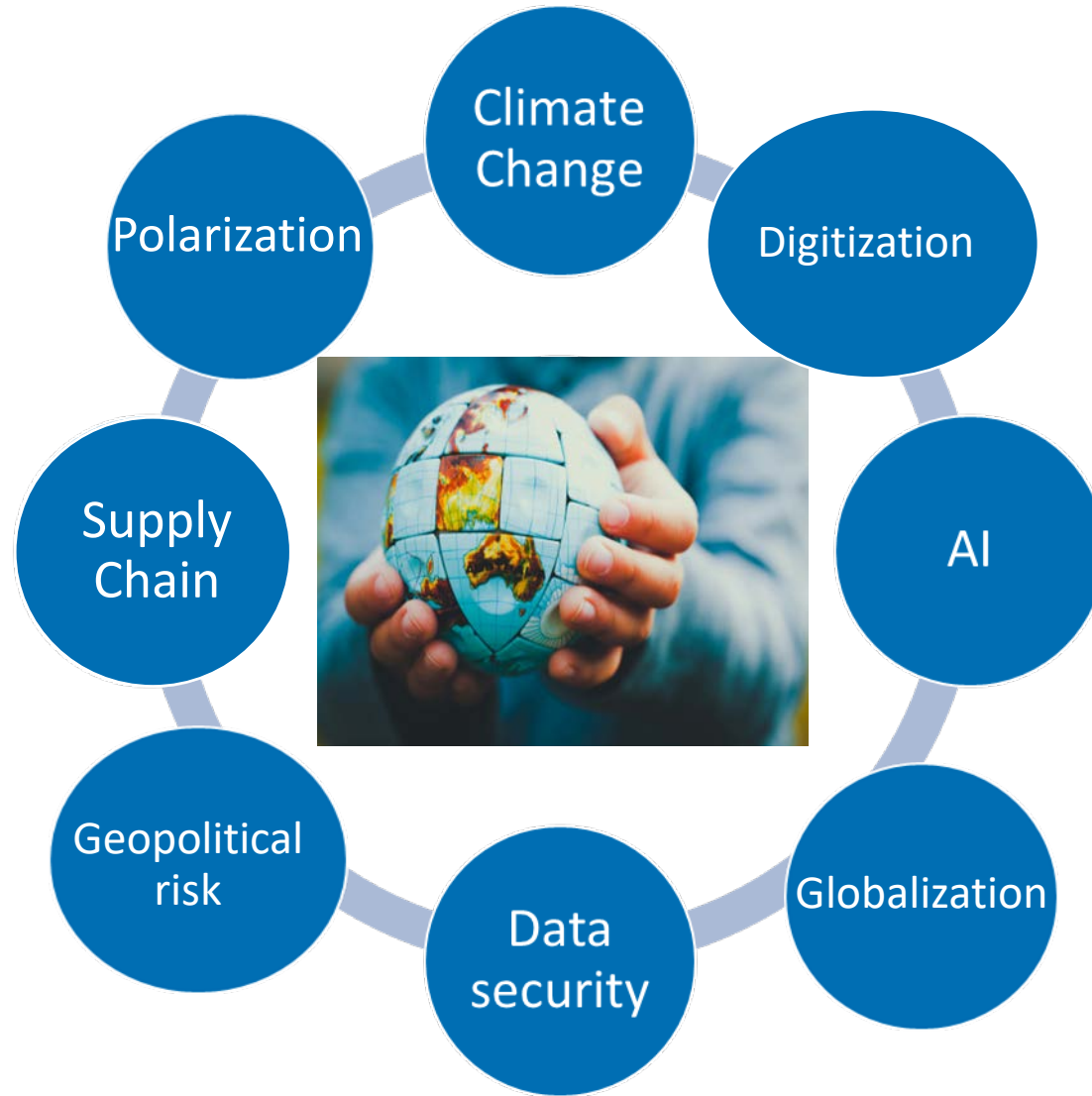
Director duties

1. BOARD RESPONSIBILITIES IN A CHANGING WORLD

BOARD RESPONSIBILITIES...



... IN A CHANGING WORLD



BOARD RESPONSIBILITIES IN A CHANGING WORLD

"we live in tumultuous and demanding times, and our governance practices must continually adapt to the vast and often furious changes taking place around us."

–Charting the Future of Canadian Governance:
A Principled Approach to Navigating Rising Expectations
for Boards of Directors

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Menti Poll #1

Are there sufficient skills and experience on your board to oversee the risks and opportunities of our changing world?

A. Yes

B. No

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Menti Poll #2

Does your board education program cover the risks and opportunities of our changing world?

A. Yes

B. No

2. ROLE OF THE BOARD VS ROLE OF MANAGEMENT

ROLE OF THE BOARD VS ROLE OF MANAGEMENT

**Oversight vs
operational control**

'Noses in Fingers out'

**Regulator
expectations**

*Provide objective
oversight of,
thoughtful guidance,
advice & constructive
challenge to,
Management*

ROLE OF THE BOARD VS ROLE OF MANAGEMENT

*“97(2) The board, a committee of the board or a director shall **not directly manage, or be involved in, the day-to-day activities** of the credit union.”*

[Credit Unions and Caisses Populaires Act, 2020]

ROLE OF THE BOARD VS ROLE OF MANAGEMENT

“1(1) In this Rule,

*(i) “**management**” means individuals who are responsible for **planning, directing, controlling, overseeing and executing the day-to-day operations** of a credit union.”*

[Rule 2021- 001 Sound Business and Financial Practices]

ROLE OF THE BOARD VS ROLE OF MANAGEMENT

"5. Responsibilities of the Board of the Credit Union

5(1) The board of the credit union shall discharge its responsibilities in a manner which,

*(i) results in **independent oversight** of the credit union's management, and*

*(ii) permits and encourages directors to provide effective oversight of the decisions, plans, processes and policies proposed by the credit union's senior management and **implemented by its management.***

*5(2) The board of the credit union shall establish and maintain a **clear division between the roles and responsibilities** of the board and those of senior management, to ensure the board complies with the Act's prohibition on the board directly managing, or being involved in, the day-to-day activities of the credit union."*

[Rule 2021- 001 Sound Business and Financial Practices]

ROLE OF THE BOARD VS ROLE OF MANAGEMENT

*"As the ultimate decision maker of the company, is there clarity about the decision rights of the board and its delegations to management?
Is there trust and openness between the board and management?."*

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Menti Poll #3

As a director, which of the following questions could you ask Management to respect your oversight role:

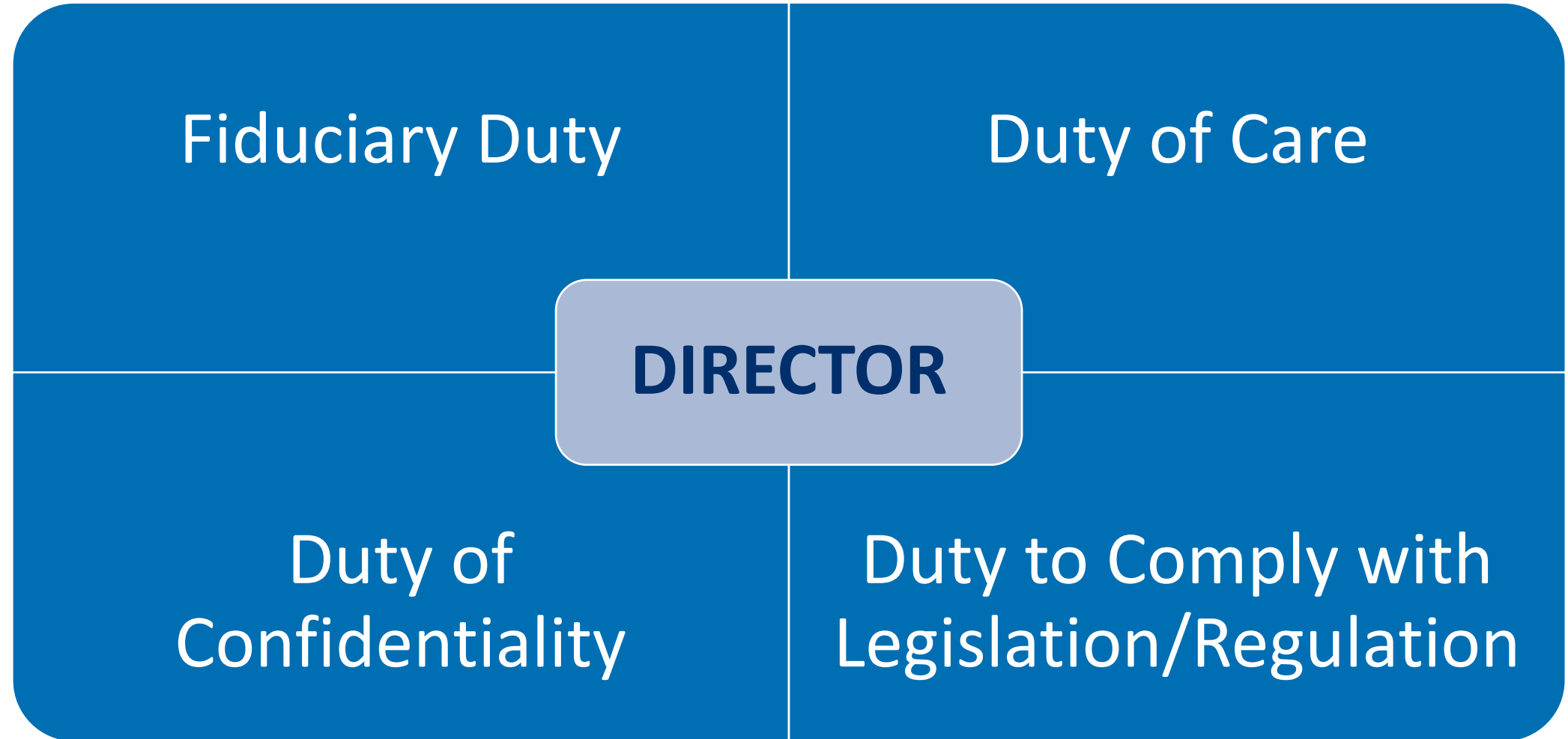
- A. What is your process to recruit data scientists?*
- B. What are the key risks and how are you mitigating them?*
- C. Why are you promoting our brand on TikTok?*

3. DIRECTOR DUTIES

Director Duties



Director Duties



Fiduciary Duty

“109 (1) Every director, officer and member of a committee shall exercise their powers and discharge their duties honestly, in good faith and in the best interests of the credit union.”

- The duty is owed to corporation and not to the members or any member.
- Stakeholder lens – which stakeholder depends on particular circumstances and exercise of business judgment
- Directors have to set aside their personal interests
- Directors have to communicate a unified leadership position with stakeholders (“the board is a unit”)

Business Judgment Rule

- Directors are in a better position than the courts to make decisions to effectively deal with the interests of the corporation
- Courts will generally not second guess a board decision if directors can demonstrate that they acted in good faith and on an informed basis
- Directors are not required to make perfect decisions, only reasonable decisions based on the circumstances at the time

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Menti Poll #4

Your duty as a director of a credit union is to act in the best interests of:

A. all members of the credit union

B. the credit union

Duty of Care

The duty of care requires that directors' decisions be made on an informed and reasoned basis.

- exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances
- make sufficient inquiries
- consider all material information available

Duty of Confidentiality



shall keep confidential all information received by the credit union or by a subsidiary or other affiliate of the credit union that the director knows or should know is confidential to the credit union or subsidiary or other affiliate.



shall not make use of information in any transaction in order to obtain, directly or indirectly, a benefit or advantage for any person other than the credit union or a subsidiary or other affiliate of the credit union.



shall keep confidential all information respecting members of the credit union



Exceptions

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Menti Poll #5

As a director, you take notes during a board meeting. You must:

- A. destroy your notes when the meeting minutes are approved by the board
- B. destroy your notes when you resign or retire from the board
- C. not destroy your notes

BOARD RESPONSIBILITIES IN A CHANGING WORLD

"Even in a changing world, or for an organization facing its own changes, the role of directors is, of course, always to guard and promote the company's best interests while hearing, weighing and balancing stakeholder voices. Strong governance practices and a strong governance culture are essential for business success and for the positive economic and social contributions businesses make."

–Torys, Directors' duties in today's world: what really matters

QUESTIONS ?

