THE DUTIES AND OBLIGATIONS OF STATE DIRECTORS

PREPARED FOR THE CORPORATE GOVERNANCE SEMINAR ENTITLED *CORPORATE GOVERNANCE – PROMOTING EFFECTIVE STATE ENTERPRISE MANAGEMENT* TO BE HELD ON 14TH APRIL 2014 AT 8:00 A.M. AT THE HYATT REGENCY HOTEL, PORT OF SPAIN

RONNIE BISSESSAR
ATTORNEY AT LAW
ROOM NO. 1, 11A GORDON STREET
SAN FERNANDO
TEL: 652-9370
FAX: 657-5285
E-mail:ronniebissessar@thelawchamberstt.com

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Overview

1. I propose to deal specifically with the following issues:-

    (A) the legal responsibilities and fiduciary obligations of State directors; and

    (B) the principles and conventions associated with directorships and board *etiquette*.

(A) THE LEGAL RESPONSIBILITIES AND FIDUCIARY OBLIGATIONS OF STATE DIRECTORS

What are you bound by?

2.0 As a State director you are bound by:-

    (i) your company's by law;

    (ii) the Integrity in Public Life Act Chapter 22:01 and Part IV being the Code of Conduct;

    (iii) the Companies Act Chapter 81:01; and

    (iv) any dedicated Act of Parliament in relation to the enterprise you serve.

(i) By law

2.1 As a limited liability company or state agency, by section 66 of the Companies Act Chapter 81:01, by laws may be enacted for the regulation of the business or affairs of the company. You should think of the by law as the company's constitution which deals with, *inter alia*, the appointment, tenure and duties of directors, the powers of shareholders, shareholder meetings and the process for the transfer and valuation of the shares of the company.

2.2 Your company may have a dedicated by law but where there is none, it is not that you are not bound; rather, you are bound by the model or *generic* by law at Schedule 2 of the Regulations to the Companies Act Chapter 81:01.

(ii) **The Integrity in Public Life Act Chapter 22:01**

2.3 Sections 25 to 29 deal with *inter alia*, insider information, influence, peddling, accepting gifts, maintaining confidentiality and situations where conflict of interest arises; sections 23 and 24 establishes a code of conduct for persons in *public life*. As a board member of a statutory body or state enterprise you are a person in *public life*.

(iii) **The Companies Act Chapter 81:01**

2.4 The principal instrument that tells a director what he can or cannot do is the Companies Act Chapter 81:01; it was reformulated and enacted in 1997 and is based on the Canadian model; prior to its introduction, companies in Trinidad and Tobago were governed by the Companies Ordinance Chapter 29 No. 1 which was based on the Companies Act 1929 in the UK

2.5 The new companies' legislation simplified the entire process of incorporating a limited liability company by removing the requirement for the *objects* of the company to be expressly stated in the incorporation documents. More significantly, the Companies Act Chapter 81:01 consolidated and codified the statutory duties of directors using language which was simple and unambiguous; moreover, in codifying the legal principles, it drew on the fiduciary and common law duties of directors and presented them in a comprehensive package that is easy to review.

(iv) **The dedicated Act of Incorporation**

2.6 In some cases your company or state agency is incorporated by an Act of Parliament. For instance the Water and Sewerage Act Chapter 54:40 which, by section 3(1), establishes WASA as a body corporate and by section 2 provides that WASA is governed by a board of commissioners.

2.7 Similarly, section 3(1) of the Standards Act Chapter 82:03 establishes the Trinidad and Tobago Bureau of Standards. Other examples of state agencies which are established by a dedicated Act of Parliament are National Petroleum Marketing Company Limited (NP), the Chaguaramas Development Authority (CDA), First Citizens Bank Limited (FCB), NAMDEVCO and the Regional Health Authorities.

Conflict between the Incorporating Act/Companies Act/By law

3.0 There should not be any conflict or inconsistencies between the incorporating Act, the by law, the Integrity in Public Life Act Chapter 22:01 and the Companies Act Chapter 81:01 as it relates to a State director's duties and obligations but if there are, my view is that the incorporating Act which is specific and dedicated should take precedence over the others. Similarly, if there is conflict between the by law and the Companies Act Chapter 81:01 the latter takes precedence.

Responsibilities of Board of Directors

4.0 Directors sitting as a board of directors are responsible for, *inter alia*:-

(1) the formulation of policy and the strategic direction of the company

(2) the implementation of government policy

(3) the financial performance of the company

(4) accounting to Corporation Sole

(5) the appointment and supervision of the CEO; and

(6) the monitoring of the performance of senior executive management

What are the director's legal duties?

4.1 There are three (3) principal legal duties:-

(1) to direct the management of the business and affairs of the company [section 60 (b) of the Companies Act Chapter 81:01];

(2) to act honestly and in good faith with a view to the best interests of the company [section 99(1)(a) of the Companies Act Chapter 81:01] ; and

(3) to exercise the care, diligence and skill of a reasonably prudent person [section 99 (1)(b) of the Companies Act Chapter 81:01].

4.2 These three (3) legal duties are often referred to, interchangeably, as fiduciary obligations. The reason is that as a director you operate as a trustee to the company's shareholders who are the beneficiaries.

4.3 Your legal duties and fiduciary obligations are very strictly defined and interpreted because of a growing public disquiet over corporate excesses. In the UK, as a result of this disquiet, various reports were presented, namely, the Cadbury Report (1992), the Greenbury Report (1995) and the Hempel Report (1998) which all underscored the need for maintaining shareholder vigilance. Here in Trinidad and Tobago, public confidence has been shaken by the Clico *buy out*, the Hindu Credit Union debacle and, more recently, the imbroglio in respect of the sale of its shares to employees of First Citizens Bank Limited

4.4 In the United States, following the *WorldCom, Enron* and *Martha Stewart Living and Omnimedia* incidents, directors' duties are much more onerous and demanding as a result of legislation intended to curb corporate excesses. In 2002 the <u>Sarbanes-Oxley Act</u> widened the definition of *insider* as it relates to insider trading to include anyone who makes use of specific confidential information for his own benefit. Moreover, the Act underscored the need for transparency and accountability by requiring CEO's and CFO's to certify that financial statements are accurate. It also entrenched *whistle blowing* as a result of which corporate governance in the United States has shifted significantly from being *market driven* to being *rule driven*.

4.5 In Trinidad and Tobago we have started this process of rule driven corporate governance so that by <u>section 25 of our Integrity in Public Life Act Chapter 22:01</u> you cannot benefit from *insider information* which is information gained from the execution of your office for your private gain.

<u>What then is the effect of the legal duties and fiduciary obligations of a director?</u>

4.6 Simply put, a director is required to act honestly and in good faith and as a reasonably prudent man of business with a view to the best interests of the company. This is the

effect of section 99 of the Companies Act Chapter 81:01. The challenge of course is to enforce the law; it is the supreme irony that while it is impossible to legislate *ethical conduct* and good governance, the legislators have, in a plethora of legislation including The Proceeds of Crime Act Chapter 11:27, attempted to do just that.

4.7 As a director you are required not only to manage the company but to formulate *macro* policy or to implement the strategic directives of the shareholder. At state agencies, the shareholder is generally Corporation Sole which is the title given to the Minister of Finance.

4.8 The question then is, as a director, what safeguards must be put in place to ensure that you comply with your legal duties and fiduciary obligations while managing the company; some guidance is given by the Trinidad and Tobago Corporate Governance Code ("*the Code*") which was formally unveiled in November 2013.

4.9 The Code was prepared in partnership among the Caribbean Corporate Governance Institute, the Trinidad and Tobago Chamber of Commerce and the Stock Exchange of Trinidad and Tobago. The Code, while intended for publicly listed companies enhances disclosure requirements and underscore directors' fiduciary obligations to shareholders. While the Code is merely a guideline it does represent *best practice* and it is contemplated that progressive companies will voluntarily accept the guidelines which eventually will form part of the statutory underpinnings of an amended Companies' Act. Moreover, the various guidelines issued by the Ministry of Finance underscoring the fiduciary duties and obligations of State directors ("*the Guidelines*") reinforce the provisions in the Code.

4.10 In assisting you through the maze of legislation and what constitutes *best practice* you should follow the advice of the company secretary; the latter's principal function by section 63 of the Companies Act Chapter 81:01 is to ensure that you as a director and the company comply with your statutory and regulatory requirements.

4.11 As a responsible director, however, you must take responsibility for your actions and for these purposes there are several safeguards which may be adopted to reduce your exposure and that of your company to complaints from shareholders, stakeholders or anyone having an interest in the company's operations. Many of these safeguards are contained in the Code and the Guidelines.

Your safeguards as a State Director

A. Information

5.0 This means that as part of your duties as director that you become informed and exposed to all aspects of the company's operations including (but not limited to) its financial statements, the identity and responsibilities of its key personnel and the strategic direction envisaged for the company.

5.1 It follows therefore that chairpersons at the inaugural meeting of the board of directors (called an *organizational meeting*) should ensure that each director is furnished with a board package comprising (but not limited to):-

(1) a copy of the Act of Incorporation (if relevant)

(2) a copy of the Companies Act and Regulations

(3) copies of financial statements for the past two years

(4) copies of the board minutes for the past year

(5) the by law

(6) the company's organizational structure; and

(7) a contact sheet showing each director's contact information including that of the CEO (who is usually an *ex officio* member of the board) and the corporate secretary.

5.2 The point is that even though there is a steep learning curve, as a director, you must have accurate, reliable and timely information which will allow you to make decisions in relation to the company consistent with your legal duties and statutory obligations.

5.3 This means that as an informed director you are less likely to be misled or fall into error, for instance, as it applies to a decision to appoint the CEO or to approve a tender or to make a large acquisition.

B. Adopt an Enquiring Approach

5.4 This is the second safeguard and reinforces the need for you to receive information that is reliable, accurate and timely because your decisions as a director is only as good as the information it is based on.

5.5 In the traditional organizational structure, the chairperson and the board receive information in the form of board papers or a board note prepared by the CEO; the latter is usually an ex officio member of the board but is generally the *conduit* of information between the company and the board.

5.6 Many of the best CEO's jealously guard the information coming to the board and discourage the receipt of information to chairpersons and directors from senior management which bypasses the usual channels.

5.7 There are two (2) ways of looking at this: firstly, since the CEO's responsibility is to ensure the accuracy and reliability of board information he can only be held responsible if the information came through him. Secondly and conversely, if the board acts on misinformation that was obtained through indirect means the board and *ipso facto* the directors and the company are exposed.

5.8 At the same time a diligent and conscientious chairperson, particularly if he is newly installed, ought not to accept, without more, the accuracy or reliability of information provided by or through the CEO and should adopt an enquiring but not necessarily suspicious approach.

C. Obtain the benefit of an expert report

5.9 This is the third safeguard to ensure that as a director you do not contravene your legal duties and fiduciary obligations to act honestly and in good faith and as a reasonably prudent man of business with a view to the best interest of the company.

5.10 If a board is required to make a major decision, for instance, the execution of a large contract or a major acquisition or to terminate or retrench a large *swathe* of the workforce or to authorize borrowings on the international capital market, the board should act on:-

(1) a note from the CEO to the board advising of management's recommendations as to what should be done;

(2) an opinion from the company's internal legal counsel or accountant or risk manager as to the merits or otherwise of the decision;

(3) an opinion from external legal counsel or from an independent and competent firm of accountants, auditors or engineers as the case may be; and

(4) the approval of the permanent secretary or Corporation Sole.

5.11 The point is, particularly where the decision has considerable financial or strategic implications, that the board should act upon expert information and not necessarily rely on its own views or that of a majority of its members.

5.12 The reason is that, consistent with the duty to act honestly and in good faith and as a reasonably prudent man of business with a view to the best interests of the company, a director must act on information which is accurate, timely and reliable. A director should also be guided by the company's attorneys at law, accountants or other experts and certainly not act in defiance of Corporation Sole, the permanent secretary or the line minister's view. Where, however, there is a conflict between the line minister's direction and expert advice a responsible board should always act in the best interests of the company.

5.13 A State director should ensure that his objections to decisions which are carried by the majority are minuted.

In the best interests of the company

5.14 A director by section 99 of the Companies Act Chapter 81:01 is required to act *in the best interests of the company*; this is not statutorily defined although guidance is given at section 99(2) which provides that in determining what are the best interests of the company a director should have regard to the interest of the company's employees in general as well as to the interest of its shareholders.

5.15 Acting *in the best interests of the company* has judicially been regarded as acting in the best *financial* interest of the company which means that you need to look at the company's profits or bottom line as the principal indicator as to what is the best interests of the company. This view, generally, mirrors the statutory obligation at section 99(1) of the Companies Act Chapter 81:01.

5.16 There has been much public debate in Europe and elsewhere as to what is meant by acting *in the best interests of the company* and out of this debate there are three (3) prevailing views:-

(1) the *shareholder value view* which assumes that a company's purpose is to maximize shareholder value;

(2) the *stakeholder or pluralist view* which argues that companies should be run for the benefit of – and be accountable to – all stakeholders. This means not just shareholders but customers, employees and the general public; and

(3) the *enlightened shareowner view* which underscores the need that it is in the public's interest for companies to be run effectively as a generator of wealth and employment.

5.17 A director's statutory obligation coincides with the shareholder value view but the *dynamic* in corporate governance is moving towards the stakeholder or pluralist view. The enlightened shareholder view may be regarded as a utopia.

Conflict of Interest

5.18 The general principle is that a director or officer of a company who is a party to a material contract has a fiduciary and legal obligation to disclose or divulge this fact and *recuse* himself from the decision making process.

5.19 This is the effect of sections 93-96 of the Companies Act Chapter 81:01 and as a result a director should disclose that he or members of his family are, for instance, shareholders or have an interest in a company which may have tendered for a contract.

5.20 The disclosure principles are strictly construed and operate against the person making the disclosure so that once there is a potential for a benefit, whether financial or otherwise or direct or otherwise, the disclosure should be made immediately and minuted and the director *recuse* himself from the decision making process.

5.21 The corollary, of course, is that a director who participated in and voted for a decision which gave him or his family a material benefit is in breach of his legal and fiduciary obligations to the company and has to account to Corporation Sole for the secret profit thereby obtained. He is also in breach of the provisions of the Integrity in Public Life Act.

5.22 This duty not to make or receive secret profit co-exists with the duty of confidentiality in respect of the business or affairs of the company and this has implications, for instance, in the securities industry where insider trading or misfeasance in public office are criminal offices.

5.23 Moreover, sections 507-524 of the Companies Act Chapter 81:01 identify the penalties and liabilities for breaches ranging from a fine to imprisonment.

Summary of the legal responsibilities and fiduciary obligations of State directors

5.24 I am making several points:-

(1) a State director's duty is to direct the management of the business and affairs of the company; this is the effect of section 60(b) of the Companies Act Chapter 81:01;

(2) a State director's duties are contained in the incorporation Act (if one exists), the company's by law, the Integrity in Public Life Act Chapter 22:01 and, in any event, the Companies Act Chapter 81:01;

(3) a State director's principal legal duty and fiduciary obligation is to act honestly and in good faith and as a reasonably prudent man of business with a view to the best interests of the company. This is the effect of section 99 of the Companies Act Chapter 81:01;

(4) in order to discharge his duties and obligations a State director should ensure the following safeguards are effected:-

  (A) to be informed

  (B) to ask questions and request information; and

  (C) to rely on information which is accurate, reliable and timely and be guided by the experts' view and those of the permanent secretary and line minister; and

(5) a State director has a legal duty and fiduciary obligation to disclose any potential conflict of interest position and to *recuse* himself from the decision making process; he will be liable for the receipt of secret profit and will be required to account for any pecuniary or non pecuniary gains received from a conflict of interest position.

(B) THE PRINCIPLES AND CONVENTIONS ASSOCIATED WITH DIRECTORSHIPS AND BOARD *ETIQUETTE*

6.0 In this part I am dealing specifically with:-

(i) the board of directors;

(ii) board meetings; and

(iii) board etiquette

<u>Board of Directors</u>

6.1 The Board should meet regularly and retain full and effective control over the company and monitor the performance of the executive management including the CEO.

6.2 There should be a clearly delineated division of responsibilities at board level which will ensure a balance of power and authority such that no one individual has unfettered powers of decision.

6.3 Where the chairperson is also the CEO and, in effect, executive chairperson, it is essential that there should be a strong and independent board to act as a *bulwark* against corporate excesses.

6.4 The Board should have a formal schedule of matters specifically reserved to it to ensure that the direction and control of the company is firmly in its hands; this schedule which is usually treated as agenda items at the directors' meetings should be prepared by the company secretary under the guidance of the chairperson with, usually, input from the CEO.

6.5 The chairperson has the final decision as to the date, venue and agenda of the board meeting and, at the board meeting, the scheduling and duration of these agenda items.

6.6 All directors should have access to the advice and services of the company's secretary who is responsible to the board for ensuring that board procedures are followed and that applicable rules and regulations are complied with.

6.7 The company secretary is also responsible for all compliance and regulatory issues as well as being the custodian of important company documents including (but not limited

to) incorporation documents, the minutes of the board of directors' and board committee meetings as well as the company's seal.

6.8 Any question of the removal of the CEO or the company secretary should be a matter for the board as a whole and is not a decision for the chairperson or line minister.

Board Meetings

6.9 Board meetings by section 80 of the Companies Act Chapter 81:01 may be held at any place unless the by law provides otherwise and upon such notice as is required. Thus, for instance, there is nothing to prevent directors from having their board meeting abroad once they can convince their line minister and shareholders that the expenditure can be justified.

6.10 Board meetings can be held by video link or teleconference provided that it is *quorate* (that there is a *quorum*), everyone consents and each of the parties can be heard. This is the effect of section 83(1) of the Companies Act Chapter 81:01. What constitutes a *quorum* is generally provided for in the by law but where the latter is silent, a *quorum* constitutes a majority of the directors.

6.11 The chairperson usually chairs the board meeting but in his absence the deputy chairperson should; in the latter's absence the directors may appoint one of their members to chair the meeting.

6.12 It is noteworthy that where board members are deadlocked on a particular decision a decision may be made by voting, generally by a show of hands, and in such cases the chairperson has an original and a casting vote.

6.13 It is significant that the *onus* is on a dissenting director to have his dissent and the reason for the dissent recorded in the minutes and in the absence of any recorded dissent the decision is recorded and regarded as unanimous.

6.14 It is critical, therefore, for a dissenting director to have his dissent recorded in the minutes. If the chairperson directs the company secretary not to record the dissent, the director should recuse himself and, in writing, record his dissent and declare it to the chairperson and company secretary before the meeting is adjourned; there is also provision for the dissent to be sent by registered mail or delivered to the company's registered address after the meeting.

6.15 The practice appears to be, however, that the dissent must be noted or recorded prior to the confirmation of the minutes of the board meeting at which the dissent occurred. Generally, the board minutes are confirmed at the next meeting of the directors. In confirming the minutes, only directors who were in attendance at the meeting whose minutes are being confirmed can vote in confirmation.

6.16 The practice of *round robin* decision making is wide spread and by this process individual directors are required to advise of their concurrence to a particular course of action; there is nothing wrong with the practice save that it introduces an element of undue influence and the possibility that decisions are being made on deliberately *skewed* information. In any event a decision arrived at by *round robin* should be ratified at a formal meeting of the board of directors in order for it to be efficacious.

Interface between Director and Company

6.17 It is a common feature of corporate governance that:-

(1) the chairperson identifies the nature and extent with which directors are permitted to *interface* with the executive management. The practice is that such or any *interface* must be with the implied consent of the chairperson or through his office; and

(2) directors who wish to treat with operational matters should advise the chairperson of the nature of this *interface* and the chairperson should direct the nature and extent (if at all) of the *interface* through the CEO.

6.18 The purpose of the controls at (1) and (2) is twofold:-

(a) to ensure that the operational authority of the CEO is not eroded through systematic intervention by directors into day to day matters, that is to say, micromanaging the company; and

(b) to maintain the integrity of the information reaching the board through the CEO.

6.19 Directors should not routinely telephone the CEO and other executive officers of the company requesting information or explanations since this erodes the operational capabilities of the CEO who ultimately is responsible for the integrity of information reaching the board.

6.20 Direct telephone contact between directors and executive management also creates a perception in the minds of junior executives that the CEO is being bypassed or undermined and creates an outlet for executive management to convey concerns or views directly to the board without the intervention of the CEO.

Etiquette at Board Meetings

6.21 At board and committee meetings, directors should direct questions to other directors or officers through the chairperson; this practice arises because it is, in effect, the chairperson's meeting and all communication should be to or through him.

6.22 It is advisable that this practice be adopted at all board meetings and at committee meetings since it maintains the *decorum* and dignity of the proceedings while, more importantly, allowing the chairperson to determine what questions or enquiries are to be put and generally to dictate the pace and tone of the meetings.

6.23 Directors' meetings should be regarded as solemn and formal so that there should be controls as to the persons who are in attendance.

6.24 Usually board meetings are conducted in the presence of the CEO who is generally an *ex officio* member of the board which means he sits as a board member but has no voting rights.

6.25 Where the CEO is not a director then he is required to be present unless the contrary is stated to him. The company secretary is also required to be present in his formal capacity as the one minuting the proceedings as well as advising the board on protocol and procedures.

6.26 Apart from these persons, there should be no other attendees as of right. It is usual for the board to invite presentations from executive management particularly where these presentations treat with a note to the board. On these occasions, the CEO is required to put the entire management on notice that they may be required to assist the board at some stage during the meeting. It is grossly discourteous to the board if an officer is unavailable to provide explanation or clarification to the board.

6.27 Corporate *etiquette* requires the chairperson, upon the entry into the board meeting of a guest of the board (whether that person is a member of the executive management or an officer of the company or anyone else), to formally welcome the guest and to introduce him to board members and other persons present. The guest should then be informed by the chairperson as to the reason for his presence and is invited to make his contribution. The company's secretary is required to minute the contribution in the name of guest unless either the guest or the chairperson indicates a preference that this contribution not be minuted.

6.28 It is up to the chairperson whether the proceedings are minuted *verbatim*, in summary fashion or at all. Generally, the practice is to reflect the decision not the deliberations but this approach should be revisited when the decision is particularly contentious and members' contributions may be individually noted particularly where dissent is required to be recorded.

6.29 At the end of the contribution the guest is invited to leave by the chairperson. It is *anathema* to good corporate governance for directors to discuss board matters or policy matters in the presence of a guest unless the chairperson expressly so indicates or allows. It is also unseemly for directors to make allegations or raise issues as to the performance of an officer of the company or other executive management or otherwise to treat with operational matters in the presence of that person or a person of equal or lesser status or rank in the organization.

6.30 Board members are reminded that operational matters remain within the province of the CEO and the *interface* of the CEO with his team is a matter for him. The Board should, therefore, not micromanage the company's operations; this is not to say however, that the board should be reluctant to offer a view on operational matters which are inconsistent with the general or strategic direction of the company.

6.31 The directors at board meetings should signal to the CEO their views but, ultimately, how these views are to be implemented remain a matter for the CEO and if the board is of the view that the CEO is underperforming then his removal is a matter solely for them.

6.32 The following courtesies should be extended:-

(i) directors who are unable to attend meetings should formally advise the company secretary or the secretary of the board, as far as is possible, of their absence and the reason for their absence; corporate *etiquette* requires that as much notice as possible be given to the chairperson at least by way of telephone call on the basis that only very pressing personal or business engagements would otherwise detain a director;

(ii) a director who is going to be absent from the meeting and who has a view on matters which forms part of the agenda of the board meeting should disclose these views to the chairperson particularly where these views are inconsistent with the views of the chairperson himself or the majority of directors;

(iii) the proceedings at board meeting are of utmost confidentiality and all attendees including guests should very discreetly be reminded of this; in that context, board minutes, board papers and other documents coming before the board should be the sole province of the company's secretary and his assistant on the basis that these trusted individuals are not to divulge the contents under any circumstances;

(iv) in order to maintain confidence levels, the company secretary should ideally be accommodated in offices which are separate and apart from the rest of executive management and be furnished with his own photocopying, filing, facsimile and word processing facilities;

(v) facilities should be put in place during board meetings for telephone calls for board members to be intercepted by the company secretary's assistant who would be instructed to, in the case of urgent matters, discreetly deliver a note to the director advising of the telephone call;

(vi) under no circumstances should telephone calls be placed directly through to the chairperson or attendees at the meeting although it is usual for telephone facilities to be placed at the meeting for directors to telephone out;

(vii) directors should, where possible, keep their responses and submissions relevant to the issue at hand and, unless specifically invited by the chairperson, should treat only with the issues and not raise speculative matters;

(viii) directors should be reminded that board meetings are not privileged and that communications to or though the board *via* board minutes are required to be circulated to the line minister, shareholders and other stakeholders and in that context there is no defence for allegations of libel;

(ix) all written communication to the chairperson should be addressed to the Office of the chairperson and, unless expressly instructed to the contrary, the secretary of the board should open all correspondence addressed to the chairperson and bring them to his attention as soon as possible;

(x) in cases of extreme urgency or, for instance, late notification of invitations, the secretary should telephone the chairperson directly to advise of these matters and perhaps send them by facsimile; and

(xi) there should be regular *interface* between the chairperson and the secretary to the board with the *caveat* that the nature and timing of these *interface* is a matter solely for the chairperson and not the secretary.

RONNIE BISSESSAR
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