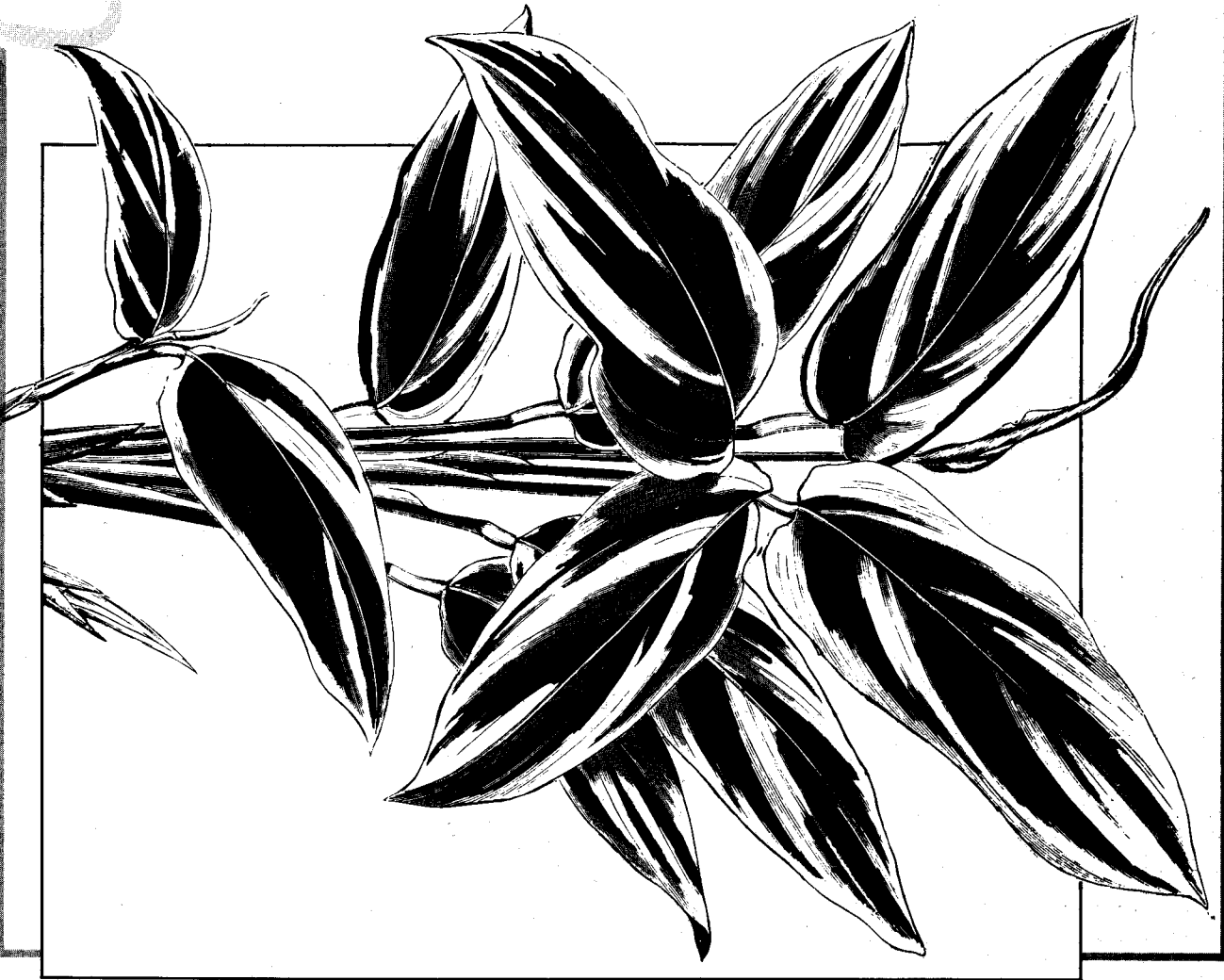


RATIONALE AND GUIDELINES FOR DRAFTING COLLECTIONS MANAGEMENT POLICIES

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The term "collections management policy" is heard more and more in scientific and cultural circles where object/specimen collections are maintained. To some it means merely a determination of the scope of material which will be collected. For others it is a compilation of procedures for recording, cataloging and maintaining collection objects. Certainly, each definition addresses important aspects of curatorial work, but these aspects are only parts of the tree. A better definition of "collections management policy" is far more encompassing. It starts with an examination of the roots and continues upward. This approach is designed to protect the health and well-being of the whole entity.



While in principle most would agree that such an all-inclusive approach is to be preferred, we find that most collecting organizations do not put it into practice. And why is this so? In good measure, it may be due to inertia, a lack of incentive to tackle a task which may seem larger than what is needed to satisfy immediate demands. I hope to convince you that this is short-sighted. While most are more comfortable tending their own little gardens, as part of an organization the ability to perform well depends in good measure on the quality of management within the organization. Curators who work in isolation do so at their peril; at any time their decisions could be overruled. Directors who are unsure of their authority cannot be fully effective, and trustees who do not have a firm grasp on their responsibilities can be the most vulnerable of all. Therefore, the scope of a collections management policy and its development should be of prime importance to everyone associated with a collecting organization. What is and isn't in that policy affects everyone in the organization: trustees, administrators, and members of the professional staff.

WHAT IS A COLLECTIONS MANAGEMENT POLICY?

A collections management policy should be a detailed written statement which explains the purposes of a collecting organization and its goals, and how these goals are fostered by its collecting activity. Such a policy should cover a broad range of topics:

1. The purposes of the organization and how collections are used to further these goals;
2. The scope of the collections;
3. Procedures and criteria for acquiring specimens;
4. Procedures and criteria for disposing of specimens;
5. Incoming and outgoing loan policies;
6. The organization's policy on accepting specimens for identification;
7. The care and control of collections once they are acquired;
8. Access to collections and to collection records;
9. Insurance procedures relating to collection material;
10. The records that are to be kept of collection activities, when these records are to be made, and where they are to be maintained.

Drafting a collections management

policy is not an easy task and it requires a good deal of homework. There are numerous issues which must be researched, considered and weighed. The very task of drafting the policy should be a learning process and the parent organization usually benefits in direct proportion to the number who participate. No matter how well the final collections management policy is worded, it cannot be an effective document if it is not understood and appreciated by all those called upon to play a significant role within the organization. Discussion, even debate, is to be encouraged in the

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drafting stage (as well as in any subsequent amendment process).

A collections management policy cannot be expected to provide a ready answer for all questions which might arise regarding the collections. However, it should contain enough general rules and cautions so that professional standards are established, routine matters are handled in a prescribed manner, and unusual and/or possibly worrisome situations are referred in a timely fashion for decision to proper officials within the organization. The policy should delegate clearly the responsibility for carrying out various functions in accordance with the stated rules, and it should specify who has the authority to waive a general rule (and the documentation needed for the waiver). If experience has demonstrated that certain types of situations frequently need special attention, the policy can so caution and provide guidance as to when there should be consultation or outside advice before decisions are made.

Chapters could be written about the many issues which might be considered in writing a collections management policy, but there are several questions which

every collecting organization should address before it delves into the particulars of drafting a policy. These questions are:

What is the legal nature of the organization?

Who ultimately is responsible for the management of the organization?

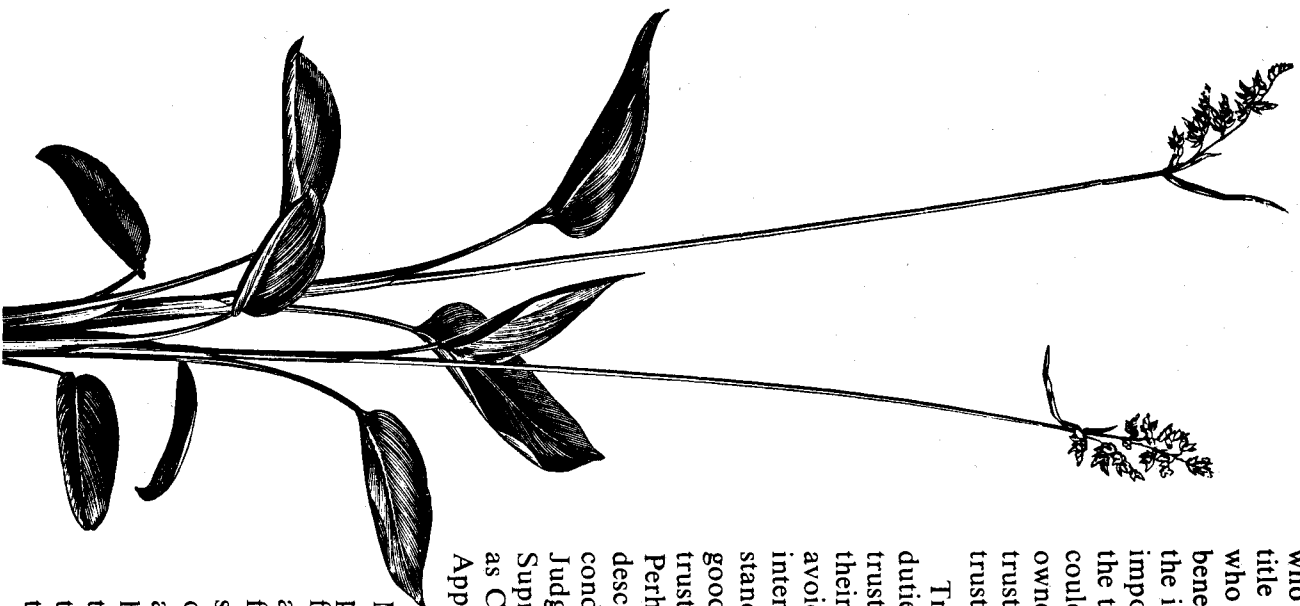
What is the standard of conduct imposed by law on those who manage the organization?

Without some grasp of these very basic issues, it is all but impossible to approach intelligently the task of establishing a collections management policy, and, indeed, there may be little incentive to even begin the collections management process. A major purpose of this presentation is to discuss these basic issues.

THE LEGAL STATUS OF ORGANIZATIONS

Most botanical gardens and arboreta can be classified as nonprofit or charitable organizations. A charitable organization is an entity which shares attributes that are found in a trust as well as attributes found in a business corporation. If one understands what a trust is and how it differs from a business corporation, it is easier to appreciate the legal status of the charitable organization.

A trust is a fiduciary relationship whereby a party, known as a trustee, holds property which must be administered for the benefit of others,



who are known as beneficiaries. Legal title to trust assets is vested in the trustee, who cannot use these assets for personal benefit, but must use them only to further the interests of the beneficiaries. The law imposes a very high standard of care on the trustee because it is a position which could invite abuse. (With all the indicia of ownership and little direct oversight, the trustee might be tempted to mishandle trust assets.)

Trustees are charged with *affirmative* duties to protect, preserve and increase trust assets; they cannot delegate away their major responsibilities; they must avoid even the appearance of a conflict of interest; and they are held to an objective standard of competence. (In other words, good faith won't necessarily protect a trustee who fails to act prudently.) Perhaps one of the most quoted descriptions of the trustee's standard of conduct is contained in a decision by Judge Cardoza, a renowned U.S. Supreme Court Justice, during his tenure as Chief Judge of the New York Court of Appeals.

Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and

inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion of particular exceptions..." Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.¹

Compare the standard imposed on the director of a business corporation. The law recognizes that the profit motive acts as a regulator in a business organization. Stockholders have methods for questioning management as do employees, and ultimately the consumer must be satisfied if the business is to prosper. The law allows these pressures of the marketplace to exert their influences and, as a rule, it does not step in and charge officers of a business corporation with mismanagement unless there is evidence of gross negligence or fraud. Also recognizing the complexity of running a business, the law permits managers more latitude in delegating responsibility and, if the corporation does not object, managers can enter into personal business deals with the corporation. In other words, the officer of a business corporation can be a bit lax and a bit greedy and still stay within the law.

But why is all of this relevant to the management of a botanical garden? Consider this hypothetical situation. Under

its charter, the XYZ Botanical Garden is to be run by a board of twelve individuals. In fact, the board rarely meets and when it does, it merely rubberstamps decisions made by the director. The funds of the organization are deposited in a local bank and two members of the botanical garden's board are officers in that bank. The board's chief activity is fund-raising and it has never taken an interest in the care and caliber of the collections. Members of the board are sued for mismanagement when an outside audit reveals that financial and collection records are in complete disarray. Is there serious cause for concern? It depends on what standard of care is imposed. If the traditional trust standard is applied, the board members are probably in trouble. They have delegated away their major management role to the director, there is the appearance of self-dealing in their banking operations, and they have not given their attention to the affirmative responsibilities to preserve, protect, and increase the assets of the organization. If, on the other hand, the business corporation standard is applied, the board members may well prevail. That standard would require convincing evidence of gross negligence or fraud and possibly personal profit before liability might be imposed. What standard is applicable?

As previously mentioned, a botanical garden usually is classified as a charitable organization which is like a trust because its assets are held for the benefit of the public. Thus, while those charged with the management of the charitable

organization hold legal title to the organization's assets, they are bound to use those assets for a particular public purpose. The public should be able to rely on the integrity of managers of a charitable organization and, hence, there exists the same practical reasons for imposing on such managers the high trust standard required of the traditional trustee. On the other hand, the charitable organization is similar to a business corporation in that it must grapple with many of the day-to-day problems which face a for-profit enterprise. It may be unrealistic to expect that the managers of the charitable organization (many of whom volunteer their time) can devote the personal attention to detail which is expected of the traditional trustee. In addition, the apparent conflict of interest rule which applies to traditional trustees could create serious problems in the operation of a charitable organization. The boards of most charitable organizations contain a high ratio of civic leaders. If the charity is prohibited from dealing with any organization with which any board member may have a substantial affiliation, the charity could be at a serious disadvantage in conducting its business locally and/or in attracting experienced individuals to serve on the board.

STANDARDS OF CONDUCT AND THE LAW

In the last decade or two, the courts have been forced to confront the issue of an appropriate standard of conduct for managers of charitable organizations.

This is due in good part to the growing public awareness that such organizations should be operated to benefit all, and thus there is more incentive to question the quality of governance. A landmark case on this issue was decided in the District of Columbia in 1974. It is commonly known as the Sibley Hospital Case,² and because it involves a hospital (a charitable organization), it is of interest to all charitable organizations. The issues in the case were similar to those raised in the hypothetical XYZ Botanical Garden. In the Sibley Hospital Case the judge, in articulating a standard of care, charted a middle course, trying to balance the importance of integrity with practical considerations. He ruled:

- Trustees³ of a charitable organization cannot delegate away their responsibility to make major policy decisions. However, once policy has been established, they may delegate implementation, but they must maintain effective oversight.

- A trustee cannot knowingly permit the charitable organization to enter into a business transaction which benefits himself or an organization in which he has a substantial interest without disclosing his interest. If such a possibility comes to his attention, the trustee must inform the other board members, give them the benefit of his knowledge, and then remove himself from further discussion or vote on the matter. A trustee must perform his duties honestly, in good faith, and with a reasonable amount of diligence and care.

Not long after the Sibley Hospital decision, well publicized lawsuits⁴ were brought against two groups of museum trustees by the attorney general of their respective states.⁵ The trustees were charged personally with mismanagement. While both cases were settled before trial, they are of interest because each demonstrates what an attorney general considered to be trustee mismanagement.

One case charged a failure to keep complete, contemporaneous records of all collection transactions, and alleged self-dealing by the trustees (the selling of collection objects to trustees and the acceptance from trustees of donated objects which were assigned inflated value for tax purposes) and questionable accession and deaccession practices. The other case cited trustees with a failure to supervise adequately the actions of the museum director, a failure to see that collection objects were maintained properly, and self-dealing with the collections. Both charges relied heavily on traditional trustee standards.

From the above discussion, certain deductions can be drawn.

- Generally, the law judges the quality of governance in a charitable organization by standards higher than those imposed in the marketplace.

- Standards applicable to charitable organizations require that the governing board establish major policy.

- After setting major policy, such boards should see that proper delegations of authority are in effect.

- Such boards should maintain effective oversight of policy implementation.

- In establishing policy, such boards should bear in mind their overall obligations to the public and the importance of maintaining public confidence.

These deductions can be further refined with regard to charitable organizations which have as their major focus the maintenance of collections.



- The governing boards of such organizations have a responsibility to establish effective collections management policies and these boards must maintain proper oversight of policy implementation.
 - The collections management policy should address the acquisition, maintenance, use and disposal of collection objects, bearing in mind the trust obligation to use assets wisely for the public good.
 - The collections management policy should require that adequate records be made and maintained concerning collections activity. Procedures should be designed so that records are produced which document significant actions pertaining to collections objects, facilitate effective oversight, and provide useful data to further the organization's research and education functions.
 - The collections management policy should reflect due attention to the avoidance of conflict of interest situations so that the integrity of the organization and its managers is maintained. The collections management policy should be reviewed periodically by the governing board to assure that it is current and effective.
- These conclusions should provide a healthy incentive for the botanical garden or arboretum to begin a collections management policy, and they clarify who must approve and oversee the policy. An understanding of these issues also serves as a constant guide in establishing

appropriate procedures. Consider the following:

The ABC botanical garden has no system for reassessing periodically the status of its collections. It appears that much time and money are being spent on maintaining stock which is very duplicative and inadequately documented. Are the assets of the organization being prudently spent to further obligations owed the public?

The DEF arboretum has all but nonexistent inventory and security systems. No assurance can be given that valuable stock is not being misappropriated. Does this comport with the requirements that trust assets be carefully maintained and accounted for?

The GHI botanical garden has no established policies regarding the loan of its material and the disposal of excess stock. To the casual observer it appears that some local organizations, both profit and nonprofit, benefit greatly from their association with the garden. Is the integrity of the garden and its managers being given sufficient thought?

As one can see, an appreciation of the very basic issues which have been discussed should be reflected throughout an entire collections management policy. If the time and effort are taken to establish such a policy, the rewards are considerable: a greater sense of professionalism, clearer definition of roles with mutual respect for the contribution of each, an ability to avoid many unnecessary problems, and a surer hand when resolving difficulties which do arise.

NOTES

1. *Meinhard v. Salmon*, 164 N.E. 545, 546.
2. *Stern v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries*, 381 F.Supp. 1003 (D.C. 1974) and also 367 F.Supp. 536 (D.C. 1973), the order granting the plaintiff standing to sue.
3. The term trustee means the individual member of a governing board whether they are called trustees, directors, supervisors, etc.
4. *Lefkowitz v. The Museum of the American Indian, Heye Foundation*, Index. No. 41416/75 (Supreme Court of New York, County of New York, June 27, 1975); *State of Washington v. Leppaluoto*, No. 11781 (Superior Court of the State of Washington, County of Klickitat, April 1977).
5. In most every state the attorney general acts for the public in overseeing the management of charitable organizations. Frequently, it is that office which initiates legal action if there appears to be mismanagement.