

## **AD HOC GOVERNANCE COMMITTEE**

### **FINAL REPORT**

#### Committee Members:

Pete Comas (Chair), Francisco (Tony) Bonilla, Lauren Paley, Karen Schatzel, Christopher Sewell, Marc Shapiro (pro bono counsel from Mayer Brown), and Steven Yuniver

#### BRIEF HISTORY OF COMMITTEE:

The Committee was created in August of 2015 and tasked with looking at Board composition and nominations, and alumni engagement. The Committee, after a number of months of engaging various alumni, was fully formed on or about March 2016. In September 2016, the Committee delivered to the Louis August Jonas Foundation Board of Directors a draft proposal that recommended the creation of a mechanism for the selection of Directors through the Alumni Council. The LAJF Board of Directors instructed the Committee to finalize its proposal after soliciting feedback from the greater alumni body through the CRS Alumni Forum, and specifically from the Alumni Council.

On September 26, 2016, the draft proposal was shared on the CRS Alumni Forum in a thread seeking comment from forum members. Over the next five days, the thread received more than 80 total comments from 9 different participants, which included 3 members of the Committee. The Alumni Council reviewed the proposal and discussed its merits during conference calls in December 2016 and January 2017 – at least one member of the Committee joined those calls to answer questions from Council members.

## RESEARCH PERSPECTIVE:

1. New York State provides a number of options for appointing Directors: *Attorney General of New York: New York Public Charity Law 701*
  - a. A self-perpetuated Board,
  - b. A member elected Board,
  - c. Any Board structure that will continue and adhere to the non-profit mission of the organization.
2. The Louis August Jonas Foundation is currently a mix in which anyone can self-nominate, nominate others, or be asked to join the Board of Directors.

## ORGANIZATIONS:

Among the organizations we studied were the following:

Leake & Watts (<http://www.leakeandwatts.org/>)

Seeds of Peace (<http://www.seedsofpeace.org/>)

Larkin Street Youth Services (<http://larkinstreetyouth.org/>)

Prep for Prep (<https://www.prepforprep.org/>)

A Better Chance (<http://www.abetterchance.org/>)

(See also APPENDIX A and APPENDIX B for additional resources)

## FINDINGS & RECOMMENDATIONS:

1. The Ad Hoc Governance Committee was created to examine and answer the following questions:

- **Board Composition and Nominations**

- Who should nominate? Expectations for Board giving?

- How can we achieve Board diversity?

- **Supervisory and Advisory Councils**

- What is needed and for what purpose?

- Future role of the MAC? Other councils -- fundraising guild?

- How does this support/maintain Alumni Engagement?

- **Alumni Engagement**

- How to maintain communication and ensure alumni involvement with key decisions affecting the future of the organization?

2. The Committee reviewed all of the current LAJF governance documents, including the bylaws and Board policies. The Committee also researched non-profit governance best practices and studied the governance structure of a number of specific non-profits.
3. The Committee found that the current LAJF self-perpetuating Board is the best governance structure for our organization for a variety of reasons, not least of which is the fact that budgetary restrictions on staff require Directors to perform a significant amount of the work necessary for the Foundation to function. A self-perpetuating Board is the most likely to select Directors with specific skills and experience necessary to perform vital roles in the organization.

4. The Committee recommends that the current policy on Board nominations remain unchanged. We remind the community that any member of the community can nominate anyone to serve as a Director (including self-nominations). Nominees are vetted and approved by the Members Advisory Council (MAC).
5. The Committee believes that the MAC plays an important role in Foundation governance and recommends that the role of the MAC not be changed. We remind the community that anyone who is interested in MAC membership may apply to join the MAC. The total number of active MAC members is currently capped at 15, although that number may be increased at the Board's discretion. If there is a great interest in MAC membership shown by the community, we recommend that the Board consider increasing this cap.
6. The Committee believes that the various regional Alumni Associations should play a primary role in facilitating alumni engagement, maintaining communication with the Board of Directors, and ensuring alumni involvement. Community members who are active in regional Alumni Associations are among the most engaged members of the broader community. The Committee encourages the formation of an At-Large Alumni Association for members of the broader community who do not live in a region represented by a regional Alumni Association. Doing so should materially expand the number of participating community members.
7. The Committee believes that the standing Committee on Governance (formerly the Committee on Directors) has performed well in identifying and recruiting prospective Directors and ensuring that a broad mix of skills and experience are represented on the Board.
8. Since the formation of the Ad Hoc Committee, we believe that the standing Committee on Governance has broadened diversity on the Board with respect to gender, ethnic, and racial identities, and we encourage the standing Committee to continue to identify prospective Directors that will achieve greater Board diversity.

9. We believe that since the formation of the Ad Hoc Committee, the Board through increased staff communication across various platforms, including through the CRS Alumni Forum, has greatly improved communication and has increased opportunities for greater alumni engagement.
10. The Committee acknowledges that the Alumni Council has expressed that it is unprepared at this time to serve as a selection body. Notwithstanding the Alumni Council's current position, we recommend that the Board officially create an *ex officio* Director to be appointed by the Alumni Council whose primary role will be to communicate with the various Alumni Associations. This *ex officio* Director should help to strengthen the bonds among the Board, the Alumni Associations and the greater LAJF community.

#### CONCLUSION:

The Committee recognizes that the primary reason for its creation was a good faith effort by the Board to respond to a perceived desire by alumni to become more involved in LAJF governance. The hope was that addressing any deficiencies found in the Foundation's governance structure would lead to greater alumni engagement. Therefore, our Committee was tasked with reviewing all aspects of LAJF governance, including the Board of Directors, the Members Advisory Council, the Alumni Council, and all Board policies. After identifying best practices and studying other non-profit organizations, we determined that the current governance structure is the most appropriate for our organization. Indeed, in 2011 the Louis August Jonas Foundation was given the Brooke W. Mahoney Award by VCG Governance Matters because of its effective governance.

The primary reason we believe that a self-perpetuating Board serves us best is that Directors play a critical role in the function of our organization, and our existing practices ensure that a broad mix of skills and experience are represented on the Board. Day-to-day operation of the Foundation is performed ably by the Foundation Executive Director and staff. They are responsible for, among other things,

making sure that Camp is ready for campers each summer, assembling and training the seasonal summer staff, supporting incoming campers and their families (including facilitating travel to Camp and coordinating hosting arrangements), communicating and engaging with the broader alumni community, and various other administrative functions.

The LAJF staff is also primarily responsible for fundraising. This means that much of the other work necessary to keep the Foundation running falls on Board committees populated by volunteers. Because Directors are ultimately responsible for these tasks, they lead the volunteers as committee chairs. Directors with the help of dedicated volunteers manage the Foundation's investment portfolio, set the yearly budget, develop and fine-tune the program, perform yearly audits to comply with tax reporting agencies, fundraise, and perform many other highly technical functions. The best and most efficient way to ensure that the Board is composed of Directors who have skills necessary to perform those tasks is through a self-perpetuating system where prospective Directors are identified and recruited, and then groomed through committee service to step into these leadership roles.

One challenge that such a self-perpetuating system confronts is achieving diversity with respect to gender, ethnic, and racial identity. Because Directors are recruited primarily for the skills that they may bring to the table, diversity becomes a secondary consideration. Recognizing that this could be a deficiency, the Board asked us to consider ways of achieving greater diversity on the Board. When our Committee was first convened, only two Directors were women. There were three Directors who brought racial and/or ethnic diversity to the Board, and only one Director who resided outside of the United States. Over the past two years, noticeably greater diversity has been achieved: Four women are currently on the Board, seven Directors offer racial and/or ethnic diversity, and there are two directors who reside outside of the United States. We note that the standing Committee on Governance has made considerable effort in achieving greater diversity while continuing to recruit Directors that fit specific

needed skills. We do not believe that a general election system among the community would do a better job of increasing diversity while maintaining the expertise required for the Foundation to function.

Notwithstanding the above, the Committee felt that if the Board were committed to formalizing alumni involvement in governance, the most appropriate way to do that would be for direct election or nomination of a number of Directors through the Alumni Council. We felt that a general election of Directors by alumni at large would not be appropriate for a variety of reasons. The cost and logistics involved in a large alumni election would likely be prohibitive; and, more importantly, it would be difficult to ensure the broad mix of skills and experience necessary for our organization to function. Because those members of the community who are most engaged with their regional Alumni Associations are generally the most engaged with the Foundation and therefore the most knowledgeable about its needs, we felt that the Alumni Council would be the most appropriate body to elect or nominate Directors.

Finally, we find that there is no real groundswell among alumni for a greater voice in LAJF governance. We submitted a draft proposal that would offer a direct voice to the most engaged and committed alumni – those who are active within their regional Alumni Associations, responsible for selection of campers and maintaining relationships with alumni. We found that there was very little appetite even among these most committed alumni for a direct voice in governance. Although there was some discussion of the proposal on the Alumni Forum, it was short lived and was limited to a handful of members of the community. There is no doubt that a number of alumni would like a direct voice in governance, but the number who desire this appears to be quite small. We encourage those who have such a desire to seek membership to the MAC or the Board. We attach our original proposal as Appendix C to this report because we feel it is the best way to give alumni a direct voice in governance should a groundswell for direct involvement develop in the future, and hopefully to serve as a starting point for future discussions should the Board want to revisit the issue.

## APPENDIX A

There are a number of organizations that currently audit nonprofits, as well as provide for best practices:

1. **CitizenAudit** simplifies learning about nonprofits by providing 15 years of disclosures for every charity in the United States and allowing one to search for any keyword inside the IRS filings (form 990s). Searches can be performed on all non-profits including foundations, hospitals, universities, political groups, etc.
  - a. CitizensAudit did a public audit of the financials and 990s of the Louis August Jonas Foundation and found that there are no financial red flags.
  - b. The Committee used CitizenAudit to look at other non-profit organizations to see what their red flags were. We found that financial malfeasances were clear in 990s, and the most common problem is that Boards of Directors use internal finances for inappropriate and higher than normal pay.
2. **SCOPE: Summer Camp Opportunities that promote Education** provides children from underserved communities with life-changing opportunities through the experience of summer camp. SCOPE believes summer camp reinforces what children learn in school and enhances overall academic learning.
  - a. One of the main inspirations of the draft proposal.
  - b. Scope is a group of nonprofit camps scattered around the United States. Their Board initiatives work with their alumni in a staged process
    - i. SCOPE's governance is self-perpetuating. However, they train members of their community to join the governance structure by having a multi-tier Young Alumni Board broken into a Junior Leadership Council, and a Young Leaders Board, which then feeds into the Board of Directors.

- ii.* Their organization is broken into regions of the United States sending representatives from each region as representatives to the Board of Directors.

3. **New York Council of Nonprofits Inc. (NYCON)** is recognized as one of the largest state associations in the country, with 33 staff members in five different offices across New York State. Staff expertise is diverse and non-profits can expect to find lawyers, fund development specialists, finance experts, governance, experts and risk management experts.

- a. NYCON works with Governance Matters, the organization that Awarded the Louis August Jonas Foundation the Brooke. W. Mahoney Award for governance.
- b. NYCON does not take a position on board structure, but provide a litany of resources with respect to the promotion of public trust and connections to consultants and legal representatives in order to ensure compliance with the Nonprofit Revitalization Act of 2013.
- c. NYCON recommends that the composition of an organization's Board, staff, and clients reflect the interests, needs, and concerns of the constituency it serves and the community in which it operates. The composition should also reflect the distinct needs of the organization at its particular stage of development, as well as the needs it is trying to address

4. **Nonprofit Risk Assessment Center of New York** suggests that non-profits avoid internal democracy because doing so is impractical. Governance with members is time-consuming and cumbersome to manage. Moreover, non-profit founders correctly perceive that members are unlikely to prevent the high-profile lapses in accountability that have plagued the non-profit sector. If members are ineffective monitors, and membership adds costs, why bother? Indeed, for these reasons, a self-perpetuating board is the most appropriate governance structure for many non-profits.

## APPENDIX B

New York Non-Profit Guide:

<http://www.nyc.gov/html/nonprofit/downloads/pdf/Board%20Development%20and%20Accountability.pdf>

Massachusetts Non-Profit Guide:

<http://www.mass.gov/ago/docs/nonprofit/guide-for-board-members.pdf>

Text of New York Non-Profit Law (Charitiesnys.com is the Attorney General's non-profit website, it has great resources and information regarding board governance and best practices):

[http://www.charitiesnys.com/pdfs/statute\\_booklet.pdf](http://www.charitiesnys.com/pdfs/statute_booklet.pdf)

[http://www.charitiesnys.com/registration\\_reporting\\_new.jsp](http://www.charitiesnys.com/registration_reporting_new.jsp)

Additional Resources:

<http://charitylawyerblog.com/2011/04/26/nonprofit-law-jargon-buster-voting-members-vs-self-perpetuating-boards> <http://www.impactfoundry.org/resource/board-all-volunteer-organization>

<http://www.impactfoundry.org/resource/board-roles-and-responsibilities>

<http://www.alcor.org/Library/html/perpetuating.html>

[http://www.corwin.com/upm-data/23270\\_Chapter\\_3\\_Nonprofit\\_Governing\\_Boards.pdf](http://www.corwin.com/upm-data/23270_Chapter_3_Nonprofit_Governing_Boards.pdf)

<http://relationshipmodel.com/2015/03/member-elected-board-or-self-perpetuating-board-does-it-matter/>

<http://www.rossmcbride.com/Blog/Corporate/November-2014/Membership-driven-organizations-vs-a-self-perpetua.aspx>

## APPENDIX C

### **Mechanism for selection/nomination of Directors through the Alumni Council, proposed September 2016**

The Committee recommends that a second mechanism for the selection or nomination of Directors, independent of the MAC, be created as follows:

- a. During the first year of implementation, the chair/leader of the Alumni Council shall serve as an *ex officio* Director and serve as a liaison between the Alumni Council and the Board of Directors. This position shall be a permanent position.
- b. During the second year of implementation, the Alumni Council shall select from among their members a second *ex officio* Director. This person shall serve for one year.
- c. During the third year of implementation, the Alumni Council shall select or nominate a full, voting Director to serve on the Board
- d. Each year after the third year of implementation, the Alumni Council shall select or nominate additional Directors. (The number of Directors to be selected or nominated in this manner to be determined at a future date.)
- e. The total number of Directors selected by the Alumni Council shall not exceed a fixed percentage of the total number of Directors. (The percentage to be determined at a future date.)

The Committee believes that such a mechanism would accomplish the following:

- a. It will provide a sense of ownership to the alumni community
- b. It will encourage both participation of alumni within regional Alumni Associations and participation of regional Alumni Associations within Alumni Council
- c. It will ensure continual two-way communication between the Board of Directors and the alumni community
- d. It will facilitate greater diversity on the Board, particularly with respect to racial, ethnic, and geographic diversity.