THE ACCOUNTABILITY GROUP

PRE- READING

GOVERNANCE RESOURCE INFORMATION

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GOVERNANCE DEFINITION

Governance is how an organization is directed and controlled in order to ensure its purpose is achieved. Governance includes the structures, responsibilities and processes that the board of an organization uses to direct and manage. These determine how authority is exercised, how decisions are taken, how stakeholders have their say and how decision-makers are held to account.

THE ROLE OF A BOARD

The board is the primary actor in and guarantor of good governance. (Other actors are members and staff). The Board is the “directing mind” of an organization. A board’s effectiveness needs to be judged against these core responsibilities:

Developing direction (mission, vision, values)

- Set the vision and mission
- Contribute to strategy development and approve the Strategic Plan
- Oversee implementation – adjust course if required

Oversight of Operations (quality and performance)

- Ensure the framework for performance oversight – corporate “big dot” (e.g. balanced scorecard, dashboard, financials, etc.)
- Review performance metrics regularly
- Ensure that the senior executive team has a plan—a “rational portfolio of projects”—with the scale and pace needed to achieve their aims. Obtain correction plans from management
- Do sufficient follow up to monitor and encourage leadership follow-through

Oversight of management

- CEO or ED is Board’s only direct report
- Ensure effective leadership is in place
- Select, define expectations and mandate, compensation, evaluation and succession planning
- Ensure clear delegation and specified limits of authority

Financial oversight and stewardship

- Ensure availability and overseeing allocation of financial resources - approve plans / budgets
- Ensure sound financial policies
- Monitor through review of financial statements and ensure accuracy and integrity of financial reporting
- Work with auditors
- Ensure legal responsibilities are met

Risk identification and oversight

- Risk cuts across all aspects of Board decision-making: strategy, finance, member and stakeholder relations etc.
- Ensure enterprise risk management is in place

- Must be knowledgeable about inherent risks and ensure appropriate risk analysis is part of Board's decision-making
- Also may/must flag unusual risk if perceived

Stakeholder communication and accountability

- Identify stakeholders and accountabilities owed
- Ensure appropriate communications with stakeholders
- Contribute to the maintenance of strong stakeholder relationships
- Advocate as a Board when required in support of mission, vision, values and strategic direction

Functioning itself as an effective governing body

- Responsible for the quality of own governance
- Establishes effective governance structures
- Recruitment of a skilled, experienced and qualified Board
- Ongoing training and education

Ensuring effective Structure and Policies

- Assesses structures
- Sets policies

RESPONSIBILITIES OF A BOARD RE: FINANCES OF AN ORGANIZATION

- Understanding the finances of the organization (its major sources of revenue and major expenditures)
- Ensuring responsible use of resources – approving the budget and monitoring the organization's financial performance
- Overseeing aspects of risk including financial risk ensuring their avoidance or mitigation
- Integrity of internal control and management information systems
- Obligations fulfilled/ filings etc.
- Financial reporting
- Ensuring organizational sustainability (long term stewardship)

BOARDS IN A SELF-REGULATION CONTEXT

Certain boards are mandated to regulate the practice of a given profession/occupation or industry in the public interest….

For many entities, board meetings take place in the public arena, subject to the scrutiny of both practitioners and the general public. These meetings tend to be more formal in nature and follow conventionally accepted parliamentary procedures such as Robert's Rules of Order. Many boards also use a committee structure model to carry out the work of the board. An individual board member may sit on one or more of these committees. Committees may be required by the statute (e.g. discipline committee) or may be working committees (e.g. finance) established by the board itself. Committee meetings are usually not conducted in public and tend to be more informal in nature. Committees are responsible to the board for the work that they do. The committee does not set policy itself; rather it makes recommendations to the board, which may or may not be adopted.

- Boards set the standards for entry into a profession and assure the public that the practitioners offering services meet those standards. Individual board members contribute to this by assisting with the development of these standards in working group or committee meetings. Boards may engage in ongoing education and communication strategies to acquaint the public with these standards. Many entities have quality assurance programs and methods of assuring that practitioners meet the standards of the profession on an ongoing basis. This may or may not involve random or targeted testing on a periodic basis. There is usually some expectation that practitioners will meet a certain standard of participation in continuing education.

- They register those who are qualified. This registration usually involves issuing a certificate or license without which a person may not practice in the jurisdiction of the regulatory body. Certain information as to the status of the practitioner is available to the public. Board members may participate in the registration function by assessing prospective registrants/ licensees, determining terms and conditions, if any, to be placed on an individual's certificate/license, and deciding appeals from individual applicants.

- Boards deal with practitioners who fail to meet the standards of practice and/or who are accused of misconduct, incompetence or incapacity. Board members may perform adjudicative functions in determining guilt and penalties with respect to practitioners and form an essential part of the system of administrative justice in a given jurisdiction. Board members serve on panels or tribunals which have the mandate to make decisions which may affect a practitioner's ability to make a living. Their decisions may also affect the care the public can expect to receive from the profession. The seriousness of these matters makes it prudent for board members to participate in their own ongoing education with respect to the principals and practices related to the administrative justice system.

Responsibilities of Board Members

In this context, board members have a responsibility to at least three constituencies:

1. **The general public**. People expect that licensees/registrants will be qualified to perform properly and safely and that they will maintain a level of competence throughout their career. They have a right to expect a fair method of dealing with disputes that may arise with the practitioner. They have a right to know what's going on within the regulatory entity.
2. **Potential licensees/registrants**. Individuals who wish to earn their living in an occupation/profession/industry should not be denied access unreasonably. That person should have easy access to all information about entering the profession, including testing and/or practical training requirements and/or moving from another jurisdiction. There should be no unfair barriers for such persons.
3. **Other board members**. There is a responsibility to listen to them and to respect their views and contributions. There is also a responsibility for helping to determine good policy and helpful procedures, for contributing to fair determination of problems and for helping the regulatory entity to operate most effectively and efficiently.

Excerpted from Barbara Smith - https://www.clearhq.org/resources/Role.htm

OBLIGATIONS OF A DIRECTOR

Directors have discretion to exercise their powers as they deem appropriate, subject to the constraints imposed by law. Each director must act honestly and in good faith with a view to the best interests of the corporation and must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Delegation is permitted with certain exceptions and must be reasonable in the circumstances. Nonetheless, responsibility for major decisions and the exercise of general discretion will always be the responsibility of the directors.

In representing the members of the organization and acting as their 'trustee,' directors have three basic duties:

1. *The duty of diligence*: this is the duty to act reasonably, prudently, in good faith and with a view to the best interests of the organization

2. *The duty of loyalty:* this is the duty to place the interests of the organization first, and to not use one's position as a director to further private interests

3. *The duty of obedience*: this is the duty to act within the scope of the governing policies of the organization and within the scope of other laws, rules and regulations that apply to the organization. Directors also have a duty to comply with the organization's governing documents, and to ensure that staff and committees of the organization comply as well.

A wide range of laws and statutes apply to corporations and individuals. The aware and diligent director ensures that the organization complies with these. In particular, any organization that is an employer has statutory responsibilities to its employees including:

- paying wages
- providing paid time off for holidays
- making deductions from wages and remitting these to the government
- providing a safe workplace, and
- protecting employees from discrimination and harassment.

Liability of directors: A director who fails to fulfill his or her duties as outlined above may be liable. The term 'liability' refers to the responsibility of directors and organizations for the consequences of conduct that fails to meet a pre-determined legal standard. Usually, the term 'consequences' refers to damage or loss experienced by someone, and being responsible for such consequences means having to pay financial compensation.

Liability arises in the following three situations:

- 1. When a law (statute) is broken. The consequences of breaking a law are:

- paying a fine
- having restrictions placed on one's rights or privileges, or
- being imprisoned.

2. When a *contract* is breached or violated, where a contract is a legally enforceable promise between two or more parties. The consequences of breaching or violating a contract are:

- correcting the breach through some form of performance or service, or
- paying financial compensation.

3. When an act, or a failure to act, whether intentionally or unintentionally, causes injury or damage to another person (*tort*). The consequence of intentionally or unintentionally injuring or damaging another person is:

- payment of a remedy in the form of financial compensation.

Clearly, volunteer directors, often unknowingly, take on a range of legal responsibilities and face many potential liabilities. Non-profit organizations recognize that this can be quite daunting. As a result, these organizations 'indemnify' their directors for liabilities that they might incur in carrying out their duties as directors. To 'indemnify' means to put someone back in the same financial position as they were in before. An indemnified director would be compensated for the following:

- legal fees
- fines that were paid under a statute
- a financial settlement that resulted from a lawsuit, or
- any other legal obligation that a director was required to fulfill.

To keep on the right side of all requirements, board members in their obligations as governors must:

- Carry out the fiduciary responsibilities
- Take actions and make decisions that reflect legal and financial responsibility. Speak up when holding an opinion different from the majority
- Attend meetings and committees. Be prepared to discuss the business on the agenda entailing reading materials in advance
- Act honestly and in good faith and in the best interests of the organization
- Demonstrate knowledge regarding the organization, its strategic plan, existing governance policies and by-law
- Act in the best interest of the organization and subordinate personal interests to those of the organization
- Act with reasonable care in all financial decision-making.

DESIRABLE DIRECTOR COMPETENCIES

While not everyone will be strong in all competencies, most nominating committees will strive to find individuals who demonstrate these qualities as their presence strengthens the board overall.

Personal/Interpersonal Competencies	Competency Description
Interpersonal Relations	• Establishes trust, respect and rapport • Demonstrates collegiality and an ability to meet and interact with people at all levels • Demonstrates diplomacy, tact, skill and discretion when dealing with others
Communication	• Ability to listen • Able to present ideas and thoughts clearly
Integrity/Ethics and Values	• Is able to separate personal interests from organizational interests • Represents information accurately and completely • Keeps commitments • Behaves in an honest, forthright manner in all situations • Challenges unethical behavior in others • Sets an example for others to follow
Negotiating/ Persuading	• Acts assertively when required – can defend and support positions • Manages disagreements with others in ways that preserve ongoing working relationships • Assists the board in making effective trade-offs • Builds on points of agreement to achieve alternatives that optimize satisfaction
Team Work	• Speaks positively about the team (board colleagues, staff, organization) • Energizes others (board members and senior staff) to achieve goals • Identifies others' strengths and weaknesses and adjusts own interventions to maximize team output • Publicly credits others • In conflict, encourages or facilitates a beneficial resolution
Insight/judgment	• Exercises authority wisely • Selects options and takes action with due consideration of organizational culture and politics
Conceptual and Critical Thinking	• Able to define problems, issues and opportunities and their salient aspects • Can recognize assumptions and evaluate arguments • Determines the authenticity, accuracy and worth of information or knowledge claims • Ability to change ones view based on the evidence

TIME

In exercising these responsibilities, directors bring hindsight, oversight and foresight to the organization's work, asking:

Hindsight

- What was accomplished last year?
- What were the results?
- What did we learn about how to improve?

Oversight

- What is happening in the current year?
- What is changing in our environment?
- What issues are we encountering that challenge our Plan assumptions?

Foresight

- How are our members changing in their needs and expectations of us over time?
- How will the organization sustain itself over time?
- What are emerging issues in the profession that we need to pay attention to?

APPROACH

According to Richard Chait, Bill Ryan and Barbara Taylor, there are three modes of governing and a board must do all three. Boards should ensure attention and "agenda space" for discussions that cover all three categories as set out below. Most boards have not developed the third aspect – the *generative* mode of governance. It is typically under-utilized.

Fiduciary

- Stewardship of tangible assets, being rule-driven, institutionalizing

Strategic

- Deciding the winning strategy, monitoring the getting from A to B (being logical, prioritizing, monitoring)

Generative

- Deciding what to pay attention to, how to frame things, exploring meaning and root causes where there are no easy answers or obvious strategy

The generative mode involves directors *framing the issues* – a key job of leadership. Generative governance requires real dialogue about cutting-edge issues and allows probing of assumptions, logic, and values behind any strategy. Generative conversations precede policy and strategy and may result in a policy or strategy. Given that these conversations can be free ranging, directors should be disciplined and remember that once they start to want to guide the *daily operations* of the organization, boards must step back into their policy-making and oversight role.

THE POWER OF QUESTIONS

Asking the right questions creates better dialogue and decision-making. It is often said that the main function of a board is to ask the right questions.

Good boards do not "wave things through," trusting that staff have done all the thinking and believing their job is only to approve. The board does its due diligence job independent of trust. Questioning is about exercising oversight, understanding situations, and constructing better strategies and responses. Directors ask questions to gain assurance that the thinking is sound and to minimize risk, maximize leverage and ensure sustainability. As well, the integration of multiple perspectives through frank discussion can help the organization better plan change that will have human and financial implications. Leaders can and must reflect on the unintended consequences over time of their decisions.

Board members must be able to recognize when questions need to be asked but sometimes culture can get in the way. There may be a tacit comfort level the board likes to maintain. It may feel like one is criticizing staff to ask for more explanation or to probe an assumption, or like going against other directors who seem ready to move on. In fact, the best board members are ones that can be effective right at this juncture!

Phyllis Yaffe is a boardroom leader in Canada and well known in the corporate governance sector. She was the first female CEO of a Canadian publicly traded broadcasting company and made the transition to board chair and lead director through various organizations including Ryerson university, Cineplex, and Torstar Corp. In an article in the July-August 2016 issue of the Director Journal of The Institute of Corporate Directors, Yaffe is talks about the value of questions from balanced, diverse boards:

"That is the hardest thing on a board – asking questions. You come into a room, you don't know the other people, don't know the company as well as they do, and it takes a bit of nerve to start asking hard questions. And if you don't ask those hard questions, the train moves on. If you have more people with diverse backgrounds willing to ask hard questions, you will have a more effective board. And if you have a more effective board, you have a more effective company."

Christo Norden Powers speaks to the overriding attitude and intention that works best. Questioning is:

- To clarify
- Find facts
- Understand
- Empower
- Improve the situation, and to
- Find out what will work best.

Directors can ask themselves during a meeting:

- Do I have enough information?
- Do I understand what is going on here?
- Do I understand the implications?
- If in a year's time this issue comes unstuck, and I have to explain myself, what standard will others have expected of me?
- If this was my money at stake, what would I

- Are the risks clear to me?
- Does the proposal/information feel right to me?
- Even if it feels OK, how sure am I that it is the correct/ best option?
- How can I fill the gaps so that I can be satisfied?

do?

- What a good director/business leader do?
- What standard of leader do I want it be?
- What is the courageous and right thing to do right now?
- What values are important for me to live by right now?

SYSTEMS THINKING

David Renz—a professor of public policy and Director of the Midwest Center for Nonprofit Leadership at the University of Missouri–Kansas City— pushes us to think about governance differently. In the January 1, 2013, edition of *Nonprofit Quarterly*, Renz updated his original 2006 article to offer "Reframing Governance II". In his view, governance is now a term that should not be applied to "boards" alone, but to a new level in our communities. He writes: "It used to be that boards and governance were substantially the same: the two concepts overlapped. But with time and a radically changing environment (i.e., changes in the complexity, pace, scale, and nature of community problems and needs), the domain of "governance" has moved beyond the domain of "the board."

He goes on to say: "The scale of these problems has outgrown the capacity of our existing freestanding organizations to respond—sometimes in terms of size, but especially, and more important, in terms of complexity and dynamism. Therefore, we've organized or developed our response at yet another level: the inter-organizational alliance."

It is the rare organization that can single-handedly address their lofty vision statements and missions. Innovation often comes from seeing things from a different point of view, which these arrangements make possible.

In its systems-aware and collaborative mindset, a board must ask:

- *Who knows something about this issue or opportunity that we don't know?*
- *Who can and will work with us on this?*
- *Who can bring assets and resources?*
- *How do we build capacity of the system, not just of our own organization?*

Progressive board members are realizing that some of the knowledge necessary for developing organizational success will be found through interaction and indeed co-creation with stakeholders. When organizations create this space for learning, and deeply understand their stakeholders' experiences and real-life issues, the chances increase that fresh energy will be generated to address the issues and find new solutions. Boards have to recognize that without this input, they and their organizations will always know less than they think they do! Boards have to ask:

- *Who are our different stakeholders?*
- *How do they experience us?*
  What are their needs and expectations? What outcomes are they looking for?
- *Are we having the right conversations and with the right people in the room?*

Growing the capabilities for boards to be effective in overseeing this relationship arena will take time. The tool kit for this board work is only now developing.

To gain Stakeholder Perspectives:

- know who the stakeholders are, their characteristics, and what is important to them;
- consider stakeholders in the development of your board profile;
- ensure the not-for-profit organization has stakeholder engagement strategies and deploys them;
- ensure regular briefings of the board regarding stakeholder interests and issues;
- move board meetings to stakeholder settings to enable opportunities for informal networking before and after the meeting. Ensure directors know what is appropriate and not appropriate for them to share in stakeholder relations. For example, directors may be encouraged to listen but avoid weighing in on operational matters, and to share the mission and goals of the organization, explaining governance processes;
- utilize advisory councils, multi-stakeholder panels, task forces and focus groups—especially ad hoc and short-term. As questions evolve and issues are framed, the best people to be involved will shift;
- when making major decisions, ask “how will stakeholders see this?” and “what is our obligation to stakeholders in this matter?”
- embrace transparency generally so that stakeholders have access to organizational and governance information;
- consult with members/clients, partners, funders, and so on, as part of the strategic planning process. Genuinely listen to different points of view that spur organizational learning and growth. Ensure there is a feedback loop so that people feel heard.

BOARD EVALUATION

Boards are responsible for the quality of their own governance.

A powerful argument for undertaking Board evaluation was expressed by Jeffrey Sonnenfeld in his September 2002 Harvard Business Review article titled “What Makes Great Boards Great : It's not rules and regulations. It’s the way people work together. ” He wrote:

“Lack of feedback is self-destructive. Behavioral psychologists and organizational learning experts agree that people and organizations cannot learn without feedback. No matter how good a board is, it's bound to get better if it's reviewed intelligently.”

The objective of board evaluation is to provide directors with an opportunity to examine how the board is operating and to make suggestions for improvement. Typically this evaluation explores how the board is working as a whole, board role performance, board structure, governance processes (succession-planning, new director orientation, etc.) quality of information to the board, relevancy of meeting agendas, effectiveness of decision-making, and group dynamics.

CONCLUSION

A high-performing Board lasers in on what truly matters for the organization. The fundamental starting point is leadership by directors. What we are learning about governance is that it is not qualifications that count but how a board member chooses to "be." Good governance must be encouraged and modelled by the chair and all directors. All should have high expectations of one another and make every meeting count. All board members must work together to grasp the strategic context within which the organization is positioned -- identifying what elements drive short and long term success, deciding when to buck norms, rethink and reinvent, and when to value the status quo.

Given the challenges, wise directors are open-minded. However passionate they are about the cause, good directors are obligated to look cool-headedly at options rather than trying to make the world fit their fixed point of view. That objective perspective is, in fact, their obligation. If all this sounds challenging, it is... and rewarding. It is also critical. Our organizations depend on good governance.

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