



LEADERSHIP ACUMEN Issue 11

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Making Time For Good Governance

Today's standards for Governance just aren't the same as in the past, and many of our Governing bodies are struggling to change their processes and approaches in recognition of these new demands. Unfortunately they take time – time that those in governance roles are struggling to find.

I remember as I grew up in my service on Boards, the oft repeated advice from my elders:

“The most important job of Board members
is to hire a good CEO, then support him/her
to do a good job.”

While this clearly is sage advice, it certainly isn't enough to properly discharge my duties as a Board member, Council member, or Governor these days. Good Governance has become a much more demanding endeavour.

Good Governance
=
Exerting Good Judgment & Decision-making in a more networked world
+
Empowering of Management toward clearly established Vision
+
Effective Oversight via establishment of Outcomes Measures & Accountability Reporting
+
Public Communication, Engagement, and Access
+
Proper Discharging of your various Duties

These demands and the governance 'work' required to meet them is taking more time than in the past... Time that many feel they don't have to give; time that hasn't been properly built into Governance agendas; time that isn't often identified when we recruit new Board members. Governance today simply requires increased (non-management) Governance work than ever before.

Understanding Implications for today's Governance Expectations

In observing and working with a variety of governing bodies: health region Boards, corporate Boards, civic government Councils, crown corporation Boards, condominium Boards, post-secondary institution Governors, food marketing Councils, professional association Boards, church Boards, federal/provincial government Cabinets, charity Boards, district school and social services Boards, and more; I am struck by several paradoxes:

- How can a Board that meets 3 – 4 times a year know enough about what is going on in the organization and the industry/community it operates within to exert good judgment? Yet, how can they gather more frequently based on busy schedules?

- How does a Board comprised of individuals with little or no executive and/or industry experience “empower” the CEO? Yet how do we ensure independence of Directors, representation of community, and diversity of perspective?
 - How does a Board exert oversight without establishment of clear outcomes and values for the CEO/Management Team to report against? Yet how do Governors really know what is important to measure given only a very part-time attention to the ‘business’?
 - How does the *Board* exert effective public communication, community engagement, and ‘access’ if everything is delegated/handled by a corporate communications department reporting to a CEO.
 - How does an individual with the title “Chairman, President and CEO” avoid conflicts of interest?
 - How do we get enough time from Directors/Governors/Council/Cabinet members to actively fulfill their:
 - Duty of knowledge
 - Duty of care
 - Duty of skill and prudence
 - Duty of diligence
 - Duty of trusteeship and investment
 - Duty of management/delegation
 - Fiduciary duty
 - Other duties (For a more complete description, see CSAE’s publication *Duties and Responsibilities of Directors of Non-Profit Corporations*)¹
- in a world that is increasingly more complex and fast-paced?

If we think that the only time required discharging these duties and providing good governance is the time spent attending Board meetings, then we are mistaken. However, simply dividing up the tasks doesn’t necessarily work either, as much of the duties are common accountabilities of every Board member. Particularly important to avoid is the situation where the Board Chair (either by default or by design) ends up spending a lot of their time working on Board aspects to the exclusion of other Board members.

We must be able to find Board members, who are able to learn, stay informed, prepare for meetings, and carry out activities outside Board meetings. We must allocate resources in the organization’s budget to support the important governance work, without expecting the CEO or Corporate Secretary to support the Board in doing its own job. [These can take the form of a part-/full-time Board Secretary or the new ‘trend’, Corporate Governance Officer (CGO).] We must find Board members who can handle complexity and also work into their schedules necessary time, under the realization that governance expectations today go far beyond just acting with the best of intentions. This may mean into the future, that those who serve, serve on fewer governance bodies.

Thus there are several important points to address:

1. Today’s legislated and/or community expectations of Boards are rising quickly and far beyond the traditional. This is happening without the attendant realization of what challenges this presents in the recruitment of effective Governors. Regardless, Directors must respond.
2. As we approach the looming “succession” requirement for a new generation of Board members, we need to be developing appropriate expectations for service. We need also to build a recruitment and ‘farm team’ approach that will ensure sustainability of the Governance body with competent members.
3. As we download more and more responsibility to community levels and voluntary Boards, we need to be developing community capacity to serve on Boards at the same time. [See the work of Altruvest.]²
4. Liability levels seem to be increasing even for well-meaning and community-minded individuals serving on Boards. Thus, we must explore new mechanisms to inform, develop and assist people in discharging all of their duties instead of just doing their best with good intentions.

So how much time does it take to “do” good governance? Of course, that depends on the type of organization you govern and the complexity of the industry/community in which you operate.

But, let's assume that you are attending the meetings you need to and are reading all the preparatory documents in advance. Let's also assume you serve on at least one Board committee (i.e.: Audit, Compensation, Governance, or Quality). You are probably averaging 2-3 days per month for a mid-sized corporation or not-for-profit organization under traditional expectations. Now let's look in more detail at the rising expectations for discharging your other duties as governor/director/politician.

Duties in Detail

These duties have both legal and general community frames of expectation. In most jurisdictions today, the general community-level of expectations has superceded the existing legal precedents. Therefore it is important for those in governance roles to attend to both the legal minimums and the changing social standards.

Duty of Knowledge

A Director is expected to know more than the "common person" about the corporation/organization and its "business". This includes knowledge of the governing by-laws and the operating bases of the business or government or association or charity.

Governors must also understand the marketplace and/or community in which it operates and how the organization delivers its products and services. This might require regular reading of newspapers, web-reports, and/or industry journals. For Council members or Cabinet Ministers, this means clearly understanding what their government programs actually do, and the kinds of clients and contractors used. It also means understanding how they might affect the various inter-regional or international trade agreements in place. For these and non-government situations, this duty likely requires regular interaction with other communities, own community members, clients, other stakeholders, etc. so as to understand the value their organization provides and how they are seen in the community/marketplace.

This does NOT mean doing the work that the CEO/Management is hired to perform. It DOES mean understanding the dynamics, issues, trends surrounding the organization and its products/services so that appropriate vision, mission, outcomes measures can be established by the Board and acted upon by Management and staff.

This "work" of a Director can take an addition hour or so every couple of days, and perhaps even involve a dedicated block of time every few weeks to formally interface with community elements – members, chambers of commerce, clients, special interest groups and clubs.

Duty of Care

Generally this duty centers on the concept of prudence. In some cases, both the elements and standards of "care" are being defined and re-defined regularly in our communities. Toronto Stock Exchange recommendations, Institutes of Chartered Accountants Guidelines, Corporations Acts, The Sarbanes-Oxley Act, World Bank/IMF standards, Ratings Agencies, and Media Access to Information requests, are examples of ever rising expectations for this duty of care of governance.

Recently publicized examples of imprudence and malfeasance have been featured in media around the world. Increasingly, ethical practices expectations, transparency practices, community/public engagement and others are considered

important work of those in the governance role – separate from management – to evidence the fact that the organizations are truly acting in good faith and in the best interests of both the organization and the wider community.

An excellent example of the new work and effort required to meet these newly evolving standards, is the 2002 Annual Report and Proxy Circular of Abitibi Consolidated.³ These exemplary documents were not achieved with “traditional” time allocation and processes at the governance table. However, they were done with a view to evolving regulation, new recommendations, changing expectations, and the personal reputations of several professionals on the Board.

An important aspect of this duty is the realization that professionals such as lawyers, accountants, consultants, etc. are usually held to a higher standard of care than regular Board members; and regular Board members are held to a higher standard of care than the average citizen. [By community as well as law.]

The amount of time required to fulfill this duty also obviously varies; however this is one area where the rapidly rising “bar” of expectation is requiring more and more time and effort by those in a governance role.

Duty of Diligence

This speaks to the requirement of Directors working to be as fully informed as possible about the various aspects of the organization: operational, financial, political, risk, etc. Here the duty addresses the integrity of both Directors and the Organization itself, and their overall reputations.

Traditionally this includes, but is not restricted to:

- preparation for Board meetings
- being active in dialogue both inside and outside Board meetings
- regular attendance at Board and Committee meetings
- voting in a knowledgeable way
- ability to exert good decisions on the issues and challenges faced by the organization

Recently, increased Governance expectations have started to create a “dynamic tension” between Board members and Management; between Political leaders and Civil servants.

The CEO, management and Staff are paid to look after the organization 24/7/365 (24 hrs a day/7 days a week/ 365 days a year). These professionals will obviously have a more thorough understanding of the organization than those in governance. However; Board members must work to understand the “business model” or “professional model” or “political model” that applies. They must also work to be informed enough to ask good questions of management that will help the governance body truly understand the risks and opportunities faced by the organization.

Finally, Board members must be able to assess and ensure that the CEO/Management is not acting/recommending things that are illegal or likely to negatively affect the reputation and future sustainability of the organization. This can be tough!

Depending on the issues and challenges being faced by the organization; proactive time spent by the governing members is preferable to the “clean-up” time required if the issue gets out of hand. Aspects such as Ethics policies, Values statements, and Issues briefs may be important investments of time on top of the traditional expectations.

Duty of Management/ Delegation

Ultimately, responsibility and accountability for all acts of the organization rests with the Governance body. Practically, we delegate responsibilities and authority to the CEO, who in turn further delegates these to others who will guide and manage the organization on a day-to-day basis.

In return for these delegated responsibilities and authorities, the Board/Council/Cabinet must also establish accountability and reporting mechanisms. Further, the Board will often establish policies and/or limitations to guide the CEO/Management. I regret to say that even these basics are not common practice today (in a concrete and criteria-referenced manner), and leave many Governance bodies open to significant problems.

Most important to effectively fulfilling this duty is the joint establishment (between Board and Management) of Outcomes Measures to guide the success of the organization; plus the institution of mechanisms to measure and report on the activities of the organization towards these goals.

In some not-for-profit organizations of limited financial means, the work of governance has been blended with the voluntary day-to-day implementive work to keep the organization functioning. This needs to be cleaned-up in both form and function. It is a rare individual that can mentally separate their governance work from their voluntary operational work. What’s more, the focus on the day-to-day work, inevitably takes away from the individual’s ability to accomplish their governance work. Thus, it is advisable to separate out the Governance role and body, from the other implementive volunteer roles, committee structures, and members that do the implementive work of the organization.

Finally, the Directors must establish policies and mechanisms to hold themselves accountable to shareholders, members, stake-holders, and community in an increasingly transparent manner. Governance without Outcomes Measures and Accountability structures is fast becoming unacceptable in almost every jurisdiction in the world.

This is important and time-requiring work for those in the governance role. However, done properly, it should help avoid conflicts of interest, nepotism, corruption, and malfeasance, plus set the bases for effective transparency.

Fiduciary Duty

Despite how it sounds, this duty has nothing to do with financials. And, yet it is arguably THE most important of all the duties. There are three key components to a Board member carrying out their Fiduciary Duty:

1. The Director must act honestly and in good faith.
2. You must be loyal to and act in the best interests of the organization. (This means you can NOT represent a constituency or negotiate for some parts/members/shareholders of the organization over others.)
3. You must subordinate every personal interest to those of the organization/corporation – no conflict of interest, no “contract voting”.

Addressing the Governance Time Crunch

With today's governance time demands more clear, we need to consider how to handle them more effectively.

For Politicians and Corporate Directors that are paid and for whom their paid governance work represents a significant portion of their earnings, then this additional time demands is similar to the increased complexity and time demands of full-time executives. They have to "get to" the extra work and improve their capacity, attention, and comprehensiveness of their jobs. Perhaps added support resources to provide research and facilitate briefings, meetings, and community engagement will help. That said, these Governors must also avoid the trap of working to be paid per diems, instead of efficiently and effectively handling increasingly complex governance demands.

For those who do governance work as part of their organization's community outreach, for a small honorarium, or as their personal volunteer contribution to community, the demands are actually threatening the supply of good competent directors for needy organizations. At the very time that some corporate executives are being exposed for questionable ethics or corrupt practices, causing communities to demand that the Governance members of almost all organizations re-establish credibility and contribute to increased insight, oversight, and strategic thinking; good governance people are turning away from this kind of service. Others that are used to contributing their governance services in traditional approaches, do not always see/understand the need for more in-depth and comprehensive governance contributions.

Unfortunately, there are no easy solutions to this evolving Governance time challenge. On one hand we have the need for more thorough Governance practices. On the other hand, more and more individuals are time-pressed in their personal and professional lives, and are becoming more uneasy with the amount of time required to fulfill their Governance duties.

Perhaps as individuals we should take on fewer select Governance roles, and give them the time and attention they now deserve to do them well. This will necessitate the recruitment of a whole new group of Directors, Governors and Councillors to take up the slack. Perhaps we can find them from non-traditional, yet highly capable sources: students, untapped communities, and different social groups. I do find that many people want to serve and put-back into community. Many will make a great contribution if they can see they can make a difference and see some support/recognition, but turn away if they sense getting bogged down in bureaucracy or petty politics.

Governance today is an important service to community, no matter what form it takes. It may well be one of the most crucial areas of leadership to address in our own country and around the world in the next few years. In this regard, Governance should be seen as a desirable, though not easy, leadership contribution – well supported with training, guidance, and support resources. And, we need to work together to find ways to make the time demands more reasonable and attractive to those we involve, yet still fully execute our duties.

I would be grateful to those readers who have found solutions to this pressing dilemma if they would share their ideas with me so we can feature them for others benefit in a future article.

Exploring the Web!

The connections below take you to sites with more perspectives on the different elements of Governance.

http://www.csaе.com/public/public.asp?C=39&K=220630&ListingByName=*ALL*

Canadian Society of Association Executives (CSAE) Bookstore with Monographs for Board Governance and other Association Leadership Resources.

<http://www.altruvest.org/>

Altruvest is a charitable organization in Toronto, Canada that links qualified and interested business people to serve as volunteer Board members for the charitable and not-for-profit sector. Volunteers benefit by gaining valuable senior leadership experience, and the NFP organizations benefit by gaining access to a network of potential Board members they wouldn't normally access.

<http://www.rbc.com/governance/index.html>

Royal Bank of Canada is an exemplary company – here's their website Governance elements for your reference.

<http://phx.corporate-ir.net/phoenix.zhtml?c=98093&p=irol-governance>

Agrium's Governance reference.

<http://about.telus.com/governance/index.html>

TELUS Governance reference.

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