

Background on Board Governance¹

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Introduction

The Board of Directors of an association or scientific society can be an elected or appointed body but no matter how it is constituted, its responsibilities are to provide fiduciary care and governance of the organization on behalf of the owners of the association. In most not-for-profit associations, the owners are its members.²

Individual members of the Board have a fiduciary relationship with the association. The duties that are owed by the Board member are among the highest standards of conduct that the law imposes. Board members are required to act honestly, in good faith and in the best interests of the Board and those it serves, and to apply the level of skill and judgment that is reasonably expected of a person with their knowledge and experience. As an official of the association, a Board member must meet certain standards of conduct and attention in carrying out his or her fiduciary responsibilities to the organization for which a court will judge conduct. The three duties are obedience, loyalty and care.³

- **The Duty of Obedience**
The governing board must comply with local, state and federal law and conform to the organization's tax exempt standing, articles of incorporation, bylaws and policies. This duty forbids acts outside the scope of corporate powers.
- **The Duty of Loyalty**
To meet the duty of loyalty a board member must act in good faith and must not allow personal interests to prevail over the interests of the organization.
- **The Duty of Care**
This duty requires volunteers to be diligent and prudent in managing the organization's affairs, including direction setting, cultural modification and management oversight. Volunteers are charged with governing and must handle the organizational duties with such care as an ordinary prudent person would use under similar circumstances or in the management of his or her own company.

Board members are expected to monitor and inquire when there is something that alerts them to a wrong direction, something outside the mission of the association, or an illegal action. The duty of care is not about inquiring as to why something was done a certain way, but to monitor, through the information the Board member receives, that action taken is in the right direction, within the scope of the nonprofit's charter, and legal.

¹ This paper draws heavily on the Background to Governance prepared by and for the Kawartha Pine Ridge Canada.
² See The Will to Govern Well, Tecker, Frankel and Meyer for further discussion of the unique "DNA" of associations in which owners are also customers and workforce.

³ BoardSource 2004

The Board's Governance Role

Governance is both what the board does – the areas in which it exercises its governance role and the approach it takes when exercising its role. Governance is also a term used to describe how a board does its work – the processes used by the board as it fulfills its fiduciary obligations.

To understand 'what' a board does requires an understanding of the areas in which the board exercises a governance role. At its most basic, a Board approves the strategic direction and programs of the organization, approves the resources available to execute those approved strategic directions and monitors the implementation of that execution. Boards typically have responsibility for strategic planning, quality, financial oversight, management oversight of the CSO, risk, communications, culture, and governance.

A board has authority subject only to the authority of the members. And while bylaws of some organizations may delegate some specific exceptions of authorities and accountabilities from the Board to the Executive Committee of the Board, in general a board has three specific roles – the corporate role, the legislative role and the adjudicatory role.

The Corporate Role

In its Corporate Role, the Board has the responsibility for hiring the chief staff executive and, usually through either a Compensation or Executive Committee, overseeing the negotiation/renegotiation of the contract and the evaluation of the CSO's (chief staff officer) performance and subsequent compensation adjustments.

The Board is also the keeper of the strategic plan. As the "keeper" of the plan, the Board monitors the plan's execution at a strategic, not tactical, level, annually reviewing the continued appropriateness of the organization's strategic direction and progress in that direction and making adjustments as needed. In the strongest organizations we've dealt with there is a 'manageable' sized board. That Board also serves as the strategic planning committee, and by doing so, ensures that all members are familiar with and in agreement on the overall strategic direction of the organization, as well as in agreement on purpose, values and vision of the organization. Ultimately the Board approves the strategic plan and ensures that its decisions are consistent with the strategic direction embodied by the plan.

The last element of the corporate role is to oversee the programs and resources of the organization. This does not mean that the board engages in oversight at the tactical level nor is it involved in daily operational decisions about the execution of program strategy. It does mean that the Board makes strategic decisions about the relative allocation of resources across possible program or business lines and it outlines expectations of what those business lines should be capable of delivering when effectively executed. Here the Board's focus is on 'what are the right things for the organization to do' rather than on whether or not the organization is doing things right.

Within this context, the Board has responsibility for both organizational quality and financial integrity. From the quality perspective, the board identifies appropriate performance standards and indicators (metrics) for the work of the organization, as well as determining and evaluating its own performance standards. The strongest boards are those which regularly assess their own behavior and consistently work to strengthen their effectiveness. From the financial side, the Board serves as steward of the finances of the organization, approving financial policies and ensuring the annual budget is developed consistent with those policies and that a reserve policy is both in place and adhered to. Further, a Board is responsible for overseeing the integrity of the internal controls and approving audited financial statements.

The Legislative Role

The second major role of a Board is a legislative or policy role and that policy focus is divided between internal focus and external focus. On the internal side, the Board establishes operational policy. The nature of this policy focus still normally stays at the strategic level. For instance, a board might set the compensation philosophy of the organization, deciding that the preferred pay point for staff is in the 50th percentile rather than the 75th percentile of the pay range or that the organization is going to offer a SEP retirement savings program rather than a defined contribution benefit plan. And while the Board establishes these broad internal human resources policies (usually based on recommendations from the CSO), the Board does not get involved at the level of establishing salaries for any position other than the CSO.

On the external side, the Board approves positions on external issues of interest to the membership. These are typically the public policy stands that the organization will take, either legislatively, scientifically or educationally. This policy setting may or may not be informed by member referendum or informal member feedback, depending on the culture and past practice of the organization.

The Adjudicator Role

As the world in which associations operate has become more complex, the adjudicator role has become an increasingly important one. This role encompasses the Board's responsibility for decision making. The traditional choices have been to choose between positions presented, to compromise or create an alternative solution more acceptable to all participants or to decide not to decide, which is, of course, a decision – a decision to defer.

In light of the limitations of these traditional approaches to decision making, a new approach has emerged. Called Knowledge Based Decision Making⁴, in its simplest form, it moves the group from the limitations of formal parliamentary procedures like Roberts, O. Garfield Jones, or Sturgis where the motion controls the scope of the discussion, and into the committee of the whole. In that setting the group is free to engage in a wide ranging dialogue designed to explore all possible solutions to large and complex issues facing the organization. The process begins with the identification of a mega issue question that addresses an issue of strategic importance to the organization, usually a question that cannot be answered yes or no and that needs to be addressed over a significant time period. These are typically not single discussions. A backgrounder is then prepared addressing these four knowledge based questions:

1. What do we know about our members', customers', stakeholders' needs, wants and expectations that is relevant to the question at hand?
2. What do we know about the evolving dynamics of our members' marketplace that is relevant to the question at hand?
3. What do we know about our capacity and strategic position that is relevant to the question at hand?
4. What are the ethical implications of this discussion?

Using the answers to those questions as a shared information framework, a multi-step dialogue then occurs that identifies the options available to the organization, evaluates the options, determines areas of consensus and assigns accountabilities and timeframes for action. The results of the dialogue are then placed into a motion and brought before the Board for deliberation and a vote.

⁴ Ibid, Tecker, Frankel and Meyer

Governance vs. Management

A Board's governance role can be described in terms of what it is not – a board is not responsible for day-to-day management of the organization. In simplest terms, the board governs and staff manages. A Board's role is to see that the association is well managed but it is not the role of the Board to do the managing. This is a critical and challenging distinction. When the Board crosses the line to delve more deeply into matters that should be solely within the purview of management, the Board loses both its focus and the time that it needs to spend on Board business.

Creating an understanding of the difference between the two roles (as well as delineating what falls where) should be done at the onset of each new Board's term. Otherwise, the desire to be a "good" Board member and appropriately execute one's fiduciary responsibility can be confused with micromanaging and stepping into the responsibility assigned to staff. This confusion is understandable, particularly when Board members new to their roles have come from affiliate or local organizations that did not have the luxury of staff and therefore no such distinctions existed. Board orientation makes clear what appropriate fiduciary responsibility truly is and what behaviors are supported and encouraged within the culture of the organization.

It falls primarily to the Board Chair to help the Board maintain its governance role. The Chairperson does this by carefully setting Board agendas in concert with the chief staff officer in advance of the board meeting and by carefully facilitating the discussion during Board meetings. Where Board members demonstrate by behavior a lack of understanding of the different roles, it is the responsibility of the Board Chair to create clarity. If that clarification role falls to the Chief Staff Officer, it is too easy for Board members to misinterpret statements as inappropriate power plays rather than clarification of agreed upon roles.

In an article in *The American School Board Journal* (May 2006) entitled *Working Together*, authors David Larson and Robert Rader outline responsibilities for School Boards and Board Directors, respectively. We have adapted their recommendations to the broader world of associations.

The Board's Responsibilities

1. To establish and regularly review policy, ensuring they are lawful
2. To hire, support and conduct an annual formal evaluation of the CSO
3. To refer administrative communications, including questions, complaints and personnel inquiries to the CSO as appropriate and to follow Board established protocol
4. To seek the CSO's input before taking action
5. To adopt and oversee the organization's budget, which is responsive to the needs of the members and the profession or industry represented by the association
6. To delegate to the CSO responsibility for all administrative functions, except those specifically reserved to the Board through Board policy and legislation
7. To conduct an annual self evaluation of its own leadership, governance and teamwork
8. To ensure the appropriate resources for the CSO to carry out his/her responsibilities
9. To have the Board Chair work with the CSO to develop agendas for meetings
10. To communicate and interpret the organization's mission to the members, customers and stakeholders and to listen and incorporate appropriate perspectives into dialogue
11. To support the decisions of the Board once made

The Chief Staff Officer's Responsibilities

1. To implement policies approved by the Board and recommend changes, if appropriate
2. To develop, implement and inform the Board of administrative procedures necessary to implement Board policy
3. To serve as the association's chief executive officer
4. To respond to communications as appropriate and ensure adherence and appropriate response through adopted communications protocols
5. To keep Board members advised about association issues in a timely manner
6. To ensure preparation and implementation of an annual budget that supports the strategic plan
7. To provide the Board with information they need to make informed decisions
8. To oversee the organization and manage its operations on a day to day basis
9. To participate, as appropriate, in the annual self evaluation of the Board
10. To work closely with the Board chair in developing meeting agendas and to ensure needed information is provided to support the decisions needing to be made
11. To hire and fire personnel for the association in keeping with best practices and to ensure each employee is properly supervised and evaluated
12. To serve as the key effective member of the staff leadership team

Joint Responsibilities

1. To work together with the membership to develop a purpose, values, vision and goals for the organization and to monitor achievement of those goals.
2. To provide leadership for the profession or industry by creating strong linkages with appropriate organizations, agencies and other stakeholder groups
3. To collectively execute their legal responsibilities and ensure adherence to Federal, state and local laws
4. To participate in continuous learning specifically geared to their respective organizational roles
5. To support Board actions and decisions
6. To establish a regular opportunity to discuss Board/CSO relations
7. To institute a process for planning strategically that positions the organization for success

Fostering a Culture of Respectful Board Behavior

The behavior of the Board establishes the leadership culture of the organization and establishes expectations of what behaviors are not only appropriate but rewarded. In the strongest Boards we've encountered, the following board behaviors are in place:

1. Board discussion focuses on desired outcomes consistent with strategic intent and core values, rather than detailing how an outcome is to be achieved or re-managing work after its been accomplished.
2. Discussion addresses what needs to happen next, rather than on what has already been done.
3. Emphasis is on using information; not collecting it.
4. The Board honestly considers issues of capacity, core capability, and strategic position in deciding what to do.
5. The Board makes the investment in individual and group behaviors that earn and sustain trust.
6. The Board sustains a deliberative process that gives governance the tools it needs to lead intelligently.
7. The Board encourages policy-making as opposed to political behavior.
8. The Board focuses on the value of what the organization produces for its stakeholders rather than on the distribution of power inside the organization.

9. It understands that its fiduciary responsibility is to define what will constitute value and ensure that value is delivered.
10. The Board encourages member and staff leadership to collaboratively assume accountability for delivering value, in an honest, open and well-informed partnership
11. The Board chooses to view mistakes that will occur as a natural result of risk taking and innovation, as a rich opportunity to be diagnosed and learned from.
12. It redefines measurements of success on the basis of indicators of quality and not just quantity.
13. The Board neither enables nor accepts dishonesty or manipulation, even when it is the path of least consequence.

In addition to these behaviors as a group, individual members of the Board demonstrate their own leadership competencies through appropriate behavior including:

- Each Board member stands in a fiduciary relationship to the Board. As a fiduciary, each must act honestly, in good faith and in the best interests of the association.
- Board members must avoid situations where their personal interests will conflict with their duties on the Board. They must also avoid situations where their duties to the Board may conflict with duties owed elsewhere. It is advisable to have all Board members sign an annual conflict of interest statement in order to ensure all are clear about expectations in this regard.
- All Board members must respect the confidentiality of information learned in the execution of their Board service.
- Board members must act solely in the best interest of the association.
- Board members bring to the Board diverse background, skills and experience. Board members will not always agree with one another on all issues. But in the discussion, disagreement should be with the idea, not with the person holding the idea, and all discussions should occur in an atmosphere of mutual respect and courtesy.
- Board members are expected to commit the time required to perform Board duties.
- Board members need to develop and maintain sound relationships and work cooperatively and respectfully with the Board chair, other board members and association staff.
- Properly authorized Board actions must be supported by all members of the Board. Board members who have voted against a motion must adhere to and support the decision of a majority of the Board.
- Board members are expected to:
 - Attend Board meetings and meetings of Board Committees on which they serve, either physically or electronically
 - Prepare for each meeting by reading Board materials in advance and coming prepared to contribute to the discussion
 - Remain up to date on board correspondence, email and other communications
 - Offer constructive contributions to Board and committee discussions
 - Voice conflicting opinions during the Board session but keep those conflicting opinions limited to the Board meeting

Board Representation

Governance's processes for work and decision-making must be transparent in order to earn the trust of members. In order to do this, members need to view governance as credible and legitimate. When the process of governance is viewed as credible, members view the process by which decisions are made as one based on rationality, not on political power, and on the reasonable use of information gathered from a variety of sources. When the process is viewed as legitimate, members believe that all of the views of all the important voices were part of the conversation that led to the judgment.

Transparency and trust in governance occurs when board members understand the difference between being “*representative for*” vs. being “*representative of*.” If Board members believe they are “*representative for*,” then they see themselves as the elected representatives of a particular constituency. *They voice only the self interests and opinions of that constituency, and vote only on behalf of that constituency’s interests.*

Board members who view their role as ensuring that the views, beliefs, values and self interests of the constituencies they know the best are on the table as part of the conversation, are “*representative of*.” They ensure that others are informed of the views of the constituencies that they understand the best. *They participate in a collective dialogue and deliberation based on what is in the best interests of the organization itself.*

Leaders who are part of national governing bodies by virtue of their role in local or statewide governance must have a particularly clear understanding of this distinction. Leadership’s role in this case is to represent the best interests of the organization whose chair they are sitting in at the moment: *When on the national board, their fiduciary responsibility is to that board. When on the local or state board, their fiduciary responsibility is to that organization.* On both boards, their role is to be representative of; not representative for.

Summary

Governance as we’ve described relates to the decision making units of the organization and the relative powers, authorities, and responsibilities that each possesses and the way in which they exercise those powers, authorities and responsibilities. The most effective Boards do this in what we call a Leadership Partnership with staff.

Positive indicators of a successful leadership partnership include:

- Clarity and understanding of roles, where neither behaves as superior or inferior.
- Commitment to mission and values
- Good communications and information
- Long range goals and a defined set of results including a common understanding and expectations of where we’re going, why, how we’ll get there and how we’ll know we’ve arrived.
- Cooperative evaluation of progress including a board committed to appraising both progress and achievement, staff management accountable to perform and demonstrate performance, and volunteer workgroups committed to and accountable for accomplishing work.

We’ve focused here on the Board, but good governance principles also apply to the other units of governance. Over the past few years, many associations have done much to streamline their governance systems in a world that required more decisions be made more quickly and with better knowledge. This background paper reflects what we observe to be best practices among association Boards that are operating in the best interests of their members and in a manner that delivers maximum value to their organizations.