Virtus Interpress and partners' project: "Corporate governance challenges:
What do practitioners advise academic researchers?"

BOARD CULTURE TRUMPS STRUCTURE AND PROCESS

By John T. Dinner

When looking back at the evolution of governance over the past 20 years or so, there's been an interesting and marked progression from a structural focus in the early days to a recognition that board work processes have a significant impact on good governance. More recently, there's been a recognition that board culture is the third, and perhaps most important, leg of the governance stool.

Board culture really speaks to the group dynamics and boardroom behaviours among directors and with management: the free expression of ideas and issues, the trust and confidence among directors and with management, and a collective focus on the organization's mission and vision in the decision-making process.

The basic fiduciary requirement that directors act in the best interests of the corporation and exercise a duty of care is often viewed in legal terms. Similarly, director independence has been defined in terms of structural perspective with respect to management. Both have significant behavioural and board culture implications that trump any legal or structural requirements when it comes to board effectiveness.

Rather than defining director independence in terms of an individual's relationship with management, real, or behavioural independence, is more about a director's ability to exercise meaningful oversight and holding management accountable, without sacrificing the ability to also partner with management to help the organization deliver on its goals.

As much as legislation, regulations and governance guidelines seek to create a standard or benchmark for governance, director behaviour and the boardroom dynamic is not something that can be mandated. While Sarbanes-Oxley, the Securities Exchange Commission's governance regime introduced in 2002, has transformed and helped to give better focus to the work of many boards, legislation can really only get at structure and process. Behaviour in the boardroom and personal conduct cannot be easily legislated. And even if it could be, it would be virtually impossible to enforce.

When I think of healthy boardroom behavior and a constructive, partnership dynamic between directors and management, I look for substantive evidence that:

- Directors have the opportunity and the freedom to ask the substantive and relevant questions that will give them the necessary comfort and confidence that they have fulfilled their oversight obligations;
- the relationship between the Board and Management is characterized by the highest possible level of trust and open communication;
- it is not acceptable for Directors to simply conform, acquiesce, criticize or control matters during boardroom deliberations;
- the Board understand their role and that of Management and guards against becoming operationally focused, micromanaging or acting in a manner that is passive and subservient;
- Management regards the Board as a strategic partner and asset and actively seeks the advice and counsel of Directors; and,
- meetings characterized by fulsome dialogue and debate with Management respecting the need for Directors to conduct meaningful due diligence.

At the heart of a healthy boardroom behavior is the degree of candor between the Board and Management. By candor, I mean that freedom with which directors are able to raise issues and speak out. A lack of candor slows down decision-making and represents one of the most significant obstacles to board success. A lack of candor blocks smart ideas, fast action, and directors from effectively using their skills and experience.

Candor helps to ensure all views and issues are put forward for consideration so that directors are equipped to make the best decision possible relative to organizational strategy and other corporate considerations. This inherently means that a healthy board culture exists when contrarian views, various options and constructive challenging or testing of conventional thinking and the status quo are welcomed, encouraged and expected.

Poor performance in the boardroom is usually indicative of a failure to appropriately recruit, orient, and integrate new board members. Without being properly equipped, board members may not understand their fiduciary responsibilities and individual directors may not embrace board work as teamwork. Many boards, though properly structured and supported with governance best practices, still encounter troublesome behaviors that point to poor people skills on the part of individual directors.

If a good defense against director liability is a good offense, boards put themselves at risk if they don't take responsibility for their own performance. Key to this is adopting lead governance processes and practices, implementing them effectively, and assessing whether they are contributing to the board's performance in meaningful ways – all with a high degree of candor.

To help promote common understanding of and adherence to what constitutes acceptable or required behavior, many boards adopt an explicit code of conduct that define the standards to which directors must adhere. Again, a compliance approach to board culture does not necessarily engender constructive group dynamics and respectful relationships.

Codes of conduct and other rules-based approaches to influencing director behavior cannot address the common cultural ailments faced by many boards:

- a sense that the Board is spinning its wheels and rehashing old issues;
- discussion that is based on opinion rather than factual data;
- long and protracted discussions that lose focus on the original topic;
- the frequent introduction of "wildcard" issues not originally on the meeting agenda;
- an inability to explain or strong defend a Board's decision;
- a lack of support by every director of the collective decision of the Board; and,
- a nagging feeling that decisions do not represent the best thinking of the Board.

Evidence of a healthy board culture most often shows up in the decision-making process. Once a board has reached a decision, all directors need to take ownership for and support the outcome, regardless of personal views. Individual directors need to respect the collective nature of board decision-making, recognizing that there is rarely one right answer or approach to addressing a particular issue or opportunity. While good debate and deliberation are hallmarks of a healthy board within the confines of the boardroom, director solidarity in public is also a critical requirement.

As much as board structure and governance processes play a critical role in the decision-making process, it is really the boardroom culture that will determine the quality of those decisions, the health and effectiveness of the board and an organization's success in achieving its vision.

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