

The Institute of Corporate Directors

Agencies, Boards and Crowns

Understanding the Dynamics



INSTITUTE
OF CORPORATE
DIRECTORS

Better Directors. Better Boards. Better Business.



Agenda

- Why ABCs?
- The Environment for ABC Governance
- Fiduciary Duties and Director Liability
- Competencies and Experience – What’s required?
- Trends in Board Selection
- Q&A

Panel

- Glenna Carr (Moderator)
- John A. MacNaughton
- Chris Portner
- Bill Sheffield
- Ron Robertson



John A. MacNaughton

- Chairman,
Business Development Bank of Canada
- Chairman, Nominating Committee,
Canadian Employment Insurance Fund Board
- Founding President and CEO
CPP Investment Board

Chris Portner

- Partner, Osler, Hoskin & Harcourt LLP
- Director of numerous private companies
- Former Trustee of the Hospital for Sick Children and former Chair of Bloorview Kids Foundation
- Advises a number of Crown corporations

Bill Sheffield

- Director, Canada Post
- Director, Ontario Power Generation
- Director, Velan Inc.
- Director, Houston, Wire & Cable

Ron Robertson

- Managing Partner, Odgers Berndtson Ottawa
- Chair of the Odgers Berndtson Board Recruiting Practice in Canada
- Director of several human resources consulting practices
- Has served on the boards of many non-profit organisations

Glenna Carr

- Chair, Atomic Energy of Canada Limited
- Former Chair, Independent Electricity System Operator, and Technical Standards & Safety Authority
- Former Director, 15 Boards of public and private corporations

Glenna Carr

Why ABCs?



Why ABCs?

- Need organizations that operate like commercial entities, but serve the public interest
- Owned or controlled by government
- Operate with a high degree of autonomy, but are accountable to government
- Many similarities in mandate to private sector, but operate in a very different environment.



Many Similarities with Private Sector Boards

- Approve strategy, business plan, capital projects
- Identify main risks
- Oversee compliance
- Report to the shareholder
- Some hire CEO, oversee succession



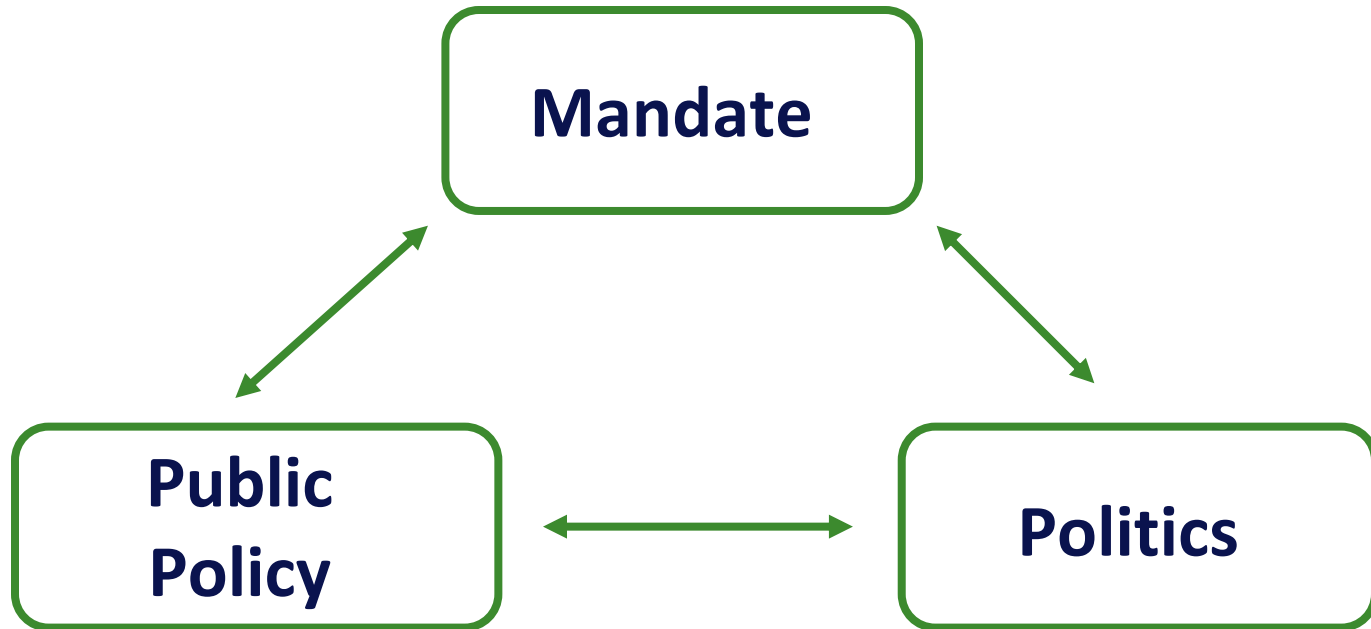
John A. MacNaughton

The Environment for ABC Governance



The Environment for ABC Governance

The Virtuous Triangle



The Virtuous Triangle

- The dynamic which establishes an ABC board's mandate is different than in the private sector
- Must respond to both public policy and political forces
- Those wishing to serve on ABC boards need to accept this reality and be committed to making it work

Politics

- Politics - The Elephant in the Room?
- An inherent part of the equation
- "Partisan" is a poorly understood concept
 - Should neither qualify nor disqualify potential directors



Chris Portner

Fiduciary Duties & Director Liability



Fiduciary Duties & Director Liability

- Duties in public vs. private sector
- Role of government in determining corporate policy of ABCs
- Potential effect on directors' duties
- Protection from liability



Directors' Duties: Public vs. Private Sector

- What are the directors' duties
- To whom are fiduciary duties owed
- Governments' ability to issue directives
- Means by which authority is exercised will vary



Government Direction

- Legislation that affects how ABC boards operate varies widely across Canada
 - Federal approach
 - Two very different examples of provincial approaches:
 - Alberta Bill 32
 - Ontario Bill 201

Effect on Directors' Duties

- Board's determination of what is in ABC's best interests does not stand alone
- Exercise of statutory authority, ministerial direction and moral suasion can all affect direction
- Government inaction may have the same effect
- Directors must stay abreast of legislation

Protection against Liability

- Statutory regimes
- By-Laws
- Contract

Table discussion – Question 1

Do the realities of politics and partisanship threaten ABC directors' ability to discharge their fiduciary duties?



Bill Sheffield

Competencies and Experience

What's required?



Competencies and Experience – Public vs. Private Sector Boards

- A number of similarities with the private sector
- Several additional elements related to public sector nature of ABCs
- Networking and stakeholder management
- Fish-bowl skills and ego management

Similarities with private sector....

- Financial literacy
- Understanding of governance
 - Prior exposure and education are critical - learning on the job is tough
- Listening skills
- Concern for good board chemistry



Some additional elements

- Understand the beast
 - Adaptability, flexibility and comfort with ambiguity
- Interest in public policy + political sensitivity
 - Concern for government's agenda and reputation
- Ego management

Networking and Stakeholder Management

- Three-way focus: upward , downward and outward
- Provide education on “what we do” + information on “how we’re doing”
- Chairs must stay connected with key ministries e.g.
 - Treasury Board, Transportation, Finance etc. federally
 - Super-Crowns, Health, Consumer and Commercial, Industry etc. provincially
- When there is turn-over, go back and do it again

Fish Bowl Skills and Ego Management

- Fishbowl skills + thick skin
 - Held to very high standards on numerous fronts
 - Directors become face of ABC in their community, social circle
- Ego management
 - In for the blame but never the credit
 - Political connections no longer useful – conflict of interest codes are increasingly stringent

Ron Robertson

Trends in Board Selection



Trends in Board Selection

- The backdrop
- Focus on competencies and qualifications is increasing
- Processes for selection are changing
- Still a “Work-in-Progress”

The Backdrop

Two key trends:

- Explosion of the Internet
 - Increasing media and political scrutiny
 - No tolerance for pure patronage
- Increasing complexity in operations of ABCs
 - Requirement for strong, business-like boards

More Focus on Qualifications & Competencies

- Board make-up must reflect a balance between:
 - Qualification / competency needs
 - Imperative for broad representation of Canadian public

Changing Processes

- Appointments continue to rest with government-increasing role for PMO/ Premier's office—**but**
- More boards doing competency grids and succession planning
- Ideally, chairs discuss their needs with government
 - Success depends on mutual trust
- Recruitment is more difficult
 - Cannot rely on ads; outreach is key

Work in Progress

- Notwithstanding new accountability frameworks, there is scepticism:
- Federal: *“There are still problems. Boards are an ideal setting for the government of the day to dole out political bonbons”*
- Provincial: *“Typically, a change in government leads to a change of Board Directors... They appear to be going through a public process, but have not really changed.”*



Table discussion – Question 2

What are the three top challenges for directors with private sector experience taking up a public sector appointment?



How can directors navigate effectively in ABC world?

- Recognize shifts - refresh mandate, corporate plans
- Study calendar for opportunity - laws, budget, Throne speech, election
- Value deputy ministers, public officials – different perspective
- Engage governments and stakeholders - over and over again

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