

What can we Learn from Governance Crises and Public Scrutiny

- Lyn McDonnell CAE. C. Dir.

Circumstances can thrust an organization into sudden public scrutiny – a flare of politics that becomes known outside the organization, over-whelming events, a “bad apple” employee, the sustained neglect of good governance, or a single hapless decision by the board.

We don't hear much in the mainstream media about governance failures within associations as associations are usually more member-facing. Public-serving organizations come under more scrutiny. The media can be swift when it learns of trouble and, before any formal investigation is done, paint people and boards as villains – whether true or fair or not. Meanwhile, the damage is done. The reputation of the entire organization suffers, morale plummets, and everyone loses focus on the organizational mission.

What happens in other NFPs can be instructive for all. Director responsibilities are common across the board. What can associations learn from governance challenges and crises in not for profit organizations?

Let's take a few examples from the past decade and extract some take-aways for directors today:

Toronto Humane Society 2009-2010

This was a news story in the Toronto media through 2009-2010. A former lawyer resigned presidency of THS in 1984, and then was re-elected to the board in 2001. In 2009, again serving as President, he was led out of the shelter in handcuffs in November and animal cruelty charges were levelled against him and senior managers. The charges were later dropped but the reputation of the subsequently dropped but not before the bad public publicity cut into fund raising and diminished staff morale. What emerged was a story of the President, a volunteer position, micromanaging a crowded and understaffed shelter. Interestingly, that President left the board but then later sought re-election. In a mailing to the charity's voting members he criticized the then-current board. That current board was recommending by law changes that would limit directors to two terms as opposed to a situation when some board directors in the past had served more than 30 years. Since then, with a new CEO, and a new Board, the organization has righted itself.

<http://www.theglobeandmail.com/news/national/toronto/toronto-humane-society-aims-to-win-back-public-support/article1676580/>

Lessons learned:

- Strive for clear functional role descriptions and accountabilities for officers (including the senior volunteer, the CEO and others)
- Encourage a measure of board turnover through a deliberate process of term limits and/or director evaluation

- If you are the new leadership on a board, make decisive moves to send a message that things have changed

Lessons learned:

- Optics are important in conflict. Ensure the board demonstrates not only its accountability for such keystone relationships but symbolic demonstration of it through partnering with the CEO in meetings.
- Be clear on delegation to the CEO and agree on key messages

Halifax School Board 2006

In 2004, Halifax Regional School Board members were elected. By 2006, they had a reputation for being dysfunctional. One member had cited violation of his rights when he didn't want to accept a newly assigned seat at the table. Members would walk out of meetings in consternation. One trustee sold products to a school where her husband was principal. A board retreat was planned to settle the conflict although not all planned to attend. Instead, Nova Scotia's then Minister of Education dismissed all 13 directors. Her reasons were that they had failed to comply with their code of ethics. The Daily News on Wednesday, December 20, 2006 printed in mammoth font "you're fired" ringed by the faces of all 13 board members.

<http://www.cbc.ca/news/canada/nova-scotia/story/2006/12/19/hrsb-casey.html>

Lessons learned:

- Establish board teamwork and a respectful tone to allow board members to disagree without rancour.
- Ensure strong conflict of interest guidelines are in place with an orientation to them and enforce these strictly.

MADD Canada 2007

In 2007, Mothers Against Drunk Driving Canada were fighting for their reputation after investigation revealed that 81% of its money was spent on fundraising and administration. The national charity had used paid telemarketers, door knockers and direct mail companies to raise funds. While that was not unusual, a seemingly large portion of those expenses were being treated as charitable expenses because of the information and education involved in the fund raising methods. The founder of the organization, a volunteer, had been dismissed from the charity's finance and policy committees following a teleconference involving five of the 17 board members. He told the media that he and other veteran volunteers were raising questions regarding the fundraising practices and had been critical of the national head office. Despite the good work the organization did and the efforts of many local volunteers, the organization found itself on the front pages of the newspaper in 2006.

Lessons learned:

- Boards should make sure their own accounting policies and practices pass the “sniff test,” reflects accepted practices of their sector, and when in doubt seek opinion from regulators.
- Welcome discomfort if it is on the important stuff. Boards can get into “groupthink” and may alienate lone voice critics who ask the tough, but necessary, questions.

Niagara Parks Commission 2009-2010

A governance review in 2009 uncovered problems at the Niagara Parks Commission. The Commission, a provincial agency, is overseen by a governors appointed by government – essentially to act as a board of directors. The audit found ethical breaches, perceived conflicts of interest, questionable practices and an “an old boy’s club” culture. The report stated that the commissioners were being treated as if they were royalty. Some were meddling in employee-related matters beyond their mandate as governors. When auditors investigated the commission’s procurement and leasing activities, they found gaps in recordkeeping, inconsistent tendering of contracts, and opaque decision-making.

<http://protectourparks.wordpress.com/2009/11/30/probes-uncover-ethical-breaches-at-niagara-parks-commission-2/>

Lessons learned:

- Ensure the proper atmosphere is established at the board table. Directors have a serious job to do and it is not a social club.
- Establish strong and transparent processes regarding procurement on significant contracts.
- Ensure role clarity between employees and the board

“Epi Centre”/ Centre for Health Intelligence (IICHI), Alberta, 2011

Board directors of the not-for-profit International Indigenous Centre for Health Intelligence (IICHI) found themselves again under criticism when they held the annual general meeting in Hawaii in the fall of 2010. Hawaii was where one of its board members lived, and according to the Centre’s leadership, Hawaii was the same cost or cheaper than meeting in Canada or somewhere else. The agency, funded by Health Canada, had earlier come under scrutiny because it was using a sole-source contracted company to provide all its staff and services – a company owned by the physician lead for the centre. The centre did not have any direct employees. The physician lead/manager said it was the board that asked him to use his company to provide staffing and other services, as the board did not want to take on that responsibility. It should be noted that several Chiefs had already formally expressed concerns to Health Canada regarding the Centre’s governance structure and service delivery.

Lessons learned:

- Ensure board orientation instills the highest regard for fiduciary responsibilities and an understanding that the board cannot delegate its ultimate accountability for all activities of an organization.
- Ensure proper tendering of major contracts.
- Listen to stakeholders who may have legitimate concerns for the organization's activity.

<http://www.cbc.ca/news/canada/story/2011/03/08/pol-epi-centre.html>

Montreal's SPCA/Canadian Society for the Prevention of Cruelty to Animals, 2007

In 2007, the Globe and Mail revealed that some donors across Canada felt misled when they learned that the Canadian Society for Prevention of Cruelty to Animals was operating solely in Quebec and was Montreal's SPCA. While CSPCA is the name under which the organization is incorporated, the French language fund raising did not use that name, and materials in neither language did not explain that CPSCA is not a national organization. According to its internal fund raising documents the Montreal SPCA had raised over the 1.6 million from more than 34,000 donors outside Quebec.

<http://www.sspca.ca/News/Articles/070206/document.html>

Lessons Learned:

- The board should insist on clear and ethical communications to supporters in order to demonstrate the desired values of organization and organizational integrity.
- What may be legally correct, may be offensive to some stakeholders.

In general, right-minded policy and practice helps avoid public -- or member challenges, and builds trust. Organizations may experience tough scrutiny and accusations of governance failures as a result of confused accountabilities, failures of internal controls, directors not living up to their duty of trust, dominant single "rogue" individuals, incompetence, or decisions on the slippery slopes of greed and hubris. In certain of these situations, board members can risk not only personal monetary liability, but their reputations.

An ounce of prevention is worth a pound of cure, as they say. Here is a list of some of the preventative measures your association can take:

- Adopt the gold standard : embrace the highest bar of good governance.
- Ensure everything you do can face public scrutiny. Promote a culture of doing what is right.
- Manage financial assets carefully.
- Assess prime areas of risk in your association and strengthen the quality of risk mitigation and/or avoidance in these areas.

- Ensure board members take their job seriously and work hard at it. Invest in board development. Make sure everyone knows what he or she should to understand and carry out their role.
- Don't "make allowances" or give staff "the benefit of the doubt" when you have a concern; speak up and ask questions.
- Watch that the board does not develop an overly "chummy" culture and avoids tension and conflict.
- Be especially alert to recommended shortcuts that keep administrative and governance costs down. Make sure that rationales they pass muster.
- Establish and maintain strong internal systems of accountability.
- Do deliberate succession-planning; plan for periodic board turnover.
- Ensure diverse sources of information to the board regarding accepted standards of sector practice.
- Plan to be as transparent as you can be prudently. Don Tapscott and David Ticoll said in 2003 "If you're going to be naked, you better be buff!"

Many organizations are rowing in this same direction and there are good resources available. Amongst many other free downloadable resources at <http://www.rogb.ca/npo/index.aspx> is a Director Alert produced by The Canadian Institute of Chartered Accountants (CICA) in 2010 called "Increasing public scrutiny of not-for-profit organizations – questions for directors to ask" in May 2010.

Imagine Canada, a national charitable organization focusing on supporting and strengthening charities and nonprofits, has developed a Standards Program currently in pilot but opening to all charities and public-benefit non-profits in the future. While not all associations will qualify for the program, or be interested to, we can learn from what will be foundational standards. http://www.imaginecanada.ca/standards/the_standards

Even good organizations doing all the right things can become caught in a crisis. In crisis, good boards will come together, show their mettle, and emerge better, stronger and more effective.