

Is it possible to develop a set of nationally applicable university governance best practices?

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Agenda

12:00 pm: Introduction and opening remarks (Jeff LeClerc)

12:05 pm: Presentation - Cheryl

12: 50 pm Audience Q&A – moderated by Jeff



In memory of Becky Dinwoodie

Treasured friend and valued
colleague

You are missed Beck.



A copy of this presentation is available at:

<https://universitygovernance.ca/more-from-the-author/>

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What am I trying to accomplish today?

- Awareness of broader government context
- Introduce ISO 37000
- Introduce the idea of a university governance best practices regime
- Encourage government to “stand back” from university governance



What exists outside the university sector?

Key Organizations



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières



What exists outside the university sector? Key Organizations - International



What these organizations say about good governance practices:

- Role of the Board
- Independence of Directors / Independence of thought
- Board Practices
- Audit Committees
- Shareholders/Stakeholders



“Comply or Explain” Governance Regimes

The disciplining power of this regime is the required public disclosure of governance practices that allows market participants to evaluate the effectiveness of the firm’s governance system and to make an informed assessment of whether the non-compliance is justified ... (See Luo and Salterio at p. 460)



An overview of ISO 37000 Guidelines

”Good governance lays the foundation for the fulfilment of the purpose of the organization in an ethical, effective, and responsible manner in line with stakeholder expectations” (p. vi)

- defines governance as “a human-based system by which an organization is overseen and held accountable for achieving its defined purpose” (p.1)
- “The governing body is accountable for establishing and maintaining an integrated organizational governance framework across the organization that coordinates these governance activities such that the organization realizes effective performance, stewardship and ethical behaviour” (p.7)
- Governing body must be competent: skills, knowledge & experience, criteria to measure progress, criteria for objectives, must assess its own competence/structure, must report to stakeholders (p.9)
- provides definitions of effective performance, stewardship, and ethical behaviour
- discusses the meaning of integrated governance, delegation, role of management, importance of sustainability and stakeholders



An overview of ISO 37000 Guidelines – what will universities like?

- Focus on sustainability
- Focus on stakeholders
- **11 governance principles:**
 - Primary principle (1) – purpose
 - Foundational principles (4) :
 - Value generation
 - Strategy
 - Oversight
 - Accountability



An overview of ISO 37000 Guidelines – what will universities like?

- 11 governance principles continued:
 - **Enabling principles (6):**
 - Stakeholder engagement
 - Leadership
 - Data and decisions
 - Risk governance
 - Social responsibility
 - Viability and performance
 - Outlines key aspects of practice for all of the principles.



Is the adoption and implementation of governance best practices possible?



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What complicates it? IMHO

- Individually unique university governance
- Universities perceive themselves as too unique
- Is governance a priority?
- Complexity of university governance environment
- University board independence
- Openness of universities to greater board effectiveness
- Limited role of university secretaries
- Limitations of ISO 37000



Would a governance best practices regime do damage to shared governance?



What's the value to universities?

- Organizations that are well governed deliver better value and avoid negative consequences:
 - “weaknesses in governance structure or a lack of governance transparency are associated with lower financial reporting quality, earnings manipulation and fraud” (Luo and Salterio, p. 463)
 - “comply or explain governance disclosure regimes allow firms to develop governance practices that are tailored to their unique set of circumstances and that on average these practices are associated with higher firm value and better performance” (Luo and Salterio, p. 475)



University Autonomy

“The ... expectation that universities can reasonably have of governments is that they will respect autonomy and governance. ... Autonomy does not mean – as some in the university would like it to mean – that government writes cheques, then stands back and watches. ... the challenge [for government] is to find the right level of engagement. Doing so requires them to recognize that trusteeship, oversight, and administration of a university’s plans and day-to-day activities have been entrusted to its governing bodies and senior administration”.

P. MacKinnon, University Leadership and Public Policy in the Twenty-First Century A President’s Perspective (2014)



Effect of Laurentian Insolvency:

- February 1, 2021 - Laurentian University of Sudbury (“LU”) commenced court-supervised restructuring proceedings under the Companies’ Creditors Arrangement Act (“CCAA”), in order to, obtain a stay of proceedings against it, and to provide an opportunity to financially and operationally restructure.
- Decision has had a devastating effect
- Decision to use the CCAA has been widely criticized and questioned - appropriateness of the CCAA for a not for profit broader public sector organization
- Very public legal battle between the university and the Auditor General of Ontario
- Provincial government reaction:
 - Bill 84 - <https://www.ola.org/en/legislative-business/bills/parliament-42/session-2/bill-84#BK9>
 - New universities
 - Warning of financial controls
- Federal initiative: Bill S-215 – An Act respecting measures in relation to the financial stability of post-secondary institutions. <https://www.parl.ca/legisinfo/en/bill/44-1/s-215>



Why is institutional autonomy good for government?

- Political distancing
- Limits Liability
- Stakeholder management
- Specialized leadership
- Protects academic freedom



How do we get to the right level of engagement?

- <https://universitygovernance.ca/responding-to-the-ontario-auditor-generals-oag-preliminary-perspective-on-laurentian/>
- Governance best practices
- Universities adopt a “comply or explain” approach
- Governments get out of university governance:
 - Get out of executive compensation
 - Get out of board appointments
 - Focus on accountability through agreements



Key Messages:

- There is no reason that universities cannot develop and comply with a set of nationally-applicable governance standards.
- Adopting and work toward best practices is an effective way to improve university value generation and public accountability.
- Institutional autonomy is better for government and society and essential for universities.
- By improving governance practices and ensuring appropriate attention is paid to the public interest, effective governance addresses key reasons for government intrusion into university autonomy.
- Governments should support and encourage the development of nationally-applicable university governance standards and then should “stand back” and remove themselves from governance of universities but hold universities accountable to governance best practices.



Resources Used to Prepare this Presentation

<https://www.osc.ca/en/securities-law/instruments-rules-policies/5/58-101/national-instrument-ni-58-101-disclosure-corporate-governance-practices-0>

https://www.osc.ca/sites/default/files/pdfs/irps/rule_20040326_52-110-audit-comm.pdf

<https://www.osler.com/osler/media/Osler/reports/corporate-governance/Corporate-Governance-in-Canada-2019-Review.pdf>

<https://www.securities-administrators.ca/about/who-we-are/>

<https://ccgg.ca>

<https://www.icd.ca/About-the-ICD/Our-Purpose>

https://smith.queensu.ca/_templates/documents/governance/reports/governance-disclosure-quality.pdf

OECD (2015), *G20/OECD Principles of Corporate Governance*, OECD Publishing, Paris.
<http://dx.doi.org/10.1787/9789264236882-en>

Luo, Y. and Salterio, S. E. "Governance Quality in a "Comply or Explain" Governance Disclosure Regime". *Corporate Governance: An International Review*, 2014 2.2(6): 460-481.

MacKinnon, P. *University Leadership and Public Policy in the Twenty-First Century – A President's Perspective* (Toronto: University of Toronto Press, 2014).

Additional Information on Governance Best Practices

- Canadian Securities Administrators
- Canadian Coalition for Good Governance
- The Globe and Mail – Board Games
- G20/OECD
- Note: Director training organizations like the Institute for Corporate Directors and the Directors College are also thought leaders in Canada promoting best practices.

How do these organizations affect governance standards? CSA

- CSA issued a set of guidelines (NI 58-101 Disclosure of Corporate Governance Practices):
 - Majority of independent directors
 - Chair is an independent director
 - Meetings of independent directors without dependent directors
 - Written board mandate: acknowledgement of stewardship obligation, integrity, strategic planning process, risk management, succession planning, governance, measures for stakeholder engagement, expectations of directors re. attendance etc.
 - Position descriptions for chair, chairs of committee and CEO
 - Orientation and continuing education
 - Code of Ethical Conduct
 - Nominating and Compensation Committees made up of independent directors
 - Process for skills/competency development applied to recruitment
 - Assessments of Board and Director effectiveness
 - Women on Boards and Senior Management
- NI 58-101 Incorporated into TSX Manual – with consequences for issuers who fail to adequately disclose non-compliance



How do these organizations affect governance standards? CSA

CSA – Audit Committees (Multi-lateral Instrument 52-110)*

- Speaks to the responsibility, composition and authority of audit committees
- Defines independence (“no direct or indirect material relationship with the [entity]” and focuses on independence of judgment of audit committee members
- Defines financial literacy – ability to read and understand a set of financial statements of comparable complexity to those of the organization an audit committee serves
- Mandates that organizations have an audit committee, auditor reports directly to the committee, audit committee must have a charter/terms of reference, audit committee must have responsibility for the relationship with the external auditor, must approve non-audit services.
- Composition: audit committee members must be directors, must be independent
- Audit committee must have the authority to engage independent counsel and other advisors and must communicate directly with both internal and external auditors.
- Full disclosure related to all requirements is required
- Companion policy expands on all of the concepts and obligations.

* Adopted differently in the different jurisdictions across Canada and not adopted by all jurisdictions.



How do these organizations affect governance standards? CCGG

Canadian Coalition for Good Governance:

Focus on enabling investors to assess the Canadian public companies in which they are invested by forcing clear disclosure relating to governance practices:

- “CCGG prepares best practices documents for reporting issuers to provide them with guidance on effective communications with shareholders emphasizing the substance of disclosure that investors expect of regulatory filings”.

CCGG reviews the annual disclosure documents (proxy circulars) issued by companies and prepares its own annual report profiling best practices in disclosure. Provides services to its members assessing the governance of particular issuer companies.



How do these organizations affect governance standards? CCGG

Thought leadership:

- Voting practices for directors (not by slate but votes for individual directors)
- Allowing shareholders a “say on pay” i.e. to vote on executive compensation practices
- Independence of directors/Independent judgment : meeting without dependent directors, avoiding director interlocks (directors serving on multiple boards together)
- Board Chair Independence – Board Chair not the CEO / Independent
- Board Composition, Diversity and Succession Planning: succession plans, evergreen list of potential directors, skills assessment and skills matrix, annual board and director assessment, term limits, measurable diversity, director continuing education, director compensation and share ownership to align director interests with those of shareholders, executive succession planning and management diversity
- Board activities: strategic planning – board’s role, strategic priorities, board oversight, risk management oversight – overview of risks, board’s role in overseeing risk, risk monitoring, stakeholder engagement – e.g. ethics hotline, advisory votes, dedicated email address, meetings, Chair’s letter to shareholders.
- Accountability – Disclosure of executive compensation, link between executive compensation and strategic plan execution and with effective risk management.



How do these organizations affect governance standards? **Globe and Mail**

- Annual Report – 20 years – Assess the governance practices of 220 plus companies and trusts listed on the S&P/TSX Composite Index
- Companies marked based on their own disclosure
- have their own methodology and list of items for review including:
 - Board composition: % of independent directors, % of audit and compensation committee independent, split role of Chair and CEO, minimal interlocks, number of women on the board, disclosure of practices related to women on the board, is diversity addressed?, is there a diverse composition?,
 - Performance evaluation of the Board
 - Independent directors meet without management
 - CEO succession planning
 - Director education processes
 - Director shareholding requirements
 - Disclosure of compensation policies and alignment of performance outcomes to compensation



How do these organizations affect governance standards? **Globe and Mail**

- Benchmarking of compensation
- Look back analysis – compensation/performance
- Shareholder advisory vote – say on pay
- Stakeholder engagement
- Stock options dilutive
- Equal voting rights for share classes
- Disclosure re. directors – biographies, attendance, consequences for poor attendance, age



How do these organizations affect governance standards? **G20/OECD**

- OECD Principles last updated in 2015
- Focus on the regulatory, legal and institutional framework for governance within the OECD countries
- Parts IV, V, and VI deal with role of stakeholders, disclosure and transparency, and responsibilities of the Board
- **About stakeholders:** respect the rights of stakeholders, provide redress for violation of rights, advocate for mechanisms for employee participation in governance, stakeholder access to reliable and timely information, mechanisms for feedback from stakeholders to the governing body



How do these organizations affect governance standards? **G20/OECD**

- **About Disclosure and transparency:** timely and accurate disclosure of material matters, ensure that disclosure covers financial and operating results, company objectives and non-financial information, share ownership and voting rights, remuneration of board members and key executives, board member information: qualifications, selection process, other directorships and whether they are independent, foreseeable risk, employee issues and relationships with other stakeholders, governance structures and policies.
- **Disclosure should be of a good quality.**
- **Annual audit:** independent auditor
- **Equal and effective dissemination of information**



How do these organizations affect governance standards? **G20/OECD**

- **About the Responsibilities of the Board:**
- **Corporate governance framework:** ensures strategic guidance, effective monitoring, board's accountability to the company and shareholders
- **Shareholders:** all treated fairly
- **Ethics:** high ethical standards
- **Functions of the board:** review and guide corporate strategy, major plans of action, risk management policies and procedures, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance objectives, monitoring corporate performance, overseeing major capital expenditures, acquisitions and divestitures
- **Ensure effective governance**
- **Select and manage key executives and align compensation with strategy and goals**
- **Formal and transparent board nomination and election processes**
- **Monitoring conflicts of interest and potential for abuse of assets**



How do these organizations affect governance standards? **G20/OECD**

- **About the Responsibilities of the Board:**

- Ensuring the integrity of the financial and accounting reporting systems, systems for risk management, financial and operational control, and compliance
- Overseeing disclosure and communications
- Exercising independent judgment on corporate affairs
- Setting up committees with clear mandates
- Board members able to be effective and are committed
- Board evaluation processes
- Training for employees on boards so they can function effectively

