

## Increasing public scrutiny of not-for-profit organizations - questions for directors to ask

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### Introduction

Not-for-profit organizations (NPOs) are operating in a climate of ever-increasing public scrutiny. Funders, stakeholders and the general public have high expectations of transparency and accountability, and their expectations of boards of directors are higher than ever before. There is also a growing focus on issues of accountability in the policy and regulatory framework that guides not-for-profit organizations.

Several large public not-for-profit organizations have recently faced allegations of improper procurement, travel and expense excesses and poor spending controls, generating significant negative media exposure. In many cases, the information forming the basis for the allegations was uncovered through a request for information from the organization itself. These allegations resulted in questions about the quality of oversight provided by the board, and have had serious effects on the reputations of the organizations and their directors.

The issue is not limited to large not-for-profit organizations. Many smaller organizations are dealing with increasing interest from members, funders and the public in issues such as the salaries paid to executive directors. Organizations that rely on fundraising must also be able to validate the cost effectiveness of fundraising activities and ensure the appropriate deployment of donated dollars.

In this climate of increased public scrutiny, it is imperative that boards of not-for-profit organizations be proactive in ensuring that sound policies are in place and that appropriate oversight occurs to confirm that policies are followed. Policies should be comprehensive and consistent with norms or best practices in the sector. Particular attention should be given to potential 'trouble spots' such as compensation, procurement, travel and expenses, and fundraising.

Gaps or failures in the organization's policy framework in areas such as these can lead to significant reputational risk for both the organization and its directors. The impact on the organization's reputation can last for years and can severely undermine its effectiveness. Directors must satisfy themselves that the organizational policy framework is robust enough to withstand scrutiny.

Boards of directors also need to anticipate potential requests for information from the public, media or special interest groups, and the implications of those requests. In some cases, disclosure may be legally required. In other situations, disclosure may not be required by law but public expectations of the organization may suggest disclosure is warranted.

This Director Alert presents a series of questions as a catalyst for dialogue at the board level regarding the organization's ability to withstand enhanced scrutiny. Not all of the questions will be relevant to all organizations. Many of the questions are intended for directors to ask management, while others are questions for directors to discuss among themselves.

## A. Policy Framework

The first step in preparing a not-for-profit organization to thrive in a climate of increased scrutiny is ensuring that there is a robust policy framework in place. Depending on the type of organization, there may be legal and/or regulatory requirements to comply with.

In a number of jurisdictions, government regulations, policies or directives have been issued that apply to many not-for-profit organizations funded by government. These guidelines commonly cover transparency and accountability, but may also address a range of areas that tend to garner public attention such as travel and expense claims, compensation and procurement.

For example, the provincial government of Ontario has recently released new procurement directives that provide detailed expectations about the procurement processes to be used in the broader public sector, which includes many hospitals, school boards, colleges and universities. Directors should be aware of key government regulations, policies and directives that affect their organization, including (but not limited to) those that impose specific obligations on the board.

Boards must regularly seek confirmation that the organization's policy framework is current and reflective of best practice. Larger or more complex organizations may find that third party validation of the comprehensiveness of the policy framework is good practice.

Questions for directors to ask about the policy framework:

1. Does the organization have a sufficiently robust set of policies related to areas that are the most likely foci of scrutiny, such as:
  - a. compensation (including salary, bonuses, benefits and pensions)
  - b. procurement
  - c. hiring and employment
  - d. travel, hospitality and expenses
  - e. fundraising
2. Is there a process in place to ensure that policies are reviewed at least annually?
3. Does management periodically compare the policies of the organization against industry standards and industry leaders and report the results to the board?

## B. Overseeing Policy Interpretation and Application

Many of the recent cases that have garnered significant public attention appear to be cases involving poor oversight rather than weak policies. A policy framework cannot be effective if policies are not consistently followed. Boards must satisfy themselves that policies are followed and that mechanisms are in place to verify adherence throughout the organization. This may require courage and determination on the part of directors to keep questioning until required information and assurances are obtained.

Boards must also ensure that mechanisms are in place to monitor consistency in the interpretation and application of the policies, and that management's interpretation of key elements is consistent with that of the board.

There should be clear guidelines in place to address exceptions to policies. Such guidelines should include board level engagement for exceptions to policies in areas that are likely to be sensitive.

Questions for directors to ask about the interpretation and application of policy:

1. Is the board's oversight sufficiently thorough to allow directors to satisfy themselves that management is ensuring the consistent interpretation and application of the policies?
2. How does the board ensure that management's interpretation of the key elements of policies is clear and consistent with board interpretation?

3. How is the consistent interpretation and application of the policies monitored? How is the effectiveness of monitoring mechanisms assessed?
4. What systems are in place to communicate and educate personnel about policies?
5. Does management provide signed declarations that policies in sensitive areas such as procurement, compensation and travel and expense claims have been followed? Do board members review, question, and satisfy themselves that the systems that lead to the declarations are appropriate and effective?
6. Do independent auditors conduct periodic audits of policy compliance, particularly in relation to the senior staff of the organization?
7. Is there documentation of board level discussion and decisions, including a rationale, on exceptions to policies in any area that might be sensitive?

### C. Issue Identification and Management

Boards of directors should receive regular reports from management, and should also scan the external environment to identify issues that could affect the organization. Seeking feedback from stakeholders can be an important part of this process.

Issues identified may require amendments to policies, or could lead to increased scrutiny in particular areas of the organization's operations. Responsiveness to emerging issues is crucial to ensuring that improvement occurs and risk to the organization and its reputation is minimized.

Questions for directors to ask about issue identification and management:

1. How does the organization monitor trends and media reporting to identify issues with the potential to affect the organization?
2. How does the organization seek out and act upon feedback from stakeholders?
3. Is sufficient time allocated for discussion of emerging issues at board meetings?
4. Does the organization have responsive processes in place to allow for timely corrections to policies and practices, as well as communication of the corrective action taken, should an issue arise?
5. How does the CEO keep board members informed about developing issues as they arise?

### D. Disclosure of Information and Protection of Privacy

Boards must be aware of any legal obligations to disclose information. They should consider the public and reputational value of increased transparency, while remaining conscious of their responsibility to ensure protection of information (such as personal information) that is appropriately kept confidential.

Legislated or regulatory disclosure requirements vary within the not-for-profit sector, depending on the type of organization and the area within which it operates. In the broader public sector (which consists primarily of organizations such as hospitals and universities with close ties to government), the application of Access to Information legislation is expanding, reaching more and more government organizations and arms-length agencies.

In some jurisdictions, legislation on transparency and accountability which applies to the broader public sector has resulted in public disclosure of organizational performance results along with related information such as meeting minutes, compensation levels and expense claims. The range of information to be made public for these organizations is only going to grow. In addition, there will likely be a spill-over effect as organizations not strictly subject to disclosure legislation choose to disclose voluntarily.

## D. Disclosure of Information and Protection of Privacy (continued)

Registered charities are required to file certain information with the Canada Revenue Agency, which is then made publicly available on the Agency's website. Bill C-470, introduced in the House of Commons on March 3, 2010, would mandate disclosure of the names, titles and compensation of the five highest-paid employees at each registered charity. It would also allow for the revocation of charitable status of organizations paying salaries above a certain threshold.

Regardless of whether disclosure is mandated by law, public expectations of transparency of organizations receiving government or donor funding are increasing across the board. In view of these growing expectations, many leading organizations choose to view any legal requirements as a minimum level of disclosure. They are aware of the potential benefits of transparency to the organization's reputation.

Voluntary best practices developing within the not-for-profit sector also reflect the trend towards increased accountability and transparency. For example, Imagine Canada's draft policy on transparency includes a general disclosure principle, which states that "an organization should make information about its operations, including its governance, finances, programs, and activities, widely available to the public. They also should consider making information available on the methods they use to evaluate the outcomes of their work and sharing the results of those evaluations".

Failure to disclose information, even that which is not strictly required by law to be disclosed, can undermine the public's confidence in an organization and lead to the perception that the organization is hiding something.

A timely response to information requests can be an important component of trust and good relationships with stakeholders. The timeliness and openness of the organization's response can fundamentally shape the way in which the matter is viewed by the broader public, even when a serious lapse has been uncovered. This can make the difference between an issue being seen as a major breach with substantial impact on an organization's reputation or merely as a policy gap that was quickly acted upon and fixed.

For example, in the medical field, the concept of open disclosure and transparency has been adopted as not only the right thing to do but as a powerful force to help bring closure to patients and their families when they have concerns. Organizations such as the Canadian Patient Safety Institute have issued disclosure guidelines to assist health professionals and organizations in open disclosure. These guidelines have been embraced in a number of provinces, thereby upholding the patient's right to be informed of an adverse event and the giving of an apology by members of the health care team where appropriate. Elements of this approach will likely spread into other parts of the not-for-profit sector.

However, transparency must be balanced against the protection of information appropriately kept confidential, particularly personal information, and compliance with applicable privacy legislation. The board of directors is responsible for ensuring that such information is protected. The potential liability as well as reputational damage to an organization which does not adequately protect personal information can also be severe.

A carefully considered policy addressing the organization's approach to disclosure and protection of privacy can help ensure that it is ready to respond to requests for disclosure in a timely and effective manner.

### Questions for directors to ask:

1. Has the board discussed and documented overall principles related to disclosure?
2. Is the organization's policy framework consistent with the principles of disclosure?
3. Does the organization have a policy and protocol to deal with information requests?
4. Does the organization have policies related to disclosure and transparency even for situations in which disclosure is not required by regulation or law?
5. Does the protocol include minimum turn-around times for information requests?
6. Will the organization fund information request responses itself or charge the requestor?
7. Does the organization have a policy to ensure that confidential information is protected?

## E. Conclusion and Additional Information

Policy gaps, failures of oversight or poor responses to information requests can cause significant harm to not-for-profit organizations. This can include reputational damage, loss of stakeholder trust, and reduced donor funding. This document is intended to help not-for-profit directors ensure that the organizations they govern are prepared to respond to increased public scrutiny.

Guidelines referred to in this publication can be found at:

Bill C-470 *An Act to Amend the Income Tax Act (revocation of registration)*

<http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=6906&List=toc>

Canadian Patient Safety Institute *Disclosure Guidelines*

<http://www.patientsafetyinstitute.ca/English/toolsResources/disclosure/Pages/default.aspx>

Imagine Canada Ensuring Excellence *Draft Standards*

[http://www.imaginecanada.ca/files/www/en/standards/draft\\_standards\\_2010.pdf](http://www.imaginecanada.ca/files/www/en/standards/draft_standards_2010.pdf)

Ontario Ministry of Finance *Procurement Policies and Procedures*. Supply Chain Guideline, April 2009. <http://www.fin.gov.on.ca/en/ontariobuys/documents/scg.html>

Further resources for not-for-profit organizations can be found at [www.cica.ca/npo](http://www.cica.ca/npo)

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