

The Skills to Govern: The Challenge for Public Sector Governance Bodies

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Abstract

Notions of corporate governance and its extension to specialized oversight bodies for specific public sector agencies are not new. Over time, governments have created a wide range of oversight bodies charged with the direction of public agencies that are often placed at arms length from central government functions. The degree of independence of these agencies varies. The relative capacity of the oversight boards to exercise full control is often conditioned by that very independence. This paper, building on the specific case of police oversight in Canada, will address what skills oversight bodies need from their members to carry out their role. The Canadian experience in policing is varied but rich in insight on this issue. That, combined with a review of the literature in this area, points to the need for governments to focus more energy not simply on putting the right people on boards, but in ensuring that their competencies and skills continue to be developed as they undertake their governance roles in the context of the functioning of these boards. The experience would suggest that there are valuable parallels with developments in private sector corporate governance. These translate into potential actions of use to improved public sector oversight governance.

The Public Sector Governance Challenge – principals and agents?

Governments around the world create various forms of arms length organizations and unique forms of governance and oversight for them for a number of reasons. The range is extensive and often quite specific to the situation. Governments all have large commercial operations over which they retain an ownership interest, often manifest in the board of directors. Many other functions are delegated to arms length organizations where, for a variety of reasons, specialized oversight boards or commissions are created. It is in this realm that this paper will find its focus.

The study of governance has generally focused on the private sector. There is a rich literature on governance theory and practice as well as a wealth of research. As Davis and Useem have pointed out, governance in that sector addresses “the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment.”¹ This leads directly to the application of agency theory in defining the governance relationships. The application in this area is to ensure that governance structures and processes ensure that the agent is sufficiently constrained and aligned that he or she complies with the principal’s best interests.²

The application of agency theory to public sector governance certainly, on its face, appears to be a sound one. As argued in the traditional view of agency theory³, the creation of a board or commission to provide oversight to a particular agency of government would strengthen the notion that the principal, in this case the state, wants to strengthen its control over the agent, in this case a special purpose body or discrete entity within the array of government structures. The question that arises

in any survey of the many oversight mechanisms of agencies in the public sector is why here and not there? Why does not the normal political/bureaucratic oversight model (call it ministerial or departmental control) prove insufficient? There is little to suggest a consistent application of specified criteria in the creation of specialized oversight entities. However, some patterns are discernable. Oversight bodies that could come under the broad rubric of governance may be created when:

- An agency of government is created to operate in a near commercial, generally off-budget environment but with residual public policy goals. In other words, the agency is not fully privatized, but rather operates mostly in the private sector but with public interests or ownership. Many postal services operate in this manner.
- An agency of government, while still within the ambit of political direction, operates a highly specialized service that requires expert governance. Many publicly owned financing entities would fit into this category.
- A public entity is created by public law, but operates with full independence. In this instance, governance oversight is needed to ensure principal interests are aligned. An example here would be a public hospital, university or educational authority.
- A public agency is responsible for a service or function that is highly specialized but has to operate with considerable independence from daily political direction while still requiring oversight in the broader public interest. Police and security agencies come readily to mind.

While a typology of this kind would appear to follow a track of logic, addressing those agencies of government that are remote from direct political control or in need of highly focused control, the simple reality is that the application of this typology would, in scanning many countries, appear to be random. Some agencies have some form of principal-based governance and some do not. Even within the range of Canadian police services, which serve as the foundation for this paper, governance practices varies widely across the country. Therefore, one could readily catalogue a wide array of boards of directors appointed to oversee public agencies. The number would be impressive. However, any notion of consistent application of the principal-agency concept by use of such governance practice would prove elusive. This is perhaps one of the key realities of public sector governance practice. In the end, the authority to govern comes from the government that has created such entities. Further, when the government chooses to not create such entities, it opens the possibility of direct political intervention in the functioning of such agencies. This paper cannot address the issues inherent in that possibility. Suffice it to say that the issue is a complex one. In the end, the decision to create specialized governance of agencies is a matter of public policy. From the perspective of the skills needed to provide effective governance, this relationship must be noted. Often specialized oversight bodies are created to strengthen public interest oversight. Often they are created to create a buffer between direct political interference and the agency that must maintain some independence in both practice and form. Often

such oversight is designed to strengthen either transparency or representivity. In all cases, those who serve on such boards are at a nexus between a meta-principal – the government – and the agent. They are in essence titular principals acting for a meta-principal or owner but with the goals of the agency in mind and often in trust as well. The potential for tension is inherent.

Corporate governance is therefore a valid line of inquiry for public administration. In fact, as governments seek different ways to deliver services, often through arms length arrangements, the question of oversight and governance grows more important. Having boards not simply as tokens but also capable of governing will become increasingly important. The need to have the skill set to govern in this complex environment follows logically.

Public sector corporate governance is anything but uniform. In fact it is widely distributed with the oversight boards of arms length agencies being part of a complicated mix of accountability and policy direction not the be all and end all of it. As noted in one government publication, “The board of directors plays a central part in governance. Its general role is to cultivate the organization’s short and long-term success consistent with the organization’s mandate and objectives, and to do so in an accountable manner. When discharging its responsibilities, the board oversees the affairs of the organization, supervises management through the chief executive officer (CEO), and sets standards for organizational conduct.”⁴ However, the powers that it has to do that vary dramatically.

Membership on governing boards of arms length agencies can take many forms:

- **Merit-based experts** bringing knowledge not normally found within either the bureaucratic or political structure (finances, pension plan management, technical),
- **Representational** in which various interests have legitimized seats at the table and therefore represent a specific group or interest (members of the authorizing legislature, appointed representatives of recognized special interest groups), or
- **Citizen** in which the board is made up of ordinary citizens with or without specific knowledge of the work of the agency but who bring a broader public interest perspective to its work to ensure it operates within the framework of that public interest.

The appointment process itself and the reasons for appointment play directly into the question of the skills needed to govern. A high degree of representivity, be it from the political source of legitimacy or from special interest representation, will mean a lower degree of focus on how the governing body can provide the kind of direction as set out in the quotation above. Concurrently, it will mean a greater amount of attention to the specialized interests represented, thereby detracting to some degree from the capacity to provide united and cohesive governance. This choice may be deliberate public policy, but it may not as well. For instance, in the

Canadian experience with police oversight, municipal councillors who sit on a police board may see their job as protecting the overall municipal budget which supplies funds to the police as the first task and the provision of full governance to the police service as secondary. This means that the functioning of the board is inhibited, at least at the outset.

Further, the length of time that any one individual sits on a board will determine his or her effectiveness. One of the problems with many public sector boards is the needless degree of turnover. This robs the board of experience and memory, keys to effective governance.

Once the decision to provide a unique governance mechanism has been made, the question has to be addressed of how to make it effective and not just window dressing. Results of a weak governance system include:

- Increased risk of capture by the agency's management (cheer leading),
- Weaker capacity to implement policies in a coherent manner,
- Cronyism and sometimes corruption,
- Weakened efficiency and effectiveness of public sector,
- Diminished rather than enhanced transparency and accountability,
- Undermined citizens' trust.

The objective of good public sector governance is not independence from the political process but rather a degree of independence that permits informed and focused oversight. This is seen as preferable to the generalist oversight that the political and central bureaucratic processes offer. In this regard, knowledgeable direction resides in a special purpose body such as a board rather than the traditional bureaucratic system of direction. The purpose therefore is not to simply remove oversight from traditional political/bureaucratic means but also to open it up to diverse perspectives while protecting it from micro-level bureaucratic and political interference in the agency's activities. Boards therefore are both inside and outside entities.

Some of the unique challenges of board governance in public organization are double and triple bottom lines, a mix of agency-specific results and general social and economic good, balancing the organizational needs of the agency with those of its authorizing environment, political and bureaucratic. As **The Good Governance Standard for Public Services (U.K.)** 2004, pointed out: "Good governance means developing the capacity and capability of the governing body to be effective. What skills have we decided that governors must have to do their jobs effectively? How well does our recruitment process identify people with the necessary skills and reach people from a wide cross-section of society? What more could we do to make sure that becoming a governor is practical for as many people as possible? How effective are we at developing our skills and updating our knowledge? How effective are our arrangements for reviewing the performance of individual governors? Do

we put into practice action plans for improving our performance as a governing body?”⁵

The Governance of Police in Canada: a varied and complex picture

This paper looks at public sector governance broadly, but through the lens of the Canadian experience in police governance. This is an attractive perspective in that this experience is rich and varied, much of it played out in a transparent fashion. As well, police governance, unlike the governance of near commercial public enterprises, demands skills unique to the public sector in a larger measure. Such skills as political acumen, understanding of complex stakeholder environments, awareness of a compelling legal framework are all essential to being able to govern effectively in this situation.

There have been forms of police oversight in Canada since the mid-19th century ⁶. Key to a preoccupation with police governance has been the need to ensure public direction of policing, a unique and specialized field of public administration, with finding the means to ensure its independence from political interference in the regular conduct of its duties, which are governed by criminal as well as civil law. This has been a historic tension in all policing around the world. The Canadian solution, albeit applied inconsistently, has been some form of board or commission overseeing the police service. Policing powers are seen as extraordinary in terms of social control, but necessary ones that have to be exercised to protect society. On the other hand, police, having been vested with such authority, are answerable for its exercise. While the courts address individual criminal cases and police conduct of them, the broader set of accountabilities as a public agency are addressed through a form of oversight.

“Police boards...were established with the specific intention of insulating the police from direct governance by elected municipal politicians, and guaranteeing a measure of political independence for police services in the performance of their duties. The idea has been to further remove the police from direct political control by ensuring that these independent bodies, rather than elected politicians, provide policy direction and approve police budgets.”⁷ Relevant here too is the overriding public concern to avoid police corruption and to defend the civil liberties of those subject to close police attention. This onerous responsibility leads to a need for effective continuing oversight once it has been put in place.

One of the key sources of contention in police governance is what degree of interference such governance demands in the operations of the police service. The challenge is how to ensure the independence of sworn officers to make judgements about appropriate actions in the face of criminal activities as they interpret them. These officers alone will have to defend them before the courts, which provide key judicial oversight at that level. Boards were created to provide a shield between those officers and those politicians who might want to use that considerable power for their own purposes. Boards therefore need to have tools to provide direction

without actually managing the service. This challenge is common in most forms of corporate governance, public and private. However, the tension persists in police oversight, with Chiefs at times contending that boards must not interfere in operations while boards insisting on the ability to set policy direction that does indeed direct operations in a general way. Needless to say, the definitions that each would apply to operations and policy will differ. The boundary, if it even exists, is a zone of contention, negotiation and refinement where the governance relationship is successful. It is more akin to a war zone where it is not.

So much of the public preoccupation with policing lies in the areas of complaints against police actions and the cost of policing, both of which focus to a degree on police oversight and accountability. Such concerns have even led to the creation of elected oversight boards in the U.K. starting in 2012 as part of the Cameron government's desire for greater local control.⁸ This development should be watched with interest for its moves police governance closer to governance in the education field in those jurisdictions where school boards are elected. The issues of powers of oversight, ability to fund and ability to enforce the public policy goals of the government will certainly arise in this process, just as they have in education.

It has been noted that police oversight varies across the country. This is because the administration of justice is a provincial responsibility, even though most of the law enforcement agencies are municipal. Laws setting in place police oversight therefore vary. In one case – Quebec – oversight remains with the municipal council. In all others, a form of board or commission is created, but with powers and responsibilities that vary. Boards or commissions, therefore, are creatures of provincial legislation arising from the administration of justice responsibility. While the legislation creates the boards, the roles and responsibilities are very general in nature, providing scant guidance to boards.

It is not without a certain irony, however, that Canada's largest police service, the Royal Canadian Mounted Police, is without any form of oversight, except through its responsibility to a Minister of the government. This has been a contentious matter of public debate for many years. However, direct political and bureaucratic control in this instance applies. The RCMP reports to a Minister and is part of the federal Department of Public Safety. It is not the purpose of this paper to argue one way or the other on this matter, except to note the anomaly. Governance in Canada cannot be described as fully successful in all aspects, most notably finding the means of controlling excesses or neglect. Numerous commissions and inquiries demonstrate that oversight in this regard has, on occasion, been poor. It has to be noted that most of these inquiries have focused on activities of police services without civilian oversight – RCMP and provincial.

Regardless of the legislation governing police boards and commissions, there are certain common features of the governance role among them. These features also speak to core governance tasks of most boards:

- Appointment of the Chief,
- Setting of strategic direction and policy for the service, and
- Determination of the budget for the service.

Board Membership, Selection and Roles

Given the capacity of public policy to try (but not necessarily succeed) to meet competing objectives, public sector boards often end up being a mix of forms. This is certainly the case with police boards and commissions in Canada where the mix of representational (usually municipally elected officials) and citizens is the norm but the balance shifts in important ways across the country.

Who actually sits on a police board or commission varies with each province. However, at the core is a concept of citizen oversight. In other words, police professionals are not seen as being viable members (for the most part) as much as those who are attuned to the broader public interest. It is not laid out in any of the legislation governing police oversight in any of the provinces what skills the board members will be expected to bring to their role. In fact, the language of the legislation clearly suggests only that representivity is important by stressing who makes the appointments. This is not uncommon in publicly appointed boards although efforts exist to ensure that there are quality members, but this varies with jurisdiction.

That being said, the issue gives greater emphasis to the need for a focus on skill development for board members once they are in situ. It has to be noted that certain police commissions have succeeded in developing skill profiles for board members and in having them considered in the appointment process. The City of Ottawa Police Board has a policy on skills required on the board.⁹ In one instance, the Edmonton Police Service, the appointing authority, the City Council, agreed to a search process usually a professional search firm, which delivered a list of qualified candidates to the Council. This is not typical but well worth noting as a progressive tool to improve skill levels.

Effective governance of any agency requires have the right mix of people and skills to government. With respect to police boards, by “right people”, Watson refers to “directors who have the competencies and personal attributes to effectively drive corporate performance and ensure integrity and accountability” She added that “by definition, boards lacking the requisite mix of competencies and behaviours will be less effective, to the detriment of the corporation and, in the case of public-sector corporations, to the public at large”¹⁰

Skills that Board Members Need to Bring or Acquire

One of the easiest things to say is that the answer to effective governance is to appoint the right and most qualified people. This is true, but also harkens to the very

notion that those ideal beings are out there. It also assumes that they come fully equipped and ready to function fully and successfully. This ignores the complexity of the appointment process, often encumbered by political concerns, the need for gender, regional and special interest balance, to name but a few. In the course of researching for this paper, some of those interviewed expressed strong frustration at the appointment process. In fact, they felt that it was the major impediment to ensuring board effectiveness. Describing the process as totally politicized, some police board officials felt that they had little control over who is appointed. Further, those appointed were more loyal to the interests of the government that appointed them than to their role on the police board. As well, boards with municipal elected officials appointed suffered from conflicts of loyalties. On the other hand, other boards reported that they had indeed overcome some of these problems by working closely with the appointing authorities, making them aware of the skills needed, and receiving a sympathetic response. In some cases, police boards had, with the permission of the appointing authority, even been able to undertake search process for new members. This reflects the mixed state of board appointments for police boards, but for public sector governance entities as a whole. This is the reality faced everywhere. In some cases, it is a serious matter than inhibits or even corrupts the capacity of boards to actually exercise their oversight responsibilities. In other, it means that the skills set need to govern effectively require a good piece of work, not just on arrival of a new member, but over the life of their term.

Few members come with a complete skill set. Further, those who bring certain valuable expertise to a board, e.g., financial experience, may then face an agency they do not fully understand, whose culture and character demand yet another learning curve. For instance, their awareness of political processes may be lacking. They may not have an adequate understanding of the work of the agency being overseen. One of the fallacies often seen in public sector board appoints is that importing good private sector governance is a ready fit easily applied.

None of the skills needed to be an effective board member involve the direct management of the police service. The very model of arms length autonomy and its oversight mean that the designated managers within the agency must be able to manage their operations in order to be held to account for doing so. Therefore, the skill set most needed for oversight and governance is different. Indeed, one of the most elusive skills is the ability to provide general direction and evaluate performance without engaging in the actual operations of the agency. This is referred to in governance thinking as the “nose in, but fingers out” perspective in which board members must have information and awareness of operations in order to evaluate the organization’s performance and plan, but cannot engage in direct management. Even when it is legally or practically necessary to have a lot of detailed information about operations and plans, effective oversight bodies prove their value by extracting the strategic elements of that information and ensuring that the management of the agency is given the direction it needs.

One of the essential skill challenges for police board members is to balance the need for police independence to act upon criminal matters without interference using all the tools of modern policing while ensuring that there is adequate public oversight in how these duties are discharged and adequate political guidance with respect to the amount of public funds are available to do this. Therefore, it is a false contention that board members should not be politically savvy. On the contrary, they walk a tightrope that requires considerable political acumen.

A real challenge for members appointed ostensibly to represent municipal interests and who are local councillors is to shed their municipal role as they provide guidance and policy direction. The practical reality is they cannot do this. There is an inherent tension, one that has to be balanced, but never fully resolved.

What this points to is that the role of oversight and being a member of an oversight body in the public sector is a unique job with its own skills. Given the citizen and representivity dimensions, the role cannot be construed as a profession, although that analogy permits those holding such roles to better understand that their conduct and capacity must reflect the task at hand not what other monikers they might have. A recent Conference Board of Canada reports on the role of Crown Corporation oversight points out that “Today, directors are expected to clearly understand their role and to bring a high degree of professionalism to it.”¹¹

Based on research, interviews and a review of the literature, the following is a set of skills that must either be brought to the role of a board member or be developed.

- Political acumen or sensitivity.
- Understanding the broader public good(s) being served through the governance role.
- Listening to and interpret the community being served.
- Understanding of the authorizing environment, manifest in knowing how government operates, the legal framework, budgetary and planning systems having an impact on the agency.
- Independence, especially for those board members who are appointed on a representational basis.
- Distinguishing between governance and management.
- Holding management to account.
- Understanding the information needed and what to do with it to monitor overall performance
- Risk identification and management: risks to the agency as well as risks within the agency
- Articulating policy in a way that the broader community being served can understand it and management can operationalize it in pragmatic, budgetary and legal terms.
- Understanding and applying boardroom ethics including honesty, readiness to work with others and a focus on collective decision-making.

- Conducting and participating of meetings, board dynamics, and standards of behaviour.
- Demonstrating an understanding of the distinction between governing and managing.
- Incorporating the core values and standards of the organization into a code of business conduct.
- Assimilating and using large amounts of information.
- Demonstrating an understanding of succession planning and its role in organization development and capacity building.
- Evaluating board performance against agreed list of governance responsibilities.
- Working within the rules of governance and engagement. For instance, Board members who are solitary actors may choose to ignore the Board and go directly to CEOs when they have questions or want to pursue a line of interest. While the Chair is generally expected to work closely with the CEO, Boards generally act collectively. Certainly the Canadian experience with police boards ¹²indicates that chiefs reported a frequent degree of contact, especially with Board members who were also elected municipal officials. This causes confusion about decision-making and who is exactly providing direction.
- Understanding the broader community that the boards operate in and avoiding being a special interest advocate.

The nature of many public sector appointment processes seldom permits a disciplined search process. Where this has been used, as is the case recently for the Edmonton Police Commission,¹³ the results have been promising. This is the exception. However, regardless of the process of appointment, no one person can bring all the skills needed for a sustained engagement in the governance process. Further, things change. New dynamics arise, new legislative or budgetary parameters cause a major shift, and key players such as the chair of the board or agency CEO move out and are replaced. Each of these shifts means that individual members are challenged to adapt. In some cases, that adaptation means modifying their skill set either through personal action or through some form of learning. Boards collectively and the chair in particular need to be aware of these shifts and their impacts.

Beyond the Induction Manual: sustaining effective governance skills

Many public agencies and their boards work very hard to provide training for board members, especially for new ones. The focus on onboarding is well and good, but not enough. Over time, skill gaps will emerge in a board. These need to be addressed. Often they arise from individual members who, as they gain experience, also realize they need to work on their skills and understanding. Many agencies undertake formal training either at a group or individual level. One agency interviewed for this paper budgets funds for each member to receive annual

training. Without continuous upgrading, board members loose contact with that broader public sector context needed for effective governance in this area.

Both in the private and public sector, sustaining a skilled board depends on pivotal role of the Board chair in assessing basic skill requirements, gaps and how to deal with them. Many boards, one noted here as an example, have developed competency profiles for their boards. Some boards interviewed reported that newly appointed members did not see the need for either orientation training or continuous improvement. This reflects a high risk to the ability of the board to function effectively. Those that did have good onboarding training and emphasized both the collective and individual need for continuous training reported more effective board functioning.

Governments that create oversight entities have to be aware of their continuing responsibilities for ensuring that boards function effectively. This overall effectiveness responsibility reflects the very real line of accountability back to the origins of the board's power – the government that created them. This accountability is not divisible. It generally manifests itself when the public agency malfunctions in some way. The question then asked is one that is often heard in the private sector: "Where was the Board?" Governments seldom actually invest in ensuring the continuous skill development of boards that they appoint. In failing to do so, they may affirm the arms length independence of such boards but give them no assurance that they are equipped to do the job for which they were created.

Skill training is not a free good. We see some useful examples both in public sector governance in general and for police oversight that are instructive. For example, the Government of Western Australia provides a rich sets of guides and checklists for governing bodies, available at http://www.opssc.wa.gov.au/Good_Governance/. Similarly, the Government of British Columbia has a long history of providing good background information for municipal police boards, available at http://www.pssg.gov.bc.ca/police_services/boards/index.htm. However, in very few instances do the originating governments invest in systematic skills upgrading of boards. This generally is left to the boards themselves.

It could be argued that the key skill a board member needs is to know what he or she does not know. This suggests that humility is a key part of a board member's skill set – this is hard to teach. Perhaps one of the best ways to ensure that humility is operationalized is to adapt a number of tools from private sector governance. These would include:

- Annual Board and Chair assessments,
- Development of a board competency matrix, as has already been done in some police boards and commissions in Canada,
- Develop a board specific risk profile that focuses on capacity,
- Require individual Board members to articulate an annual learning plan,

- Ensure members receive governance training from centres of excellence in this area.

Such practices may seem obvious, but the reality is that most public sector oversight bodies do not do this. Further, few board members, when they are appointed, anticipate that they will spend time tooling up. Many will believe that their representational role automatically renders them sufficiently expert. Or, they may assume that their expertise in finance or some other much needed highly specialized areas renders them fully competent for the array of tasks their board membership demands. Once again, a degree of humility might temper such views.

What Does Police Oversight Tell us about Other Forms of Public Sector Agency Governance?

While it might be argued that police oversight and governance occur in a specific and unique corner of public policy and practice, it can equally be concluded that what we see in this example suggests some of the over-riding challenges of providing effective governance of many public agencies. One of the reasons for establishing specialized governance outside the central government apparatus is this very test of specialization or uniqueness. The agency in question represents a public endeavour, but one at arms length because of its specialization. Another reason for creating specialized governance is the need for more intensive accountability and transparency. This can apply across many public agencies either because of their powers or because of the risks their missions pose. Finally, this example suggests a mix of skills we see emerging as needed in the governance process that is instructive for many other public sector boards, commissions, directors or oversight bodies. Principal to this is the need to balance political acumen, sensitivity to public opinion and community concerns and an understanding of the legal framework with governance skills such as strategic direction setting, holding the CEO to account, risk management and financial ability.

The core message of this study is that one cannot assume that upon appointment to a government oversight board the member will bring all of the attendant skills to the task. Further, the representative nature of some board members may in fact inhibit their perceived need to join into the collective process of governance of the agency, choosing instead to hold to a more restricted role of representing the interests of the government that appointed them or the cause that they may represent. This is a dangerous form of isolation and one that, certainly within the police governance world, renders the board considerably less useful than it ought to be. A focus on skills informs the need for a collective level of ability and focus on the melding of talent rather than the continuous jostling of interests. That is the heart of good corporate and public sector governance.

Endnotes

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