

# Chapter 1

## Framework for Good Governance

### OBJECTIVE: GOOD GOVERNANCE OF HOSPITAL CORPORATIONS

The objective of the *Guide to Good Governance* is to help boards of public hospital corporations govern effectively.

Hospital corporations are non-share capital corporations incorporated by letters patent under the *Corporations Act* (Ontario) or, in some cases, incorporated by special legislation. Hospitals are subject to the provisions of the *Public Hospitals Act*. Other significant legislation that is relevant from a board's perspective includes the *Commitment to the Future of Medicare Act*, the *Local Health System Integration Act*, the *Excellent Care for All Act*, the *Broader Public Sector Accountability Act*, and the *Broader Public Sector Executive Compensation Act*.

Hospital corporations exist for objects or purposes. The assets of the hospital corporation are dedicated to the fulfillment of the purposes of the corporation. Hospital corporations are different from for-profit corporations in that they exist for the purpose of providing hospital services and not to enhance shareholder value.

The hospital's objects or purposes are set out in its constating documents: its letters patent under the *Corporations Act* (Ontario), or its special legislation. While these may vary among hospital corporations, the objects usually include the establishment, maintenance and operation of a hospital. These objects are considered charitable.

Hospital corporations have members and not shareholders. Distinct from a business or share capital company in which shareholders are entitled to a share of the company's profits by receiving dividends, a hospital, as a non-share corporation, has members who are prohibited by the *Corporations Act* from receiving any financial gain. Members elect directors, appoint auditors, receive financial statements and approve certain fundamental changes, including amendments to by-laws.

The affairs of a hospital corporation are governed by its board of directors. The *Public Hospitals Act* confirms the role of the board by providing that, "every hospital shall be governed and managed by a board".

Directors stand in a fiduciary relationship with the hospital corporation. The fiduciary duties that are owed by a hospital director to the hospital corporation are among the highest standards of conduct that the law imposes.

Directors are required to act honestly, in good faith and in the best interests of the hospital, and to apply the level of skill and judgment that is reasonably expected of a person with their knowledge and experience.

This is a subjective standard of care; it depends on the personal knowledge and experience of each director. The fiduciary duties owed by directors to the hospital also include the duties of loyalty, maintenance of confidentiality, avoidance of conflicts of interest, as well as the duty of corporate obedience. These duties are more fully discussed in [Chapter 6](#).

## The Not-for-Profit Corporations Act

In October 2010, the Ontario government passed the *Not-for-Profit Corporations Act*, which, when it is proclaimed in force, will replace the *Corporations Act* where it applies to hospitals. The *Not-for-Profit Corporations Act* makes a number of changes to the *Corporations Act* as it impacts corporate governance of not-for-profit corporations in Ontario. This Guide refers to some of the more significant changes that will impact corporate governance once the *Not-for-Profit Corporations Act* comes into effect. It should be noted that the new *Not-for-Profit Corporations Act* is not yet proclaimed and could still be amended before it is proclaimed.

the board to ensure the corporation it governs succeeds in serving its objects or purposes (i.e., fulfilling its mission), and sustains itself in order to continue serving those objects by maintaining its tangible and intangible assets and financial viability. In doing so, the corporation adheres to its core values and discharges its accountability responsibilities.

The quality of governance is a direct result of the quality of the board's behaviour. Effective board behaviour is crucial for good governance. There are three broad conditions for good governance that are conducive to, and supportive of, effective board behavior:

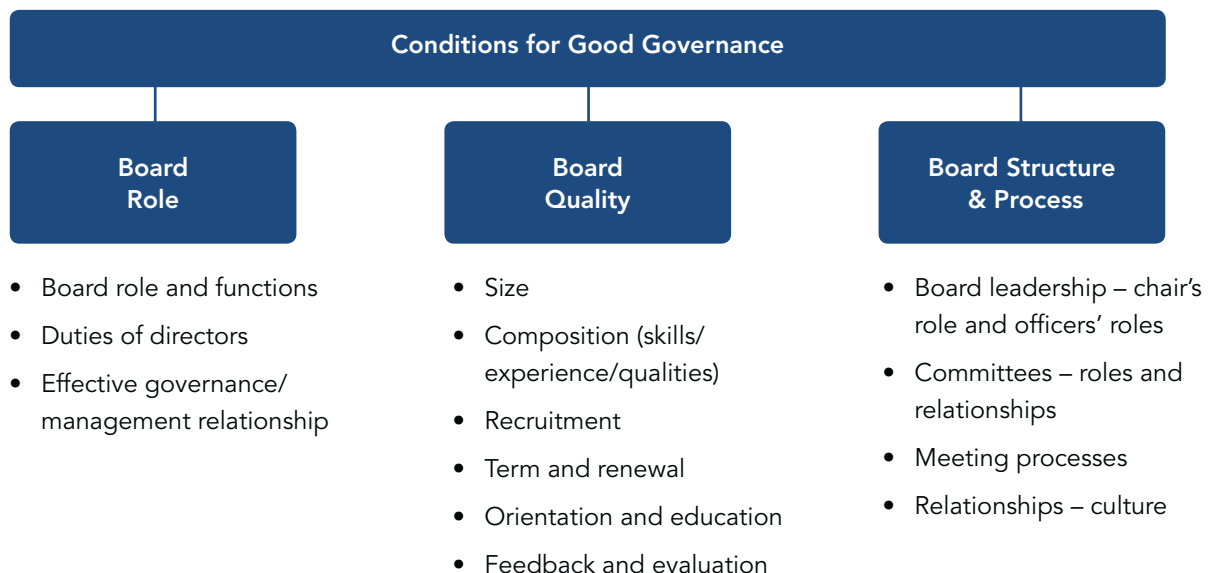
- 1. Board's Role** – The areas in which the board exercises a governance role and the approach the board takes to exercise its role (i.e., **what a board does**).
- 2. Board Quality** – The quality of **the people at the table** and the impact of their collective skills on good governance.
- 3. Board Structure and Processes** – The structures and processes used by the board to perform its governance role (i.e., **how the board does its work**).

## A FRAMEWORK FOR GOOD GOVERNANCE

Good governance fundamentally means that boards carry out their fiduciary responsibilities.

The fiduciary role of directors is to act in the best interests of the corporation as a whole. This requires

Figure 1.1: The Good Governance Framework



The fiduciary role of directors is to act in the best interests of the corporation as a whole. This requires the board to ensure the corporation it governs succeeds in serving its objects or purposes (i.e., fulfilling its mission), and sustains itself in order to continue serving those objects by maintaining its tangible and intangible assets and financial viability.



### Condition #1 – The Board’s Role

All boards have fundamentally the same role, although they may exercise it somewhat differently. Effective performance of the board’s role involves the following:

- **Board role and functions** – Being explicit about the board’s role as the governing body;
- **Directors’ duties** – Ensuring all directors understand the board’s role and their individual duties as directors, and that they discharge each of their own duties accordingly; and
- **Effective governance/management relationship** – Differentiating the board’s role from the role of the chief executive officer and management as clearly as possible.

These subjects are discussed in [Chapter 4](#), [Chapter 5](#) and [Chapter 6](#).

### Condition #2 – Board Quality

Both the board role and the effectiveness of the board’s processes and structures are impacted by the quality of the board. Board quality is comprised of a number of elements, including the following:

- Board size;
- Board composition including the skills, experience, qualities and diversity of the board;
- Recruitment, including the processes that the board uses to recruit and train its directors;
- Term and renewal of directors;
- Orientation and education; and
- Feedback and evaluation of governance.



These elements of board quality are more fully discussed in [Chapter 7](#).

### Condition #3 – Board Structure and Processes

Governance includes the processes and structures that are used by a board to perform its governance role. Governance processes comprise a number of elements, including:

- **Leadership** – The board chair and other officers are the directors who take on board leadership roles. The board governance processes with respect to its officers include defining the role and qualification of officers, setting the term, and establishing the process for selecting officers.
- **Committees** – Board committees can assist the board in performing the work that the board might not otherwise have the time to do. Governance processes with respect to committees include distinguishing

between standing and ad hoc committees; ensuring committees are not doing management work; determining and reviewing the committees' terms of reference; committee composition and selection processes for committee members and committee chairs; and ensuring good practices for board reporting and oversight.

- **Meeting processes** – This includes how agendas are set; how directors have input into agenda setting; open board meetings and *in camera* meetings; approval of minutes; and distinguishing between matters requiring decision and matters for information.
- **Relationships** – Relationships among board members and with management, while less tangible, is an important element in creating effective governance.

Matters of board structure and processes are discussed in [Chapter 8](#).

## BOARDS ARE RESPONSIBLE FOR THEIR OWN GOVERNANCE

Boards are responsible for their own good governance. Therefore, boards need to assess the quality of their governance and determine how to develop or improve it.

As part of governance development, boards need to actively seek to achieve a culture of good governance where the conditions for good governance are in place, best practices are followed, and the board “lives and breathes” good governance as a matter of course.

In [Chapter 9](#), the focus turns to how boards routinely work to develop good governance, and how boards in trouble identify and act to improve their governance.

It is important for boards to take their responsibility for the quality of governance seriously, and to review their own performance regularly. There are many ways to do this depending on the size and resources of the board. [Chapter 9](#) also provides some ideas about conducting governance reviews and summarizing best practices for governance.

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