

Ensure OR Assurance?

AS FAY BOOKER EXPLAINS, IT'S OF VITAL IMPORTANCE THAT A BOARD SETS OUT ITS ROLE AND RESPONSIBILITIES IN A CLEAR AND CONCISE MANDATE.

The federal and provincial corporation acts state the duty of the Board of Directors in a generic statement. It usually goes something like: "the directors shall manage, or supervise the management of, the business and affairs of a corporation." Therefore in order to have an understanding of the Board's role for a particular organization, it is necessary for a Board to set out its role and responsibilities in a terms of reference or mandate (charter or job description).

I have read many Board mandates over my years of consulting in the governance arena. These terms of reference have taken on particular importance in the litigation cases where I have served as the governance expert and successfully found the Board negligent in cases and successfully found the Board not at fault in other cases. I cannot understate the need for a clear statement of the Board's role and responsibilities and the importance of the words that are, or are not, used.

The terms of reference needs to address the Board's role in the five critical areas of strategy and organizational performance, risk, executive talent management, organizational integrity, and governance practices. In some of these areas, the Board needs to be fully engaged with management, some require oversight, and some require action. For example, in strategy the Board needs to fully engage with management in developing the strategic direction. The

Board provides oversight of operational and financial performance as well as risk management. The Board takes action with respect to management of executive talent and in establishing governance practices.

The word that is to be carefully used is 'ensure.' There



will indeed be areas where the Board must ensure that certain matters are actioned. However there are areas where at best the Board can 'gain assurance' that the matters are being dealt with properly by management. Ensure and assurance are two different levels of ownership.

'Ensure' means that the Board directly owns the subject and itself takes action. 'Gain assurance' means that the Board has conducted sufficient due diligence including enquiry and receipt of informa-

tion from independent sources when appropriate, to determine if action has been taken by management. So 'ensure' is appropriate when the Board must ensure that a person proposed for a Director position has the appropriate background because the populating of the Board is an action that

required to enable the Board to effectively perform its duties.

- Overseeing the development of the Company's approach to corporate governance.

In the first statement the Board is stating it will "ensure" that it receives information which it requires to enable it to perform its duties. How does the Board "ensure" this? In the examination of organizational failures Boards will often say that they were not aware of inappropriate action by the CEO yet all Boards have responsibility for oversight of the CEO and integrity of the actions by the CEO. In its sentence the Board is stating it will "ensure" that the CEO is giving it all required information. If this is the case then how do we have situations where the Board's excuse is that that it was not properly informed? The appropriate description for this responsibility is the Board will 'gain assurance.'

In the second sentence the Board states that it will oversee development of the approach to corporate governance. The approach to corporate governance is the job of the Board and therefore, is an item which is owned by the Board and which the Board therefore must ensure gets done.

I suggest that all Boards pull out their terms of reference and read them carefully to determine if the level of responsibilities in the areas of governance have been properly distinguished between 'ensure' and 'gain assurance.'

the Board itself must take and cannot delegate this to management. Whereas oversight of the CEO in his/her fulfillment of the position will require the Board to make enquiry, review reports provided by the CEO and others, to 'gain assurance' that the CEO is functioning appropriately.

Here are two extracts from the Board terms of reference of a major corporation:

- Ensuring that the Board receives from senior executives the information and input



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