Shared Governance: 
Innovation in the Health Sector

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by
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The Institute On Governance (IOG) is a Canadian, non-profit think tank that provides an independent source of knowledge, research and advice on governance issues, both in Canada and internationally.

Governance is concerned with how decisions important to a society or an organization are taken. It helps define who should have power and why, who should have voice in decision-making, and how account should be rendered.

Using core principles of sound governance – legitimacy and voice, direction, performance, accountability, and fairness – the IOG explores what good governance means in different contexts.

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IOG Policy Brief No. 25: “How good is our board?” How Board Evaluations Can Improve Governance, by Tim Plumptre (February 2006)

Introduction

The complex and interrelated problems that Canada faces today – such as persistent poverty, accommodating diversity, rising health costs, safety, and climate change – require a coordinated response not only across different orders of government, but also from the private and non-profit sectors.

A vast array of intergovernmental institutional arrangements has been developed over the past couple of decades to try and improve coordination – particularly between the federal and the provincial and territorial governments. These arrangements range from more formal structures such as federal/provincial/territorial (F/P/T) forums and committees, to more informal networks and interactions among officials.

Despite these efforts, Canada’s current intergovernmental arrangements have come under increasing criticism. Concrete improvements have been limited. Relations have been conflictual rather than collaborative. And important actors such as civil society, the private sector, citizens, Aboriginal governments and municipalities have been excluded. 1 To a certain degree, Canada is locked into a federal model built more for the 19th century than the 21st century. 2

There have however been instances of institutional innovation that involve governments and those outside of government in collaborative policymaking or implementation. The health sector is a case in point.

Over the past decade or so, a number of independent, federally-incorporated, not-for-profit health organizations have been created where governance is shared not only among F/P/T governments, but also with patient representatives, professional associations, members of the public, academics, and others. In other words, appointments or nominations to the governing body – either a Board of Directors or a Council – are shared across governments and across sectors of society. 3

This Policy Brief examines these institutional innovations in the health sector from a governance perspective. The Institute On Governance defines governance as the process whereby societies or organizations make important decisions and determine whom they involve and how they render account. We base our work on a set of five governance principles drawn from the literature and international precedents: legitimacy and voice, direction, performance, accountability and fairness. 4 Because these principles are often in conflict, the art of governing lies in getting the right balance.

We start by providing background on the rationale for creating the organizations and then explore the challenges they face in terms of representation and accountability. We conclude with an outline of some of the policy questions and implications for governmental and non-governmental stakeholders who may be considering creating similar institutions in the future or for the shared governance organizations themselves who may be reviewing their governance arrangements.

Rationale for Innovation

The shared governance organizations include the Canadian Institute for Health Information (established in 1994), Canada Health Infoway (2001), the Canadian Patient Safety Commission (2003), the Health Council of Canada (2003), the Canadian Partnership Against Cancer (2006), and the Mental Health Commission of Canada (2007).

1 For a summary, see “Intergovernmental Innovation and the Administrative State in Canada” by Carolyn M. Johns, Patricia L. O’Reilly and Gregory J. Inwood, in Governance: An International Journal of Policy, Administration, and Institutions, October 2006, pp. 627-649.


3 It should be noted that funding may not be shared – in fact in most cases funding is provided by Health Canada and not by the provinces and territories or the non-governmental sector.

4 A further explanation of these governance principles is contained in IOG Policy Brief No. 15: Principles for Good Governance in the 21st Century by John Graham, Bruce Amos and Tim Plumptre, August 2003.
These organizations are involved in activities that support the delivery of health care across the country – through information sharing, research, knowledge exchange, advice, monitoring, public education, strategy development, etc. Because these types of activities do not fall clearly or exclusively into the jurisdiction of one level of government, it could be argued that they are, by nature, shared activities.

A major reason for establishing these organizations has been the need to improve coordination and collaboration across federal, provincial and territorial governments – whether it be on the issue of standardized and comparative health information, transferable electronic health records, patient safety, the monitoring of progress in health care renewal, accelerated action on cancer control, or increased attention to mental health. Conventional mechanisms such as intergovernmental committees of officials, advisory councils or departmental secretariats do not seem to have been able to marshall the commitment, expertise and resources needed to tackle these national problems.

Another reason has been the need to engage the non-governmental sector, the private sector, patients, and citizens in determining what should be done and how it should be done. These constituencies were either not involved in other intergovernmental fora or did not have a significant voice.

Other reasons given for setting up such institutions are that they are more independent, inclusive, transparent, efficient, accountable and flexible.

While setting up an organization outside government with a diverse board may have the advantages cited above, there are a number of governance challenges that may also arise. In particular, we look at issues related to representation and accountability.

**Representation in Shared Governance: A Balancing Act**

Responsibility for the governance of non-profit organizations resides with the board of directors. This responsibility includes: defining the strategic direction; ensuring good organizational performance and the achievement of desired outcomes; maintaining sound relationships with key stakeholders; ensuring the financial and organizational health of the organization; anticipating and managing risk; rendering account; maintaining a sound governance system; and in many cases, representing the organization and raising public awareness. The board carries out these governance tasks in collaboration with the chief executive officer and staff of the organization.

The composition of the board of directors should therefore relate to its role and responsibilities, and board members should be sought who can exercise this role effectively. Having the right mix of skills on the board, as well as knowledge and experience in the subject matter, is called a competency-based board.

Public purpose boards, however, are often constructed so as to represent certain interests or constituencies as well. Constituency-based boards are particularly challenging since every interest group or geographic area with a stake in the activities of the organization tends to want to be represented. This can lead to large, ponderous boards that are ineffective; and to the nomination of board members who may not have the competencies required to govern.

To further complicate matters, the composition of boards is also influenced in some cases by considerations of demographic representation – in other words, that board members reflect the linguistic, cultural, racial, gender and other aspects of the diversity of Canada.

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5 As in, for example, the Report of the National Task Force on Health Information that led to the creation of the Canadian Institute for Health Information; the report of the Romanow Commission on the Future of Health Care in Canada that led to the establishment of the Health Council of Canada; the Canadian Strategy for Cancer Control that recommended the creation of the Canadian Partnership Against Cancer; or the Standing Senate Committee on Mental Health, Mental Illness and Addiction that preceded the creation of the Mental Health Commission of Canada.
Balancing issues of competency and constituency and demographic representation is a complex task — and no less so in the six shared governance organizations.

Because they have been set up to be intergovernmental, the federal government as well as every province and territory have typically sought to have an appointed member — resulting in a large board at the outset. Because they are also intersectoral, and the objective is usually to have a majority of non-governmental directors, this size has doubled. Some organizations have grouped the provinces and territories into five or six geographic regions to keep the size manageable.

Most of the government-appointed board members in the shared governance arrangements that we have looked at are public servants. In all the cases we reviewed except one, government nominees automatically assume a position on the board. This can make it difficult for the board to ensure that it has the right balance of skills, interests and demographics.

Another challenge in terms of government representation — and intergovernmental relations — has been the opting out of one or more provinces, usually Quebec. The question then arises as to how the “constituency” of that province can be adequately represented on the board. When a provincial government chooses not to become a member or appoint a director to the Board, however, it may still have an observer at the board meetings, its provincial ministry or agency may collaborate with the national organization at various levels, and non-government representatives on the board may come from the province.

Finally, Aboriginal or municipal governments do not have appointed representatives on the boards we have looked at. Whether either federal or provincial/territorial government representatives will be able to adequately reflect the interests of these groups is open to question.

Defining what groups or organizations should be represented from the nongovernmental sector poses significant challenges as well. The possibilities are almost endless — ranging from health care providers such as hospitals to professional associations representing various health care professions, from patients to caregivers, from the academic and research community to the private sector, or from individual non-governmental organizations to organizations that represent a coalition of interests.

Of course, stakeholder and citizen engagement is not limited to board appointments. It can also occur through committees of the board, task forces or working groups, the membership, communication and consultation mechanisms, or ongoing and more informal interactions through board members and staff.

Multiple Accountabilities

As with the issue of representation, the accountability relationships of the directors of the shared governance organizations are complex. Each director could be considered to have four key accountabilities:

1. A fiduciary accountability to the organization itself
2. An accountability to their constituency
3. An accountability to funders
4. An accountability to the public

Each of these accountability relationships is discussed in more detail below.

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6 In the case of the Canadian Institute for Health Information, the government nominees are elected by the Board. This practice retains some element of discretion and independence for the board in terms of its composition and the performance of its members.

7 For example, the Canadian Patient Safety Institute has a broad-based and active voting membership; the Canadian Partnership Against Cancer has a national Advisory Council on Cancer Control; and the Mental Health Commission of Canada has eight Advisory Committees to the board.
Shared Governance: Innovation in the Health Sector
Policy Brief No. 30: Institute On Governance, Ottawa, Canada

**Fiduciary Accountability**

From a legal perspective, directors ("agents") are accountable to the members of the organization ("principals") and are expected to discharge two principal kinds of fiduciary responsibilities or duties:

1. the duty of care
2. the duty of loyalty

The duty of care calls for competence and diligence and implies that a director should be knowledgeable, come prepared to meetings, engage in constructive dialogue, and be able to think strategically. The duty of loyalty carries a responsibility to act in the best interests of the corporation, to avoid parochialism and impropriety, and to declare conflicts of interest.

The fiduciary responsibilities of federally appointed members of boards has been acknowledged and accepted by both the House of Commons Standing Committee on Public Accounts and the federal government. The same would be true for provincial and territorial government and non-governmental appointees.

The members to whom the directors are accountable are "the persons interested in furthering the objects of the corporation." In most of the cases we examined, the members are the directors. This rather limited definition means that in these cases, the directors are accountable only to themselves - unless there are ways for the public or others to hold them to account.

**Constituency Accountabilities**

In the case of constituency-based directors, we would add another obligation and related accountability:

3. the responsibility to consult with and communicate to their constituency.

Strictly speaking, this is not a fiduciary duty rooted in law, but in contemporary society there is certainly an expectation that a board member who is elected or appointed from a particular group or constituency should be acquainted with their interests and be able to make those interests known when appropriate. This does not mean that these directors are required to make decisions in accordance with their constituency’s wishes - on the contrary, they are still expected to act with care and loyalty to the organization as a whole. It does suggest, however, that these directors should be in touch with their constituencies in order to understand their needs and desires, should communicate this information to the board, and should communicate back to their constituencies about board decisions and other organizational information of interest.

In this respect, constituency-based directors would be accountable to their constituencies for how well they “represent” them during the decision-making. “Answerability” might therefore be a better term to use for the type of relationship that exists between constituency-based directors and their constituencies.

**Accountability to Funders**

A more complex issue of accountability arises when we examine the accountability relationship between the board of directors and the funders of the organization. What happens when a member of the board also represents a funder? For example, most of the federal government appointees to the boards that we looked at are also senior officials in Health

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8 Report of the Auditor General of Canada to the House of Commons, Chapter 12: Role of Federally Appointed Board Members, November 2006.
9 Canada Corporations Act, Part II, Model Bylaw, Corporations Canada, May 1, 2007
10 Only the Canadian Patient Safety Institute has a broad-based membership of individuals and organizations.

11 We are using the term “constituency” very broadly to mean any group or organization including government that has the right to appoint or nominate a director to the board.
12 Answerability is the duty to inform and explain but without the personal consequences (such as discipline or sanctions) that usually accompany an accountability relationship. A more detailed explanation of the concept can be found in Modernizing Government Accountability: A Framework for Reform by Peter Aucoin and Mark Jarvis, Canada School of Public Service, 2005.
Consider the situation when the organization’s budget is being prepared. The department may have received political direction to reduce funding to non-departmental agencies. But the organization may believe that an expansion of its budget is needed to fulfill its mission and may therefore develop a strategy to lobby the political level of government for a change of policy. What is the role of the federally appointed public servant in these (or similar) circumstances? Does the incumbent’s greater loyalty or responsibility lie with the minister of the department or with the corporation? Should the official brief the minister on what the organization is planning to do? What if, for some reason, the organization believes the department or the minister is acting irresponsibly? Where does the director’s duty lie?

In practice, the six organizations that we reviewed deal with accountability to Health Canada as a funder in various ways, outside of the board. Funding agreements specify the nature of the accountability between the organization and the federal government and how it is to be executed (through plans, reports, audited financial statements, periodic evaluations, etc). The relationship is managed primarily between the Chief Executive Officer and staff of the organization and the funding division of Health Canada – and not by the federal government representative on the board. The federal government representative might provide some insight and advice on the funding available but would not commit the federal government to the funding. We also know of one case where the federal government appointee actually abstains from voting when the board approves budgets and financial statements.

In our view, however, there is still a potential for conflict between theaccountabilities of the federal government appointee as a civil servant and the fiduciary duty of the federal government appointee as a board member. This potential conflict may outweigh the benefits of having senior federal government officials on the board in terms of knowledge, expertise and connections.

Public Accountability

Due to the public purpose of the shared governance organizations, and to the fact that their funding comes primarily from government, the directors are expected to operate the corporation in a public, open and transparent way. Corporate information is generally made available through strategic plans and annual reports posted on websites. A few of the organizations that we reviewed have gone further by also making evaluation reports, minutes of board meetings, bylaws or governance policies public.

There is an increasing requirement at the federal level for transparency and accountability to Parliament whenever the federal government participates in shared governance arrangements. In cases where the organization has been created through legislation, annual reports from the organization must be tabled in the House of Commons. As of 2007, the Treasury Board of Canada also tables an annual report to Parliament on shared-governance corporations.13

Conclusion

Governance in the six organizations that we have reviewed is shared across federal, provincial and territorial governments, and with non-governmental stakeholders and the public. The composition of the governing bodies of these organizations is intended to provide a vehicle for intergovernmental and intersectoral collaboration on a common agenda in a flexible, transparent, accountable and efficient manner.

By its very nature, however, shared governance raises a number of challenges including the challenge of representation. Competencies, constituencies and diversity all need to be balanced when determining the size and composition of the board and the procedures for nomination and selection of board members. And representation in

13 Shared governance corporations are defined as corporations without share capital for which the federal government has the right to appoint or nominate one or more members to the governing body. Crown Corporations and Other Corporate Interests of Canada, Treasury Board of Canada Secretariat, 2007.
governance does not obviate the ongoing need for good stakeholder and public engagement.

Shared governance also raises accountability challenges. Directors have multiple accountabilities – to the members of the organization, to their constituencies, to funders, to the public and to legislatures. Real or perceived conflicts of interest among these various accountabilities have to be well managed. This is particularly true of directors who are also public servants in funding departments. Openness and transparency are key.

Governance is a complex business and there are no perfect solutions. Anyone who has spent much time thinking about these issues knows there is a need for balance and tradeoffs in designing governance architecture.

However, setting aside the complexities and tradeoffs of design, these organizations represent something relatively new and interesting on the governance horizon. Governments are forever wrestling with the problem of how to deal with public policy issues that cross jurisdictions and involve multiple stakeholders. Conventional intergovernmental mechanisms tend to work poorly. Perhaps these shared governance arrangements offer a solution.

Policy Questions and Implications

When considering whether to adopt a shared governance model to address an issue, governmental and non-governmental stakeholders should ask themselves a few key questions:

- Is the issue best addressed by this sort of arrangement? Is it an issue of shared jurisdiction? Is it of national importance? Does it require coordinated national action and collaboration across the government and non-governmental sectors?

- Is there another arrangement that might achieve the same objectives – for example, through the devolution of authority and responsibility to another organization?

- What is the appropriate membership for the organization – who has an interest in the issue? What responsibilities should the members have in relation to the board?

- What is the appropriate size and composition of the board and how should board members be nominated and selected in order to ensure that constituencies are adequately represented and that other factors such as demographic representation are taken into account? How can these requirements be squared with the need to ensure that necessary skills and expertise are in place for the organization to be effectively governed? Should government appointees come from within or outside of government? Should there be a majority of non-government members?

- What sort of provision should there be for communication and consultation between the board members and their constituencies? How does this relate to other stakeholder engagement and consultation undertaken by the organization itself?

- What are the potential conflicts of interest between board members’ other responsibilities and accountabilities and their responsibility and accountability to the new organization? How are these conflicts to be dealt with?

- How should the anticipated benefits of shared governance be monitored and evaluated?

The shared governance organizations themselves could make their governance more open by publicizing bylaws, nomination criteria, selection procedures, board evaluation policies and other governance information. The more information that is publicly available, the more transparent and accountable the governance of these organizations will be.

Greater openness and transparency would also help others who are considering the establishment of similar organizations. The experiment of shared governance needs to be pursued and widened so that we can learn from experience and more effectively address intergovernmental and intersectoral cooperation.
# Summary Table

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<th>Organization</th>
<th>Mandate</th>
<th>Membership</th>
<th>Board Composition</th>
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| **Canadian Institute for Health Information**           | - to coordinate the development & maintenance of a national health information system  
- to provide & coordinate the provision of accurate and timely information | Directors                   | Board – 16 members, majority NG  
- 1 HC nominee  
- 1 Stats Can nominee  
- 5 P/T nominees  
- 5 NG regional nominees  
- 2 NG nominees at large  
- 1 Chair nominee  
- Chair of CPHI |
| **Canada Health Infoway**                                | - to foster and accelerate the development and adoption of pan-Canadian interoperable electronic health information systems and electronic health records | 14 F/P/T DMs                | Board – 11-13 members, majority G  
- 2 federal appointees  
- 5 P/T appointees  
- 4-5 Directors at large elected by members |
| **Canadian Patient Safety Institute**                    | - to provide leadership & coordinate work on patient safety & quality improvement in the Canadian health system | Voting Members – max. 100 G and NG orgs.  
Non-Voting Members – orgs. & individuals, none appointed yet | Board – 18 members, majority NG  
- 6 P/T appointees  
- 1 HC appointee  
- 9 elected – 7 healthcare and 2 public  
- Chair & Past Chair |
| **Health Council of Canada**                             | - to monitor & report on the progress of health care renewal in Canada   | F/P/T Health Ministers Excluding Quebec & Alberta | Council – 26 members, majority NG  
- 12 G appointees (excluding Quebec & Alberta)  
- 13 elected NG - expert and public  
- Chair |
| **Budget (06/07 Revenue)**  
**Funding**  
**Date of Incorporation**                                |                                                                         |                             |                                   |
| **Canadian Institute for Health Information**           | $71.8 million (06/07)  
HC, P/T funding  
1994                                                                    |                             |                                   |
| **Canada Health Infoway**                                | $174.6 m  
HC capitalization  
January 2001                                                        |                             |                                   |
| **Canadian Patient Safety Institute**                    | $9 million  
HC funding  
December 2003                                                       |                             |                                   |
| **Health Council of Canada**                             | $6.3 million  
HC funding  
December 2003                                                      |                             |                                   |
<table>
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<tr>
<th>Organization</th>
<th>Budget (06/07 Revenue)</th>
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<th>Membership</th>
<th>Board Composition</th>
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<tbody>
<tr>
<td>Canadian Partnership Against Cancer</td>
<td>$50 million</td>
<td>HC funding</td>
<td>November 2006</td>
<td>to accelerate action on cancer control across Canada through knowledge development, translation and transfer</td>
<td>Directors</td>
<td>Board – 16-18 members, majority NG - 1 HC appointee - 5-6 P/T appointees - 5 NG elected - 2 at large – patients or families - 2 affiliated with 3 national cancer orgs - Chair</td>
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<tr>
<td>Mental Health Commission of Canada</td>
<td>$55 million over 5 years</td>
<td>HC funding</td>
<td>March 2007</td>
<td>to focus attention on mental health issues and to work to improve the health and social outcomes of people living with mental illness</td>
<td></td>
<td>Board – 18 members, majority NG - 11 NG - 7 G – 6 P/T appointees (DM/ADM level) and Chair appointed by federal government</td>
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Acronyms:
ADM – Assistant Deputy Minister
CDM – Conference of Deputy Ministers of Health
CEO – Chief Executive Officer
CIHI – Canadian Institute for Health Information
CPHI – Canadian Population Health Institute
CPSI – Canadian Patient Safety Institute
DM – Deputy Minister
F/P/T – federal/provincial/territorial
G – Government
HC – Health Canada
MOU – Memorandum of Understanding
NG – Non-Government
P/T – Provinces and territories