

Accountability - the Governance ‘orphan’

Introduction

When was the last time you had an ‘aha’ moment?

My recent ‘aha’ moment was after my ‘down-tools’ for the holidays and relaxing over the Christmas break.

Over the last few years I have continually struggled with thoughts of what is the practical impact of governance in organisations and society.

Of course, it is not as simple as that question may at first seem. It had, for me, become a persistent, as well as a multi-faceted problem, that appeared immune from effective resolution. Certainly, no single effort has so far appeared reasonably effective.

The complexity of the problem led me to articulate the governance impact issue as a multi-pronged question - “Who is accountable, to whom, and for what?”

The frequency of new stories of poor governance in a variety of organisations fuelled my keenness to reach a satisfactory answer to this multi-pronged question. My keenness existed despite the unlikelihood of finding a simple solution to the critical issue of the practical usefulness of governance in organisations.

When relaxing, however, the ‘aha’ moment can emerge, which was what occurred for me when I was least expecting it.

The recent holidays set my thinking free. I was relaxing and, without the pressure of deadlines and self-applied expectations, my thinking was allowed to roam.

Then it was there. The obvious had just become evident to me.

What became obvious?

I think the trigger was my reading of yet another organisation’s questionable governance practices.

Nothing new about that, you might say.

However, in my now relaxed mode, I once again reflected on the question “Who is accountable, to whom and for what?” with a sense of seeing it anew.

The subjective versus the objective

The practice of good governance is considered by many to be strengthened where it recognises the inclusion of the principle of accountability.

Why?

Accountability can be argued as integral to the exercise of power, especially where that power is given to another (we’ll refer to the person to whom the power has been given as the *player*).

Who the *player* is, has emerged more and more as the start of where things begin to be challenging and to start to unravel.

The basis of this is the *player* includes not only an individual, but also legal entities or body corporates, such as a publicly listed company on the stock exchange, a private company, a company limited by guarantee, an incorporated association, a co-operative, or a trade union, as well as regulators and the public.

The legal entity requires either an individual or individuals to be acting on its behalf or the *player alter ego*. This will often give rise to the challenge of what is the relationship between the individual or individuals and the legal entity, or in our terms, between the *player* and the *player alter ego*.

It also gives rise to questions of accountability. The look and feel of the relationship between the legal entity (the *player*) and the individual or individuals (the *player alter ego*) needs to be resolved for the benefit of exemplary governance practices.

The different governance issues recently attracting the attention of the press appear to often become mired in not just the accountability aspect but, importantly, what is the nature of the relationship.

While it is easy to establish whether a relationship exists between one individual and another individual, it is often much more difficult to link the relationship of the *player*, where it is a legal entity, and the *player alter ego*, the individual or individuals who act on the legal entity’s behalf.

When a governance issue is involved, there is not only the separation of the legal entity from the individual(s) working on its behalf, but also the apparent diminution of any expectation that can be placed on those individuals’ roles or involvement on behalf of the legal entity. The legal entity or *player* in all of this is portrayed as being far from the major character in any governance matter. Experience suggests the legal entity/*player* can cite its dependence on an individual or individuals to act on its behalf as part of the

whole organisational operations, and their imperfect nature. The relationship, if considered from the perspective of the *player alter ego*, allows the individual or individuals, to readily express limitations on their roles and responsibilities, thereby inviting the conclusion that any meaningful linkages to what goes on within that legal entity/*player* are virtually non-existent for governance purposes.

For governance to have a connection with reality, then the *player alter ego* is to be factored into considerations. Proving an individual or group of individuals is a *player alter ego* for the legal entity appears to be an advance on where matters currently stand.

In other words, the *player alter ego* – individual or individuals - is to be viewed as the relevant and reasonable focus of the legal entity. Could not this be considered for governance accountability within a legal entity?

Relationship

The aspect of relationship reveals various dimensions and raises important questions, such as:-

1. Does an obligation exist requiring the *player alter ego* to explain their actions and/or role in what has occurred?
2. Is there legitimacy for *stakeholders* to question or expect answers of the *player alter ego*?
3. Ought an opportunity to exist in governance matters to question the standard of the *player alter ego* involvement, or the reasonableness of their conduct?
4. Is it fair for a regulator or the public to decide on the standard or conduct of the *player alter ego*?

The player alter ego deprived of recognition

"No." - Rupert Murdoch's remark when asked by Labour MP Jim Sheridan in the *News of the World* Phone-Hacking Scandal inquiry, if he accepted that "ultimately you are responsible for this whole fiasco".

"The people that I trusted to run it [his media empire] and then maybe the people they trusted." Rupert Murdoch said when asked who he blamed.

While this example is by no means the only one, it does highlight the dilemma of having a focus on an individual.

Many instances are now regularly occurring elevating the credibility of the answer of ‘No’ to a similar question of “Do you accept that you are responsible for what occurred?”.

More and more the answer of ‘No’ is assuming a plausibility and hence ready line of defence for many individuals in the world of governance issues.

So, if it is not the *player*, and not an individual, then is it reasonable for our focus to be now on the *player alter ego*?

Who deprives or who provides?

In an analysis of the culture of the Murdoch empire in *Newsweek* in July 2011, one of Murdoch's former top executives was quoted as saying: "This scandal and all its implications could not have happened anywhere else. Only in Murdoch's orbit. The hacking at *News of the World* was done on an industrial scale. More than anyone, Murdoch invented and established this culture in the newsroom, where you do whatever it takes to get the story, take no prisoners, destroy the competition, and the end will justify the means."

This same executive went on to say, "In the end, what you sow is what you reap. Now Murdoch is a victim of the culture that he created. It is a logical conclusion, and it is his people at the top who encouraged law-breaking and hacking phones and condoned it." (Bernstein, Carl. "Is Phone-Hacking Scandal Murdoch's Watergate?" *Newsweek* 11 July 2011.)

Must the fundamental view shift to being one that acknowledges the fallacy of expecting an individual in a dynamic, complex and large organisation to be accountable for anything?

We all can readily relate to the increasing pace of change, the exponential growth of knowledge, the complexity of things happening around us, the emergence of markets, the challenge of integration in differing facets of the organisation, and relevant, accurate and timely reporting.

In other words, if ‘it is a logical conclusion, and it is his [Murdoch's] people at the top who encouraged law-breaking and hacking phones and condoned it’, then ought ‘his people at the top’, as the *player alter ego*, be considered to be held accountable?

That is, is it time to supplant the focus on the individual with that of the ‘people at the top’ – the *player alter ego*?

Divide or unify?

With a little help from the KISS principle, it seems that by persisting with the focus on an individual or individuals, this simply pursues a pathway of “division without governance” strategy.

If a more productive result is sought, then the need is to follow the “unity enabled governance” strategy. This recognises that organisations are governed by many, not one person, no matter how influential or high profile that individual may be. Enterprise Care has long acknowledged the centrality of this in governance, following the development of the Governing Together® program.

There is a complexity and a plethora of decision-making and actions in organisations, so that no individual can be held to be the sole repository of accountability anymore. So it is truly time to accept this position as reality, and not ignore it as if it does not exist. This can be liberating for a view of governance and its important nature and role within exemplary organisations.

Otherwise, the predictability of an individual explaining that they are only one of a number will be the standard response to all questions concerning governance responsibility and accountability. The governance ‘orphan’ (accountability) will continue to grow up without links to the organisation itself, nor to the governance of that organisation.

Revelation – even if all are equal, some still are more equal

Ultimately, what is clear is the need to move past the view of individuals and their simple participation, to individuals who together have a meaningful participation. It can only be the latter that can truly attract governance accountability. Given the disruptive nature of organisations, such accountability is more and more a matter residing with a group of individuals, not an individual. It could also be suggested that such a group ought not always be labelled a discrete group of, for example, the senior executive or executive team or the Board of Directors. Organisations are dynamic and undergo transformation and reforming processes.

Individual versus collective

The focus on the individual and their relationships runs counter to all that is occurring within and outside of organisations. The focus must be directed to a group of individuals in an organisation if accountability is to have any life in a governance framework.

While the Leveson Inquiry may comment in their 2012 report that Murdoch "exhibited wilful blindness to what was going on in his companies and publications" and stated that

he was "not a fit person to exercise the stewardship of a major international company", it may still make more sense to identify those individuals who are a part of the core players of the organisation, and to determine their collective accountability.

Time to bridge the governance gap

The world of governance appears to continue to be influenced by the view of the power of the CEO, or the importance of an executive or independent Chairman or Director.

While still having some validity, these aspects have been rapidly pushed aside by what is really happening in organisations. The notions of integration and collaboration, and dare it be said, the subtlety of culture, exert greater influence and control over the operations of an organisation across its many layers.

The multi-dimensional nature of governance includes the concepts of:-

1. culture
2. transparency
3. accountability
4. engagement
5. execution

These concepts offer a core group of checks and balances if governance is to emerge with any meaning and effectiveness in many of our organisations. Increasingly, it is recognised that organisations now face a higher demand for their behaviour to be more socially, ethically and environmentally responsible.

It is easy to conclude that any of these matters cannot, and will not, be the purview of an individual.

The flip side is that there has to be a group ownership – the *player alter ego* - of these most important matters for there to be delivered appreciably positive governance outcomes.

The reason is simple as these matters cross over organisational barriers and functions.

Why is accountability the governance ‘orphan’?

The genesis of accountability lacking a governance owner can be linked with three (3) possible misunderstandings:-

1. the make-up and dynamics of organisations;
2. the lag in appreciating the effect of organisational integrative factors; and
3. an outmoded notion of a ‘single-driver’ delivering all outputs or outcomes.

The management of a dynamic organisation will generally derive from the efforts of the many individuals and not an individual, as the former have emerged as truly the core instrument of the execution of an organisation’s governance deliverables, good or bad.

Who is the owner of accountability?

It seems only reasonable to suggest that every organisation has a core group of individuals who either formally or informally, directly or indirectly, actively or passively, are integral to the inputs, outputs and outcomes of their organisation.

It is this core that seems most logical to become the owners and stewards of accountability and therefore an organisation’s governance.

The importance of getting this right is not simply academic. Research shows that organisations significantly underperform as a result of:-

- unclear governance practices;
- the presence of functional barriers and silos;
- the lack of alignment of the organisation’s core purpose;
- uncertainty around the accountability for decisions;
- multiplicity of duplication;
- a vacuum of timely and current information; and
- poorly executing agreed plans and delivery of outcomes.

While no one individual within an organisation could claim to have:-

- complete understanding of the organisation’s operations;
- 20/20 visibility and insights of the organisation;
- fully achieved identified outcomes;
- delivered greater operational efficiencies;
- enhanced timely exploitation of opportunities;
- heightened execution of operational plans; and
- strengthened stakeholder engagement;

it is reasonable to expect and call to account for these from a core group of individuals or, in our words, from the *player alter ego*.

Recent development

The Australian Securities and Investments Commission (**ASIC**) recently brought proceedings in the Federal Court of Australia against Australian Property Custodian Holdings Limited and each of its Directors alleging breaches of duties owed as responsible entity of the Prime Retirement and Aged Care Property Trust and Directors of the responsible entity.

While not discussing this in detail, the manner in which the court suggested that duties owed by responsible entities and their Directors are more demanding compared to the duties owed by officers of companies, given their role as professional trustees of members' assets, shed some light on the notion of a collective and the existence of accountability.

The court commented that Directors are not only required to inform themselves of matters under consideration, but they must also ensure that the Board also considers and understands the matters.

The judgement appears to have stressed that Directors are not only responsible for their own decision- making process, but they also have a responsibility to ensure that the Board as a whole has given adequate consideration to the issues.

Conclusion

The tension of individual and collective responsibility, and the necessity of their linkage to accountability, can no longer be ignored. Governance cannot accommodate an individual or a random group of individuals pursuing a ‘frolic of their own’. Accountability is at the core of exemplary governance practices and therefore means it must not be allowed to remain an ‘orphan’. It appears the Australian Property Custodian Holdings Limited decision, leaving aside its specific factual situation, offers at least a glimmer of light at the end of the tunnel for our governance ‘orphan’.

Maybe the next step is for the legal entity to annually consider and decide their *player alter ego* for the next 12 months and to register this with an appropriate body.

Is it too early to celebrate a genuine establishment of exemplary governance practices?

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February 2014