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# Executive Committees of the Board: Current Practices, Trends and Context

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## Context in the Use of Committees and Executive Committees

Committees are used by the board to conduct work on its behalf, to draft and review policies and guidelines for board approval, and to oversee and review management and corporate information in specific areas.

While the ideal situation would be if a board could deal with everything as a whole, in practice the more complex, larger, and heavily regulated an organization is, the more difficult it is for its board to operate without committees. Over the past several years boards and regulators in all sectors have recognized this fact, and revisited the way in which the board is structured and makes use of board committees.

Traditionally, most boards of directors have operated with an Audit Committee (usually required by law), an Executive Committee, and other committees which were intended to deal with items of significance to the organization (e.g. Nominating, Pension, Investment, Planning, Membership, Business Development.)

Of these, the Executive Committee is unique:

- The Executive Committee is usually the only committee that is able to act on behalf of the full Board between meetings (what is called its "transactional" role; other committees usually make recommendations to the board for its approval);
- The Executive Committee is usually composed of the Board Officers, traditionally the President/Chairman, Vice-Chair, Treasurer, Secretary and General Manager. As board offices have changed over time, the Executive Committee in more recent times is more typically composed of the Chair, Vice-Chair, and Chairs of the most senior Committees.
- Because of these (powers and composition), the Executive Committee tends in practice to become a "super-committee" which plays a "gate-keeper" role (deciding what needs to go to the board, when and how), and also fulfilling the liaison role between the board and CEO, acting as "sounding board" for the CEO, and even a proxy for the board in fulfilling its "employer" role with the CEO (i.e. CEO objectives, evaluation and compensation – at times not even disclosing these to other board members.)

A central theme of the most recent round of governance reform (starting in 2002) has been on how best to ensure the independence, competence and diligence of the governance process and so the board's work. A significant conclusion reached is that boards need to delegate work to multiple committees in order to fully accomplish this. These most recent governance codes and standards (led by the Sarbanes Oxley Act (SOX) in the United States, and the Canadian Securities Administrators National Instruments in Canada (C-SOX)) call for 3 core committees of the board – the Audit, Governance, and Human Resources & Compensation Committees.

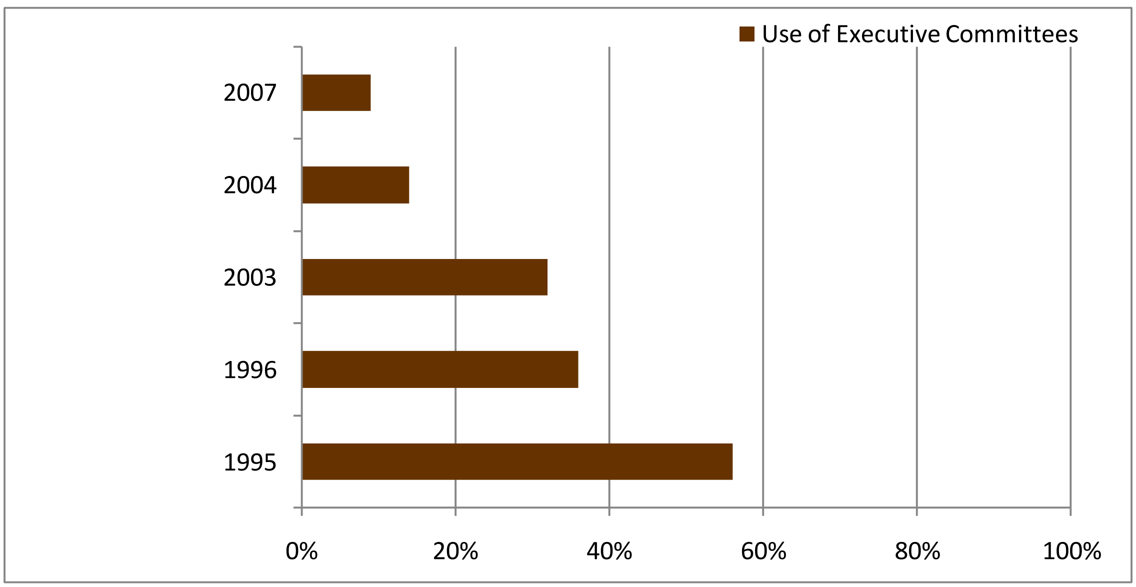
These new standards have accelerated the trend towards fewer and more focused standing committees of the board. By implication and effect this has meant the discontinuance of Executive Committees.

## Trends in Executive and Other Board Committees: 1995-2007

Research is clearly showing the significant drop in Executive Committee usage. Clearly, few organizations are starting new ones – most are discontinuing their use.

According to the Korn Ferry International/Patrick O'Callaghan and Associates latest governance benchmarking report published in 2006, "The downward trend in boards with Executive Committees continued in 2005, 9% per cent had an Executive Committee compared with 14% in 2004.[1]" See research below:

### Chart One: Trends in Executive Committee Use[2]




[1] Korn Ferry International and Patrick O'Callaghan and Associates, *Corporate Board Governance and Director Compensation in Canada: A Review of 2006*, 2006.
[2] Source: The Conference Board of Canada and Korn Ferry/Patrick O'Callaghan & Associates, and The Canadian Co-operative Association and Brown Governance Inc. Co-operative Sector Research 2007

## Table One: Trends in Use of Board Committees[3]

| | 1995 | 1996 | 2003 | 2004 | 2007 |
|---|---|---|---|---|---|
| Executive | 56% | 36% | 32% | 14% | 9% |
| Governance | 2% | 58% | 65% | 89% | 93% |
| Audit | 98% | 99% | 100% | 100% | 100% |
| HR & Compensation | 80% | 81% | 86% | 86% | 94% |

Executive Committees have become a convention of the past for a number of reasons. As Mark White, author of *Executive Committees*[4] says, "While many boards find Executive Committees to be helpful, most boards today do not use one or need one, and still operate an effectively run board."

A recent article in the *Northwestern Business Review* pulls no punches with its article "Do Away with the Executive Committee"[5]. They write:

> *"Every board member wants to be on the Executive Committee. That's where the real power of the board rests. As a director, you have arrived when you become a member of the Executive Committee, and you hold onto your perks as long as you can, with fingernails and toenails gripped firmly into the mahogany board table. The Executive Committee should be disbanded and discarded. Just get rid of it. If all board members believe the Executive Committee is the seat of power and the most prestigious committee, they will not be easily convinced to serve on other committees that are as important, if not more important, than the Executive Committee."*

[3] Source: The Conference Board of Canada (Corporate Sector Results) and Patrick O'Callaghan & Associates, and The Canadian Co-operative Association and Brown Governance Inc. Co-operative Sector Research 2007
[4] http://www.boardsource.org/Bookstore.asp?Item=151
[5] http://findarticles.com/p/articles/mi_qa3799/is_200502/ai_n10298173

John Carver, founder of Carver Policy Governance has widely expressed his dislike for Executive Committees, believing they have been widely overused in the past and should be avoided wherever and whenever possible: because they create two tiers on the board, insiders and outsiders, and this division can be "damaging to governance." The "outsiders" either get frustrated and disempowered because they are not on the inside (which Carver argues is their legitimate response), or else they defer unduly to the "insiders" (and so fail to fulfill their duties as directors.)

## Other Reasons for the Drop-Off in Executive Committee Usage

- Create a two-tiered board leading to fractures and divisions between directors: As the *Northwestern Business Review* puts it, "The most important reason to eliminate the Executive Committee is to eliminate the two-tiered class of board members. All board members are created equal - they all have the same liabilities and responsibilities. Committee assignments should be based on the individual director's expertise and experience. Members should be assigned to those committees for a long period of time so they can be increasingly educated as to the workings of the Audit Committee or the Compensation Committee.[6]" And as John Carver cautions "the Executive Committee can become the real board within the ceremonial board; that is not a formula for promoting board wholeness."[7]
- Cause duplication of effort: Many boards report that they have discontinued using Executive Committees because of duplication. The Committee meets to discuss items in detail, only to meet again almost immediately with the full board and those same items are then fully discussed all over again.
- Force some directors deeper into management than they should be: Some directors find it difficult to empowerment management with decision-making powers and then to trust the core board committees to verify the work it has entrusted management with. Having a seat on the Executive Committee provides them with the power (and temptation) to cross the board-management line.
- Have liability implications for non-executive committee members: Executive Committees usually have all the powers of the board allowing them to make decisions on behalf of the board between meetings that the whole board is then accountable for. Most directors want to make decisions jointly – not have them made for them and then feel that, they have no choice but to post-approve them at the next board meeting. *Directors and Boards* (the leading governance magazine in North America) recently dubbed the Executive Committee the "stealth board body" because it is not required to adhere to independence standards and a quorum of Executive Committee members are able to make decisions for the full board without either the board's or management's approval - meaning a couple of people have the ability to make decisions that the full board will ultimately have to live with and be liable for. As *Directors and Boards* says:[8]

[6] http://findarticles.com/p/articles/mi_qa3799/is_200502/ai_n10298173
[7] http://www.carvergovernance.com
[8] http://www.directorsandboards.com

"it is sobering to think that Executive Committees have three to five members. A quorum in these cases could be two or three individuals. It seems that the full board would need a large measure of faith in those few members."

- Modern technology enables rapid meeting and decision-making capabilities: The Executive Committee has been practically helpful for decisions needed between board meetings (the "transactional" role) – but in this day of high tech communications and conference calls, this need is not the same as it was years ago when it was more difficult to gets boards together to make emergency decisions that just cannot wait until the next board meeting.
- No longer needed: One of the most compelling reasons to discontinue the use of Executive Committees is that there is simply no longer a need for them. The traditional roles of the Executive Committee are now included within the recommended roles and responsibilities of the three core committees (i.e. the "employer" role falls within the scope of the HR Comp Committee, and at least part of the "gatekeeper" role falls within the scope of the Governance Committee as it ensures board, committee and CEO mandates are clear and aligned.)
- Time commitments: Directors' time is limited. Most are comfortable with and uniquely qualified to sit on one core committee. Allowing directors the time to concentrate their energy on a single committee is optimal. Two at the very most can be workable and acceptable. Beyond that, a board risks diluting the value a given director is able to add to the board and therefore the organization.

## Why Some Organizations Continue to Use Executive Committees

- Tradition: Executive Committees have been used as a mechanism to move directors "up the ranks" on a board.
- Large unwieldy boards: Large boards have also been on the decline as impractical and untenable for several years now.
- Diverse geography: Some boards have directors that are located nationally or internationally making meeting in person more difficult. However, this is more and more often addressed using technology rather than having decisions made by an Executive Committee.
- Smaller organizations: Smaller organizations, especially in the not-for-profit sector and the co-operative sector, that tend to micro-management and are of such a size that the board is involved in the day-to-day activities of the organization.
- Emergencies: Some boards keep an Executive Committee to deal with emergencies with the CEO, but the Executive Committee does not hold any regular meetings, or have anything else on the agenda.
- New CEO & Management Team: This circumstance may require a more hands-on approach for a short period of time.
- CEO Relationship: Some are used to ensure a mechanism to provide a sounding board and professional advice for the CEO.

## Are Not for Profits Different?

Research data indicates that not-for-profits have a higher incidence of Executive Committees than is the norm in the corporate sector. This raises the question – why? Is it more important to have them in this sector – is there some special unique need?

While the number of not-for-profit boards that continue to use Executive Committees is higher than in the private sector, this is not an automatic argument for them to continue their use. Some might ask, "If other not-for-profits have Executive Committees, then shouldn't we?" Answering this question depends on a number of factors. For example: what is the size and structure of our board; does our geographic distribution effect the need for one; does our board have enough bench strength; do we need this type of committee at all?

There is no compelling literature or research to demonstrate that not-for-profits benefit from or need to use an Executive Committee compared to other sectors. One probable reason that not-for-profits have a higher reliance on Executive Committees than other organizations is that they may respect tradition more, and therefore be more hesitant to change something that may not seem to be "broken". Traditionally, not-for-profits have lagged the private sector in the uptake of many new governance practices (e.g. board and CEO evaluation, risk and control oversight, and even disclosures such as governance and compensation.)

Another factor to assess is, should a large not-for-profit benchmark its governance practices against other not-for-profits, or against other large commercial corporations in the private sector. The answer is probably both, but in cases where commercial success and organizational performance are enhanced by a private sector governance practice, there is a good argument to consider adopting that practice.

## Final Thoughts

What steps should your organization take in making a decision on whether to discontinue the use of the Executive Committee?

1. Consider the recent trends and regulations (governance codes and standards.)
2. Consider the specific needs of your organization.
3. Make the decision based primarily on best practice and organizational needs, and then secondly on tradition.

Should the board decide to discontinue the Executive Committee as it currently exists, they should:

1. Ensure all of the major duties of the existing executive committee are delegated to the appropriate board committee (for example, CEO performance issues and HR Policy to the HR/Compensation Committee, and director orientation programs and ethics policy to the Governance Committee.)

2. Because having an Executive Committee may be mandated by older Acts and Bylaws, the organization may need to appoint the Chair of the Board along with the board standing committee chairs as the members of the Executive Committee (in the absence of opening the Act or Bylaws to have this article removed.)
3. Ensure the CEO has a ready means of engaging the board as a “sounding board” and wise counselor in the absence of this committee.

Should the board decide to continue to have an Executive Committee, they should:

1. Review and revise the existing terms of reference, moving related activities to the more appropriate core committee that currently deals with those matters (see point 1 above).
2. Consider limiting the scope of decision-making “transactional” authority delegated to the committee in order to mitigate the liability risks inherent with Executive Committees
3. Focus the roles and responsibilities of this committee on its emergency functions, with a clear delegated mandate, and clear reporting and accountability back to the full board at its next meeting.