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**In This Edition**

**Lessons From Collingwood’s Judicial Inquiry**

*Collingwood’s Town Council engaged in some questionable actions in 2012. We apply lessons learned to Ontario’s non-profits including charities.*

**How Much Policy Should Boards Have?**

*A little or a lot? Tom discusses the Common Sense Board versus the Policy Board.*

**Ben & Jerry’s Unveils a New Flavour**

*TomBits explores the concept of corporate social activism, but this time driven by a third party ad agency. Is it all about marketing?*

**Be Clear On The Role Of Executive Committees**

*Executive Committees are the only ones that can act on behalf of the Board without its prior approval. Is that a good thing?*

*At CMCS, COVID means we Zoom more and travel less. Our work, including strategic planning, Board training and executive recruitment goes on. All continues to be possible.*

November 16 - 20, 2020

**Lessons from Collingwood’s Judicial Inquiry**

**The Story**

A judicial inquiry into two major initiatives undertaken by the Town of Collingwood in 2012 offers up a number of lessons for non-profits in Ontario.

One of the transactions involved the partial sale of the Town’s electrical utility, the other, the construction of recreational facilities. A consultant involved in both transactions on the side of the purchaser of the utility’s shares and the firm awarded the construction contract was the brother of the mayor. He earned over a million dollars in fees (isn’t that just like a consultant!). According to the judge who oversaw the inquiry, other councillors and a paid employee engaged in questionable behaviour as well. “Undisclosed conflicts, unfair procurements and lack of transparency stained both transactions”, he concluded.

Even though Collingwood is a municipality, with a mayor and councillors instead of a Chair and Board members, we can learn from this misadventure. Many recommendations set out in the inquiry’s report, titled: “Transparency and the Public Trust”, constitute a checklist for best practices among non-profits including charities.

**The Skinny**

**Exactly Who Causes A Conflict Of Interest**

The report concludes that conflict of interest can extend well past members of Council themselves. It suggests that if one of the people listed below and related to the councillor is in conflict, the councillor is in conflict:

* Spouse, common-law partner or any person with whom that person is living as a spouse outside marriage;
* Parent including step-parent and legal guardian;
* Child, including stepchild;
* Grandchild;
* Siblings;
* Aunt, uncle, nephew, niece, first cousins; and
* In-laws, including mother- and father-in-law, sister- and brother-in-law and daughter- and son-in-law.

Non-profits and charities require that Board members reveal any conflicts of interest that are created by organizational transactions. However, not all those organizations provide guidance on the familial reach of this requirement. Best practice suggests that you need to articulate that a transaction that benefits any of the other people listed above, puts the Board member in conflict.

**Who Is Authorized To Provide Direction To Employees**

The report notes the importance of stating that: “…only Council as a whole, not a single council member, has the authority to direct staff to carry out a particular function, or act on any other matter, unless specifically authorized by Council.”

For non-profits including charities, this is an important proviso that needs to be laid out either in their bylaw or in policy.

We would even add to this with a statement to the effect that the CEO/ED is obligated to advise the whole Board of any situations where this principle is not respected by a Board member and that the Board ensure it has a policy for dealing with such situations.

**Who On Staff Reports To The Board**

The report emphasizes the importance of the proviso that only the Chief Administrative Officer reports to Council and that all other employees report to the CAO.

This principle is well-established in Ontario’s non-profit world, but it is worthwhile including it on the best practice checklist and embedding it in the organization’s governance policy manual.

**The BIG Idea**

Non-profits including charities are usually very good at dealing with conflict of interest. For charities in particular, the rule is clear: a Board member cannot benefit financially from holding that position. End of story. But I am not sure they are as clear on who else may put the Board member in conflict. So my BIG Idea for this week is to look at your bylaw and policies, and ensure they spell out who, beyond the Board member, may put the Board member in conflict due to a transaction with the organization.

**Emails… We Get Emails**

**A person standing in front of a building

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**How Much Policy Should Boards Have?**

Unrelated to the Collingwood inquiry, a BIG Ideas reader emailed a question about updating their non-profit’s Board policies.

In our back and forth, I suggested that one of the questions Boards of Directors should ask themselves is how much policy they want in their governance manual.

I brought this up because I am reminded of the time I was providing governance training to a Board and was on the subject of Board policy, when one of the participants observed: “We are a Common Sense Board.” He went on to explain that as a result, the Board created policy by exception – i.e. only when common sense didn’t necessarily prevail and therefore called for something in writing.

This leads to the question: How much policy does a Board need?

While in theory I like the Common Sense/Policy By Exception approach, in part because developing governance policy can be painful for Board members and it may not always get read once developed, there are two arguments in favour of an expansive number of governance policies. One is that they provide clear guidance to the Board for the multitude of situations it may confront. The other is that they help fulfill the due diligence obligations of the Board. Were the Board to encounter a significant problem and be held to account by some external body, the existence of and adherence to policy would go a long way to explain and justify its actions.

**This Week’s TomBit**

A pile of sugar donuts

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**Ben & Jerry’s Unveils A New Flavour**

Earlier this year I wrote about Ben & Jerry’s, the ice cream maker, and its strong focus on community and advocacy.

Included in my observations were that:

* In 1985 it established a foundation that receives 7.5% of the company's annual pre-tax profits to fund community-oriented projects.
* Although it is now part of Unilever, an $80 billion multinational company headquartered in England and the Netherlands, its values and social commitment have continued.
* Among its causes, it has stood up for:
* Young people exercising their right to vote
* Sourcing fair trade products
* The Occupy Wall Street movement
* Mandatory GMO labelling
* Justice and Black Lives Matter

A BIG Ideas reader responded to the article as follows: “I was with Unilever when we took them over. Quite a sight to have us suits, walking around with their people in jeans, dogs wandering around and kids being taken of! I was proud of the tack Unilever took then and continues to take now. A great caring company with morals!!!”

When I received a notice from Linkedin about a position at Ben & Jerry’s in Canada titled Activism Manager, I was curious, especially given our current world circumstances. What exactly did Ben & Jerry’s have in mind?

The ad read: “Values-led ice cream company Ben & Jerry’s is recruiting an Activism Manager to lead social and environmental justice campaigns with our team in Canada. The primary role of the Activism Manager is to translate Ben & Jerry’s progressive values into successful externally-focused activism campaigns that create impact and drive action. The Activism Manager for Canada will join a global team of Activism Managers and will provide vision and leadership within the Global Social Mission and Advocacy teams to ensure Ben & Jerry’s remains the most progressive, innovative, and impactful activist company.”

Here's the rub: the Activism Manager won’t be working for Ben & Jerry’s. That person works for the ad agency retained by Ben & Jerry’s. The ad agency explains its approach this way: “(We believe) that agencies work better inside a brand’s organization – delivering more effective work at the speed and flexibility required to drive modern businesses forward. Using our unique methodology, and supported by bespoke technology, we design, build, and operate specialist, dedicated agencies onsite with our clients. We believe that proximity enables better collaboration, leading to better marketing solutions.”

Somebody leading the company’s social and environmental justice campaigns who isn’t employed by the company! Activism that is third party and tied directly to marketing! Does that seem curious to you?

**Blast from the Past**

**A close up of a clock

Description automatically generated***Blast from the Past is a selection of previous BIG Ideas articles that you may not have read, or if you did, may have forgotten how helpful and insightful (i.e. brilliantly written) they were. This article is from 2016.*

**Be clear on the role of Executive Committees**

Contrary to popular belief, there is no law that says you must have committees. But most non-profit Boards decide they need committees to help them fulfill their obligations.

Executive Committees are a special breed, because in many organizations they fulfil duties that otherwise would fall to the full Board. Executive Committees can be stand-ins for the Board during periods when the Board is not available, like summer and Christmas. They can deal with sensitive, confidential issues. They can provide leadership in terms of setting meeting agendas or suggesting action the Board should take on pressing matters. They can spearhead planning.

Executive Committees are usually small, made up of the Chair/President, Vice-Chair/Vice-President and Treasurer. And most organizations that have them, find Executive Committees to be useful, while respecting the role of the full Board.

But problems can arise. My favourite story about Executive Committees involves an Ontario art gallery. According to newspaper reports, it was facing financial problems and the possible sale of part of its collection to make up the shortfall. This produced conflict between some members of the Board and management. Without advising the full Board, the Executive Committee put the Executive Director on paid leave. As part of its public pronouncement, a spokesperson noted that “Board members were fully informed from Day 2”. As you might expect, Day 2 was one day too many for five Board members, who resigned in protest over the Executive Committee’s action.

Which brings us to the heart of the matter. By legislation, Boards of Directors are required to assume overall responsibility for the organization, and to deal with all issues. They do this as a whole, not by committee. Boards are the ultimate democratic institution in that regard. Any power that is delegated to an Executive Committee, without requiring that decisions of the Executive Committee that bind the corporation to come back to the Board for approval, before being undertaken, erodes the authority of the Board.

Using the art gallery as an example, the Executive Committee assumed the power of sanctioning the Executive Director. Whether it had the authority to do so is not addressed in the newspaper report, but appears questionable, given the resignations of the five Board members.

In my experience, where Executive Committees do exist, the extent of their authority to make decisions for the Board and to act on behalf of the Board is not clearly defined in writing. Often there is also little or no understanding among Board members that they are giving up part of their authority to this body. Executive Committees can also create a “insider/outsider” environment where the Executive Committee members are seen to be the real decision-makers and everyone else is expected to nod their heads in approval.

My BIG Idea for this week is for organizations that have Executive Committees is to review the reasons why the Executive Committee exists, its powers to act on behalf of the Board and its responsibilities related to informing the Board of its actions, both before undertaking those actions and afterwards. Ensure there is clarity regarding these issues and that everything is confirmed in writing. Then decide if you still need one, and if so under what circumstances. Be particularly attentive to any authority granted to the Executive Committee to make decisions that bind the organization independent of the whole Board. For those of you that don’t have an Executive Committee, think hard before instituting one. Most non-profit Boards are small - in the range of nine to twelve members - so convening meetings and making decisions should be relatively straightforward, especially in the world of Zoom. Ensure you are convinced you need one before taking this important step.

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**Current CMCS Clients**

We are pleased to be working with York Region Centre for Community Safety, Community Living Thunder Bay,  Canopy Support Services (formerly Tri-County Community Support Services), Literacy Network Northeast, Community Living Port Colborne-Wainfleet, Community Visions and Networking (Quinte), Chatham-Kent Family Health Team and Community Living St. Catharines. Recent clientele includes Durham Youth Services, Community Living Trent Highlands and Mill Creek Care Centre.

**Testimonials**

*Thank you again to you and Nancy for all the work, dedication and effort put into this Operations Review. We made the right choice in hiring you to do this project and on behalf of the board of directors, I express our deep gratitude.*​​***Roz Werner-Arce, Board Chair, Durham Youth Services***

*Our Strategic Plan is moving along better than I could have imagined. I chair the group of around 20 Board and staff who have been meeting monthly for the past 6 months and plan to continue through the fall. Great enthusiasm from all involved and much is being accomplished already, particularly on renewed focus on our Mission and Vision. Thanks again for getting us off on the right foot!*  
**Frank Moore, Board Chair, Community Living Central Huron**

**About Tom Little and Nancy Collins**

A close up of a person

Description automatically generatedTom Little and Nancy Collins are the principals of CMCS.

In addition to consulting for many years, Tom has been Executive Director of a large human service organization, experience he brings to the table when working with his non-profit clients. In his younger days he was lucky enough to be part of three Canadian champion hockey teams while attending the University of Toronto.

Nancy's background includes a degree from Wilfrid Laurier and working at a downtown Toronto law firm. In her spare time, at least when there is no pandemic, she plays goal in women's hockey and catcher in summer slo-pitch. A life-long Leafs fan, she no longer apologizes for her unwavering commitment, given their resurrection in recent years. Now if they could just win a playoff round!

**Free Resources From CMCS**

We offer a range of free resources to help non-profits be better. For your copy, contact us at [info@cmcsconsulting.ca](mailto:info@cmcsconsulting.ca)   
  
Board Duties  
Policy Board Model  
Board Meeting Minutes  
Board Decision-Making Checklist  
Board Evaluation Form  
Dealing with Risk  
List of Possible Board Policies  
Board Recruitment (Stop the BIG LIE)  
Management Principles  
Member and Director Qualifications  
The Importance of Planning  
Canada’s Great Non-Profit Websites

Transitioning to the New Not-for-Profit Corporations Act

**Tom’s Book For Boards of Directors**

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One hundred and ninety-pages. Thirty-six *BIG Ideas*. Thirteen of them are *The BIGGEST of the BIG,* ideas Tom’s experience says are critical to any non-profit. Then come twenty-three *BIG Ideas*, more ways to enhance the governance of your organization.

You don’t just get ideas either. The book contains all kinds of resources for implementing them. For example, *BIG Ideas* includes samples of strategic and Board yearly action plans, and of evaluation formats Boards can use to rate their own work.

*Tom Little’s BIG Ideas* is formatted as a work book, so it can be used on a continuous basis by the Directors. It is easy to read and has a fun quality your Board members will appreciate.

Just $40 plus HST and shipping. For your copy, contact us at [info@cmcsconsulting.ca](mailto:info@cmcsconsulting.ca).

**More About CMCS**

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Description automatically generatedAt CMCS, our specialty is strategic planning. Since the start of 2018, the following 14 organizations have completed their strategic plans with help from CMCS:

Kenora Association for Community Living

Community Living Dryden-Sioux Lookout

Community Living Trent Highlands

Elmira District Community Living

Literacy Northwest

Durham Region Child Care Forum

Tollendale Village

Centennial College School of Transportation

York Region Violence Against Women Coordinating Committee

Autism Home Base Durham

Canoe FM Community Radio

Toronto Island Residential Community Trust

York Region Centre for Community Safety

Literacy Network Northeast

We provide Board training that comes with a bonus: A Board action plan developed by participants based on the discussion.

Tom wrote his book for non-profit Boards, which you can buy and use as an ongoing resource.

We are great facilitators and can help develop agendas for Board and management retreats.

Much of our past work has been in the human service sector, especially disability. But we have assisted in other sectors such as community colleges, local workforce authorities, family health teams, Big Brothers Big Sisters, United Ways and violence against women. We have even assisted a community radio station.

We have built our reputation on producing quality products that have great content and are appealing to look at.