



PROFESSIONS AUSTRALIA

Presentation by PA President Brenda Aynsley OAM FACS CP at the Associations Forum CEO and Chairs Symposium, Hobart, 1 February 2018

Abstract Creating a Culture of Professionalism – the Board’s Role

Organisations today struggle with stakeholders who are increasingly sceptical about what value they have as members, customers, employees and shareholders. Similarly, organisations are uncertain what standards apply within their ecosystem. Professions Australia asserts that all actors in a transactional economy and society have a duty of care to all those they interact with and a responsibility to exercise their duty of care to one another. Professionals need to understand this and act in a way which assures the benefits of duty of care can be realised. This session will provide CEOs and Chairs with tools to operationalise this concept of duty of care and achieve this culture transformation.

Introduction

I’m sure you can all think of examples where companies have gone to the wall or have been shamed by their clients or consumer organisations because they haven’t paid attention to the things that matter. And right at the very top of the list of things that matter is culture – and creating a culture of professionalism. Now this culture of professionalism is just as pertinent for associations as it is for companies. A key component of professionalism is duty of care. So what I am going to speak with you today about is the concept of duty of care and share some examples where this has failed. Then I want to look at some tools we can all use to embed a culture of professionalism within our associations.

What is Duty of Care?

Firstly let me say that I am not a lawyer, I am a professionalism advocate, or some might call to a ‘professionalism tragic’. I have spent the best part of the last twenty years promoting the benefits of professionalism locally, nationally and internationally with varying degrees of success. Why do I do this? Because I firmly believe that professionalism including an ethical framework underpins the operation of our society and our responsibilities to each other and more fundamentally provides a means of managing risk.

Duty of Care is a legal term which is defined as a requirement that a person or company acts toward others and the public with awareness, caution, attention and prudence to the standard that a reasonable person in the circumstances would. In the absence of such then an action for negligence and the resulting damages may follow if successful in court.

Over a number of years the law has established the requirement that people (including companies and governments) should manage their affairs to the standard required of the reasonable person.

However it is not always clear that there exists a Duty of Care which might need to be referred to a court for determination:

According to emerging tech and cybersecurity experts Merritt Baer and Chinmayi Sharmi:

Until the last decade or so, most people had a fairly knowable set of relationships in their daily lives. They often arose through contracts and the relationships were few and well-established. Individuals had a single employer, a single landlord, and so on. Today, our daily transactions are intricately webbed and can involve many parties we might not even know exist. We constantly interact with companies-- and their contractors-- that don't necessarily have a direct relationship with us as individuals. <https://lawfareblog.com/does-equifax-owe-victims-duty-care>

So what does this mean for Boards and particularly Association and NFP Boards? Litigation is expensive and affects to a greater or lesser extent the bottom line of all organisations profit or not for profit alike.

Boards are responsible for the governance of organisations and the oversight of the Management. As we've heard at this Symposium collaboration is the only possible game in town to assure good governance, Collaboration between Management and the Board will be needed to avoid the failures in Duty of Care. Before we get into the form this collaboration should take, let's look at some examples of failures in Duty of Care.

Failures in Duty of Care

1. Australian Embassy in Baghdad



The screenshot shows the top portion of a news article on the website 'THE AUSTRALIAN'. The page includes a navigation bar with categories like NEWS, OPINION, BUSINESS REVIEW, NATIONAL AFFAIRS, SPORT, LIFE, TECH, ARTS, and TRAVEL. The article title is 'A failure in the duty of care', dated 12:00AM January 11, 2016. The lead paragraph states: 'The safety and wellbeing of staff at the Australian embassy in Baghdad appear to have been compromised by a failure to meet security and medical safeguards.' Below this, it mentions 'Detailed investigations by The Australian have exposed alleged failings with the'.

Source: <https://www.theaustralian.com.au/opinion/editorials/a-failure-in-the-duty-of-care/news-story/032e85a2f21ca407ceaf0adea8e51b28>

Problems

- Staff shortages undermining appropriate security measures in providing protection
- Inadequate training in specific functions eg inadequate paramedical training for protection personnel

Causes?

- May stem from cost-cutting in the contract

Effects/Expression?

- Long running and involving lack of regard for appropriate vetting of workers, the quality of equipment and training, and the standard of medical support.

Impact?

- Loss of faith and trust in the organisation's awareness of its obligations under its Duty of Care leading to negative effects such as loss of donors, loss of business, loss of contractual benefits and renewals, decline in membership, loss of voting support

2. Hospital Duty of Care Failure Leads to MRSA Infection

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Hospital Duty of Care Failure Leads to MRSA Infection

Norman was 82 years old when he was admitted to hospital following an episode of renal failure and dehydration. Following admission a cannula was inserted into his arm to give him a blood transfusion. Unfortunately, the cannula site became infected with MRSA.

The hospital failed in their duty of care to follow their guidelines which state that high risk renal patients, such as Norman, should be screened for MRSA upon admission.

The hospital failed in their duty of care by inserting a cannula which became infected with MRSA. There was also a delay in taking a blood sample from Norman to identify the infection quickly. He was prescribed antibiotics to treat the MRSA however his condition deteriorated and sadly he passed away.

Source: <https://www.irwinmitchell.com/client-stories/2009/july/hospital-duty-of-care-failure-leads-to-mrsa-infection>

Problem

- Treatment provided resulted in the premature death of a patient

Causes?

- Failed to follow guidelines re establishing if MRSA present on admission

Effects/Expression?

- The hospital failed in their duty of care by inserting a cannula which became infected with MRSA. There was also a delay in taking a blood sample from Norman to identify the infection quickly. He was prescribed antibiotics to treat the MRSA however his condition deteriorated and sadly he passed away.

Impact?

- Loss of faith and trust in the organisation's awareness of its obligations under its Duty of Care leading to negative effects such as loss of donors, reduction in patient numbers/admissions through loss of reputation.

Almost all failures will take on a similar form to these two examples

3. Data Breaches.

A more difficult example is in the more recent data breach cases such as Equifax and Uber, Ashley Madison and Yahoo all caused as a result of hacking and poor security of the data stored by those companies which left it vulnerable to attack. A visualisation at Information is Beautiful site (<http://www.informationisbeautiful.net/visualizations/worlds-biggest-data-breaches-hacks/>) gives you a sense of how widespread this type of incident is.

Who is to blame for these failures and whose liability is it?

There are innumerable papers to address this question and legal advisors will answer that question but my interest is in the professionals who are front and centre in these cases, the HR professionals in the first example and the medical staff in the second. In the last whose fault is it? One could argue it's the "IT department" after all they provide the environment that stores the data and the networks that provide access to hackers to grab the data. But almost every Board now accepts that it has to take responsibility for IT failures in regard to Duty of Care.

These are very complex yet real examples of which there are lessons for all our associations. Having scared the pants off you - I hope, I now want to spend the rest of the time, speaking about how your organisation, and all organisations for that matter, begins to assure itself that the standards which apply within its purview are those of the reasonable person mentioned at the start of this talk?

Tools and Techniques to ensure standards of care are reasonable

1. Change the Culture to one of respect and collaboration amongst all stakeholders from the highest to the lowest, from the outsiders to the insiders, in the organisation

Tim Kuppler, co-founder of CultureUniversity.com and Director of Culture and Organization Development for Human Synergistics offers a starter in the methodology of cultural change in his article “The 9 Clear Steps to Organizational Culture Change” (<https://www.tlnt.com/the-9-clear-steps-to-organizational-culture-change/>) which of course is backed up in more detail in his book “Build the Culture Advantage, Deliver Sustainable Performance with Clarity and Speed”. Importantly he says: “*Manage your own culture journey, build clarity and alignment, and stop wasting energy on implementing tips, keys, and levers unless they fit with your unique culture foundation.*”

All at this Symposium know that a cultural change journey has absolutely no possibility of succeeding without the continual support of the highest levels of the organisation and that includes not just the CEO but also the Board. We have all heard the often attributed to Drucker expression that “Culture eats strategy for breakfast” and one commentator, Bill Aulet shared his views on this in an article at Tech Crunch (<https://techcrunch.com/2014/04/12/culture-eats-strategy-for-breakfast/>)

Some may believe that culture cannot be “engineered,” and that it just happens. It is true that culture happens whether you want it to or not. It is the DNA of the company and is in large part created by the founders – not by their words so much as their actions. So the very decision to not try to create a corporate culture, or worse, to not have company values, is in fact your choice of what culture will prevail – and not for the better.

Aulet continues with his own experience which supports his contention, he says:

Should this have been a surprise to me? No, because for over a decade in the 1980s and early 1990s, I worked for IBM when it was the most respected, profitable and rapidly growing company in the world. From day one of training (training which lasted often for two years), the company made clear the importance of their trio of core values: respect for the individual, superlative customer service, and the pursuit of excellence in all tasks. It was this fervent adherence to these core values – through the training, the monthly communications, the performance-appraisal system, the role models, and ultimately every decision we made –that made us great.

*In my later years there, I had seen a distinction (sic) erosion of management’s commitment and adherence to these values. ... Lou Gerstner as CEO.... voiced himself at the end of his tenure: “I came to see in my time at IBM that culture isn’t just one aspect of the game – **it is the game**. In the end an organization is nothing more than the collective capacity of its people to create value.”*

<https://techcrunch.com/2014/04/12/culture-eats-strategy-for-breakfast/>

There is no doubt as Aulet recounts that ‘ownership’ of the culture of an organisation will reduce the risk factors associated with the likelihood of a Duty of Care failures in such an organisation. I really like his description of Eventbrite’s GSD ‘get stuff done’ philosophy so that complaints don’t exist in this company, opportunities to innovate the things that don’t

quite work exist instead and a very strong sense of ownership prevails throughout. Problem solving is rife and staff tend to remain in the company's employ because of the EventBrite cultural game. They are long term employees and much valued for their experience and cultural fit.

Such a strong cultural environment as operates at EventBrite adds value to the company and reduces risk significantly.

A particularly relevant and practical resource that you can draw upon is 'Managing Culture: A good practice guide' released at the end of last year by the Ethics Centre, Governance Institute, Chartered Accountants Australia New Zealand and Internal Auditors. Speaking at the launch of the guide (12 December), ASIC Commissioner John Price emphasized that it is companies themselves – from the board down – that must own and drive corporate culture. He said, " Culture is at the heart of how an organisation and its staff think and behave. It is an issue that companies themselves must address." He also poses four questions Boards might want to consider:

- Is culture a regular feature on the board and audit committee agenda
- Do directors have regular interaction with staff across the organisation and not just with the CEO and executive management?
- Are there good relationships with key employees, such as line managers, to help with gathering insights about team-specific issues and subcultures?
- Is there periodic engagement with all stakeholders to get a broad perspective on the issues impacting on customers, suppliers, regulators and the community? This should help with balancing various competing and conflicting interests.

You can download this free resource from the Governance Institute of Australia website: <http://www.governanceinstitute.com.au>

2. Properly qualified staff are hired for each position in the organisation

Boards do not involve themselves in the hiring practices of an organisation generally however if the Board is keen to lower its risk profile then as we saw in the first example of Failure, the Baghdad Embassy, hiring practices and cost cutting were suspected to be the major contributors to the failure in Duty of Care that took place. One could assert that the Board under such circumstances, not in this particular case but in a similar case in one of our organisations, would be easily seen to be negligent and having failed in the Board's Duty of Care to the employees.

Boards must ensure that

- the right pay scales are in play and the appropriate rates are applied to attract and retain competent and qualified staff

- if the staff are professionally qualified that their bona fides are established beyond doubt, Professional bodies can assist in this regard because they understand what is required in a professional practitioner at every level of practice, particularly those which use an accepted standard such as a body of knowledge or globally recognised skills framework
- In hiring practices weight is given to the employee's commitment to his or her professional body through membership and be aware of the membership grade within such an organisation to help determine suitability, these grades usually mean that the employee has been subjected to peer review of skills, experience and professionalism as expressed through his or her commitment to the continuing professional development requirements of the particular profession and willingness to subject themselves to the requirements of a Code of Ethics or Code of Professional Practice. These are the staff who are best placed to understand their duty of care and who most need to be supported in their professional practice to allow them to influence their peers in avoiding risks and in utilising their special skills that are concomitant to their professional standing. The understand
- the recruitment process gives due regard to the existence of conscious or unconscious biases in hiring policy. Recruitment companies are well known for thwarting diversity outcomes as they attempt to match the cultural fit of candidates with what they perceive as the culture of the organisations such that older workers are excluded from a perceived younger cultural group, of women who are not considered because of the gender biases of the company or HR recruiter. Boards must be particularly aware of this and work towards overcoming such biases. Such 'mismatches' never get to the company's hiring team because they are sieved out in the vetting process undertaken at the recruitment company
- there is a vibrant diversity policy operating within the organisation. Easily assessed by understanding the business, its 'gender needs', its staff churn and its gender of staff at each level of the organisation particularly in leadership roles. Senior staff should be KPI'd on the diversity mix in the organisation if they wish to reap the well documented benefits of a diverse workforce. But to name a few that readily spring to mind for Rose Johnson (<http://smallbusiness.chron.com/advantages-diverse-workforce-18780.html>) :
 - Increase in productivity is often reported
 - Increase in creativity through the reduction in group thinking
 - Language skills and cultural diversity provides a platform for expanding into other markets
 - Positive reputation for both new employees and customers or other stakeholders

3. Staff and Board alike are subjected to ongoing and continuing professional development during their tenure with the organisation

- Board members can become victim to group think and organisational blindness without continuing development in good governance practices
- Boards generally are held at arms length by members of staff as occasional on site occupants. Staff do not necessarily understand the role the Board plays in the organisation and its value. This needs to be remedied through the cultural change suggested in tool 1.
- Similarly the constitutional framework is not understood or even its existence known to the organisation's employees in the Not-for-Profit sector, certainly not sufficiently well known to prevent actions which are prohibited in the constitution or bylaws. Instead the employees develop policies and procedures which over time are far removed from their origins unless the Board plays a role in ensuring this does is less likely to happen. Remember it is not necessarily in the interests of the employers to act in accordance with a ruleset they are not particularly familiar with, There is no suggestion here that such disregard is malicious or mischievous it most often arise out of ignorance. Therefore continuing governance training for everyone in proportion to their needs is another means of reducing risk as part of a GRC (governance, risk and compliance commitment)
- Experience over many years in several organisations tells me that Board members are generally guided by their peers such that the Board Expert for X is relied upon to provide advice to his or her peers in matters before the Board. Many times this is not a negative however ultimately it represents a risk and arises out of the ignorance mentioned previously
- Board must ensure that parameters are set to establish the reasonableness of the behaviour that will be evidenced in day to day practice in the organisation. As an example, in the Victorian state education system teachers, in order to avoid being negligent when giving advice to students are admonished to:
 - *limit their advice to students to areas within their own professional competence and given in situations arising from a role specified for them by the principal*
 - *ensure that the advice they give is correct and in line with the most recent available statements from institutions or employers. Careers teachers and coordinators at senior levels should keep contemporaneous notes of advice given to individuals*
 - *avoid giving advice in areas unrelated to their role or where they may lack expertise.*

see <http://www.education.vic.gov.au/school/principals/spag/safety/Pages/dutyofcare.aspx>

4. Create KPIs to manage the performance of Board and employees and provide time to ensure they are being monitored and outcomes measured

- Volunteer Boards as well as those remunerated should be subjected to performance measurement. It may be more difficult in the first case but that should not preclude attempts at establishing this regime of accountability. Good governance demands this and more and more Boards are being held to account by their membership. Auda, CPA Australia, National Trust UK, Co-op Group UK all had their troubles with membership who felt alienated by their Boards and leadership leading to members becoming much more militant and forcing changes within the Board and in some cases senior staff.
- Even companies are being held to account by their stakeholders within the community, examples being Enron, Equifax, AshleyMadison, Volkswagen. What role did the Board play or should have played in avoiding the root cause of their problems? All of these situations like that described by Bill Aulet in his recounting of his time with IBM over many years, showed that the culture of accountability, responsibility, collaboration and trust had degraded so much so that negligence was a real possibility and the price was astronomical. The most recent, Volkswagen set aside 6.7 billion euro to fix the problem through buybacks and fines. CPA paid \$4.9 million in a payout to its CEO and clear the way for a new Board late last year.

Concluding remarks

We have canvassed a number of tools and the reasons why such tools are necessary in the litigious, transactional world in which we live where relationships are not one on one necessarily, where face to face is not always the norm and where trust is increasingly in short supply. For me it's all about trust building, trust and trustworthiness for individuals and for organisations. We have seen the negative effects that lack of trust can have on the business world in this short expose, we have also seen the lack of trustworthiness – which is defined as it is said - something or someone worthy of trust – has diminished the standing and stocks of quite a number of organisations from shareholders revolts to membership revolts and of course customer/client revolts consider the very recently reported “Japanese cryptocurrency exchange Coincheck has just confirmed that more than \$600 million worth of XEM were stolen in a hack earlier today.” (26/1/2018).

It is and must be the role of the Board as the ultimate body responsible for the wellbeing, prosperity, however defined, and sustainability of the organisation of which it sits at the head.

Thank You