IN-CAMERA MEETINGS

How misunderstanding the concept can stump boards and irritate management

by JOHN T. DINNER

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One of the more common traps boards find themselves captive to is an inability to gauge whether the board is really unified on an issue or whether there are concerns or reservations about a particular matter. In a meeting with directors, management and possibly others present, it's difficult to raise these matters without mistakenly offending or putting others on the defensive.

In-camera sessions are designed for and intended to help boards work through potentially contentious issues so that the best interests of the organization are well served. Most directors and management groups misunderstand their purpose and often fumble their way through in-camera session often because of a lack of a shared understanding of their purpose, how they will be used and what decisions will be made.

It's dangerous to generalize, but when it comes to in-camera sessions of the Board, Directors tend to have misconstrued ideas as to how these sessions are to be managed and what they are to achieved; Management, on the other hand, often try to avoid in-camera sessions altogether so that Directors won't make the wrong decisions or have inappropriate discussions.

A definition of what constitutes an in-camera session is probably valuable at this point: essentially, it is when Directors meet on their own, without Management or any other non-Board member present.

A good starting point for considering the degree to which non-Directors should attend meetings is the purpose of governance: to enhance Management decision-making. The risk of having open meetings is that issues will not be fully considered and that difficult issues will be overlooked or addressed superficially. Not having Management and, perhaps others, attend Board meetings will often mean that Directors will not have access to information that is critical to optimal decision-making. Clearly, in-camera sessions must, therefore, be aligned with facilitating decision-making by the Board.

Ensuring the right people are in the boardroom at the right time will help deliver on this goal; allowing Directors the time to meet with Management helps to promote Board independence and provides a forum where Directors can put forward issues and questions that a more open meeting might not permit.

Regularly scheduled in-camera sessions provide the means by which directors can, ideally, raise concerns and dispense with issues that could otherwise serve to undermine the trust and confidence that in-camera sessions supposedly create on their own. Rather than breeding mistrust and doubt, in-camera sessions, over the longer term at least, tend to do just the opposite by allowing for areas of possible conflicts to be identified and resolved proactively. Issues that go unaddressed tend to fester and, ultimately, come to the surface much uglier than had they been addressed in their infancy.

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Even when in-camera sessions are used regularly by boards as part of their regular meeting agenda, they are often done so for the wrong reasons. They are not hiding places where boards can run to deal with difficult issues or where directors feel they can speak with greater candour. As much as this may be tempting and true, directors need to use in-camera session judiciously and for the right reasons. Boards need the courage to work through the agenda during the course of the normal meeting.

The growing accountability expected of boards along with increased transparency would suggest, perhaps to some, that in-camera sessions are now an outmoded and irrelevant (and possibly, irresponsible) tool. Rather than acquiescing to this misguided notion, boards need to understand and be explicit about when and how in-camera sessions should be used.

The following is a brief list of issues that rightly should be considered first by Directors in-camera:

- identifying and resolving internal problems and factions of the board;
- reviewing the CEO's performance, compensation and employment status;
- handling approaches from/to third parties;
- reviewing important government policies and their implications for the organization;
- legal advice and litigation;
- the possible acquisition or disposition of property; and,
- considering personnel and union matters.

While in-camera meetings should be used sparingly, they should be a regular part of the meeting agenda and the Board should be unapologetic for doing so. The key is to have a well understood rationale for their use. The most important reason for prohibiting non-directors from attending certain portions of a meeting is when deliberations are likely to include information that could prejudice the interests either of the organization or of a person the organization has an obligation to protect.

As to content of minutes of in-camera meetings, the same principles generally apply as to what records should be kept relative to regular board meetings: the place and date of meeting, and the start time; the persons present, and who served as chair and secretary; the text of all resolutions; the results of votes on all resolutions; any formal objections of directors; and the time of adjournment. The nature of the issue considered during an in-camera session of the board should be noted in brief and generically. Records of the in-camera meetings themselves should be kept separate from the other records, maintaining confidentiality as long as warranted by the circumstances.

CLC vs. ESA

The rules are different for federally regulated companies

by MELANIE REIST

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Most employers are familiar with the Employment Standards Act ("ESA") and the obligations that piece of legislation places on them, particularly at the time when an employee is dismissed. Under the ESA an employer must provide advanced written notice of termination or payment in lieu of that notice (termination pay) which amounts to roughly one week for each year of service up to a maximum of eight weeks. In cases where an employer has an annual payroll of $2.5 million or more, or as a result of a partial or permanent discontinuance of an establishment of 50 employees or more are terminated within a six month period, then severance pay of one week for each year of service is owing for employees of five years or more up to a maximum of 26 weeks.

The ESA, however, only applies to provincially regulated employers. If an employer is a federally regulated company, then the Canada Labour Code ("CLC") applies. This can be quite significant as the CLC provides employees with a unique remedy not available to provincially regulated employees which mirrors protections available to unionized workers through their collective bargaining agreements.

The unjust dismissal provisions of the CLC allow non-managerial workers upon dismissal to file a complaint that they were unjustly dismissed, notwithstanding the employer's payment to them of any termination or severance pay which might be owing under the provisions of the CLC. In order to be successful in an unjust dismissal complaint the employer must prove that it had real and substantial cause to end the employment relationship and that the decision to dismiss was independent of any purely personal disputes or reasons, and that the action taken was necessary to ensure the effective operation of the business. This is a difficult threshold for an employer to meet. In support of its decision to dismiss, the employer must establish that the penalty imposed (summary dismissal) is proportionate to the error(s) committed by the employee.

To be successful, an employer must establish that there were warnings and progressive discipline to try and correct the employee's misbehavior or misconduct.

A carefully considered, and proportionate regime of progressive discipline is necessary if an employer wishes to be successful in an unjust dismissal complaint. It is very difficult to mount a successful response to an unjust dismissal complaint if there has been no thoughtful consideration in advance of the steps to be taken throughout the progressive disciplinary process.

If an employer is unsuccessful in an unjust dismissal complaint, it can be faced with an order to reinstate that employee and pay to the individual lost wages from the date that the employment relationship was terminated. Where it takes a year or more to reach a hearing of the issue, the damages can become quite substantial.

It is therefore extremely important for federally regulated companies, where they are considering dismissing an non-managerial employee, that they seek legal advice in advance and ensure that the actions taken will be adequate to effectively respond to any future complaint for unjust dismissal.

THE BEST PERSON TO HELP SOLVE CLIENTS' PROBLEMS

Putting all the questions and issues on the table

by WAYNE VANWYCK

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It's Friday afternoon. Earlier this week you presented a proposal to your client that you feel really meets his needs. You've done a great job of asking questions to determine his needs, wants and the pain he is feeling. Based on your understanding of your product, you believe you have the perfect solution. It fits exactly what he said he was looking for. When you made your presentation, there were no objections raised other than, "Leave it with me and I'll get back to you next week." It looks like a slam dunk. You put it into your sales report as a 95% chance of closing. You expect to get the order within the next 10 days. After all, there were no objections.

When you make the follow-up call, you get voicemail. You leave a cheery message ending with, "Please give me a call..." But John doesn't call. Two weeks go by. In the third week you call again. You leave another voice mail. Still no response. By the time five weeks have passed, you're beginning to wonder what went wrong. What did you do – or not do – that may have caused this? It seemed like such a perfect sale.

Does this sounds familiar? Chances are it's not personal. It's not that you did anything wrong, but you may not have done everything possible to facilitate the sale.

You may have assumed you were dealing with the decision-maker. You may have even asked, "In addition to yourself, is there anyone else who should be involved in our discussion?" And the prospect said "No, I will be making the decision."

What both of you failed to realize is that even if he has the authority to make the decision, there is a lot of background noise going on in his head. He's wondering things like:

- How is this going to impact our budget? If I buy this, what will I have to defer for the next budget?
- How will this change our procedures? How will it impact people's lives? Who is going to be resistant to this change? How can I get her on side?
- What are the political ramifications? If I buy this, who will be offended? How will that impact our relationship?
- Even though it will solve one problem, will it create others? Do I have the time to manage the fallout? Is it better to wait?
- What are the implications of buying now vs. the future? Will I have more money to spend in the future? What about the opportunity cost? Which is the biggest risk?
- How will I sell this to my boss (or spouse, or board of directors)? Do I have enough data to recommend this product? What objections will they have? Where do I find the time to put this all together?
- What if the other two vendors that I talked with really did have a better deal? Should I have them come back one more time?
- I wonder if we can solve our problem with an in-house solution.
- How do I compare this product fairly? Maybe I should

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make a decision matrix with all the features from the three products and see which one gets the most points.

- I just don't have time to think about all this right now and I don't have enough solid information to make a confident decision. I think I'll put it on the back burner for a few months...

And you thought it was a slam dunk.

It may not be lost, but it's going to take longer to consummate this sale than you thought. Deep in your heart you knew this might happen. It's happened before. And if you're honest, you make decisions the same way. There are almost always others who have to be appeased, consulted or persuaded before you buy.

How do you deal with this situation in a proactive way? Even if there were no objections, there are still issues to be dealt with. Help him through the buying process by asking questions that will get him to think through these concerns.

- What opportunity costs are you avoiding by taking action now? What would they be if you waited?
- If it's important to solve this problem, why haven't you done so in the past? What's gotten in the way? What's different now? What internal solutions have you considered that might solve this problem? Why haven't you gone that route?
- Who else will be impacted by this purchase? What changes will they have to buy into? How will you convince them that this is the right decision? Who might be a detractor? How will you deal with that person?
- What are the criteria that you will use to judge this solution? What additional information do you need to be able to convince others on your team? What do you need to make a fair comparison with other vendors?
- What makes this a good time to move forward? What would happen if you didn't?

These are only a few of the questions your buyer may be considering. The key to making this work is to sincerely try to help him make the right decision by putting all the background questions and issues on the table. Show that you are considerate and understanding of the process he must go through before saying "yes". Show that you are here to help him think his way through it to come up with the best answers. Because you care enough to deal with this in a helpful, coaching manner, you are showing that you are the best person to help him solve his problems.

2008 – BE YOUR OWN CHANGE AGENT

Get clear on the vision and choose your goals list wisely

by LINDA GREGORIO

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It wasn't that long ago that we were asking ourselves where the summer had gone so quickly. Now, with winter upon us, it will be 'resolution' time before we know it. Speaking of resolutions, have you given any thought to what you 'expect' out of 2008, both personally and professionally? And, if not, maybe now is a good time to do that.

As the Next Year moves in on you, how has 'resolution' time worked for you in the past? Or has it? Maybe you also have an annual method of writing down your resolutions, and of holding yourself accountable to them throughout the year. Maybe you even start early to think about them and you may already have a well vetted list for 2008. Or, perhaps like many others, maybe you make resolutions knowing full well that they'll be broken sooner than you would like – either sometime mid-spring when the outdoor weather starts calling you, or for certain when summer arrives and all routine seems to go out the window.

Although I have never been big on the so-called 'New Year resolution' hype – probably because in the past I made them never really intending to keep them – I do feel it is important to have a vision of where you want to go in the year ahead, and to have a clear goals list to guide you in getting there. I tend to think of each New Year as a change management initiative of sorts. A time when you can identify change needed, and kick-start the change needed to shift the status quo.

What should that change process include? Part of the change process not only includes having a clear vision of what you want, it includes ensuring you list and target goals you are interested in, committed to and capable of, with or without support. Being clear on the vision and choosing your goals list wisely is crucial.

As a long time volunteer fitness instructor at the local YMCA, I am reminded of all the resolutions that come and go each year. Each and every January we note memberships and attendance rise, only to fall back down again, to normal levels, within 90 days. I dubbed this the "90-day start-stop plan," and I use it as a benchmark when setting annual goals for myself. If I think my interest in any one goal may/will fade within the first 90 days, for any reason, I don't add it to the list.

Whether you take 'New Year resolutions' seriously, or create an annual goals list, or whatever it is you call your annual plan, there is no question it is worth

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having one, one that works for you. One that sets you up for success; instead of one that sets you up for repeated disappointment. After all, I assume you want to do new things and get new and improved results, don't you?

To help all of us prepare for 2008, below is a list of change management reminders:

After all, I assume you want to do new things and get new and improved results, don't you?

- Let Go. Let Go. Let Go. Be willing to let go the old, to make way for the new. Whether that is letting go of old patterns of behaviour; or letting go old friendships which no longer work; or letting go your old reactions to problem colleagues who last year made you want to rip your hair out, whatever it is, be ready to 'Let it Go'.
- Get Real. Be sure you are serious enough about whatever it is you put on your goals or resolution list. Ask yourself, "Can it survive the 90 day start/stop plan?"
- Stay Sane. Remember: the definition of insanity is to do the same thing over and over again, yet expect different results. Be prepared to change what and/how you do things. If you don't, you'll fail.
- Work It. Ensure that you know which skill you are trying to develop, strengthen and/or leverage. It is the skill(s) you must rely on to succeed, for merely wanting it will not make it so.
- Get Support. Ensure you have the support/resources you need. Surround yourself with the people needed to help you succeed. Find the mentors you need; hire a trainer, or perhaps make time for the continued learning classes you have been putting off.
- Don't Change 'Everything' You Do. Some things can be left alone, and some things might just need minor tweaking. Personally and professionally, as with organizational change, too many change management initiatives at once can do more harm than good.

If you did not achieve everything you had hoped to in 2007, then prepare for 2008 differently than you have in the past. Perhaps, try creating and implementing an annual plan, if you never

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have. Maybe even be bold and commit to being your own change management agent this coming year. You have nothing to lose, only a few things to let go of, and lots to gain – get started today!

TOO MANY TRIPS TO THE ZOO?

Learning to attack all sides of the issue without attacking each other

by JIM CLEMMER

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Last spring I delivered a two-day workshop at a ranch resort in the foothills of Alberta's beautiful Rocky Mountains for a group of 21 managers and supervisors for a mid-sized family business. They were highly participative and keen to improve their personal leadership skills and move their company from very good to outstanding.

One of the key features of our workshop was a moose hunting exercise I have developed over the past seven years of work with many management teams. The Moose-on-the-Table metaphor has evolved into a very popular and effective part of my workshops and our consulting work. The moose represents an issue that everyone knows is a problem but isn't being addressed. People are trying to carry on as if things are normal. Meanwhile the issue is blocking progress and has caused some team members to tune out of conversations. Like a dysfunctional family with an abuser in its midst, no one wants to confront the problem. By failing to declare the issue, they further empower it. The moose has babies and invites its buddies to wade into the growing organizational swamp.

The biggest moose that emerged for this group was that they had trouble openly dealing with issues, concerns, and problems. They were just too darn nice to each other! That's certainly a good thing on the one hand. But teams (and families) that don't have courageous conversations eventually end up with bigger problems. Using a guided discussion process, we were able to effectively voice the issues and get them out on the table to form action plans.

This experience meshed wonderfully with a chapter I just finished the week before in my Moose-on-the-Table fable. The book's main character is Pete Leonard, a struggling middle manager in a struggling company. In this short excerpt from one of the last chapters — after many trials and tribulations — Pete is talking about some of the insights and changed perspectives he's developed as he tried to deal with his own fears and the company's big moose problem:

"We've had way too much going-along-to-get-along and inauthentic conversations around here. This behavior has attracted a major herd of moose that are getting in the way and slowing us down. We need loud debates, heated conflict, and healthy arguments."

The moose has babies and invites its buddies to wade into the growing organizational swamp.

"That's the part I am having real trouble with. We have enough problems now. I don't see how more conflict is a good thing," Cy said.

"Let me give you an example. Two Saturdays ago Ryan was home from university. It's a rare treat to have him home, so we tried to figure out what to do to for some nice family time together. It's been a while since we did anything together so the ideas weren't exactly rolling off the top of our heads. After a bit of overly polite discussion about what to do, the four of us agreed to pile in our little compact car and drive ninety minutes to the zoo. It took three hours to get back due to a huge traffic jam. I think the whole trip was mostly for old time's sake. At the zoo, we spent four hours miserably trudging around from pavilion to pavilion – in the rain — looking at exhibits that hadn't changed in years.

"It was a quiet ride there and a sullen ride back. As we sat there stuck in traffic seven dismal hours later – and after we'd given up our Saturday together – we finally vented our true feelings. Cy, not one us of wanted to go to the zoo in the first place. Everybody was being too polite and going along with what they thought the others wanted to do. If we would have had an open conversation with everybody stating how they really felt we would have had a much better time together."

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"Been there, done that," Cy chuckled as he nodded his head.

"We've been on way too many trips to the zoo around here. We need to learn how to argue without being argumentative. We have to learn how to attack all sides of the issue without attacking each other. That's a huge culture change for us."

"Yes, it is," Cy agreed. "We do avoid disagreement and differences of opinion – to each other's faces anyway. We do go to the zoo a little too often."

Have you been part of a few too many trips to the zoo? It takes real courage to initiate tough conversations and declare a Moose-on-the-Table. It also takes courage to create an environment that allows everyone to openly discuss problems and give their opinions so you can all skip the trip.

HOW TO PAY EMPLOYEES "JUST RIGHT"

You need good process, strong executive governance and disciplined execution

by DAVID NEILLY

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Anyone who leads a company or a department knows it is foolish to underpay employees, because when employees feel underpaid, they become resentful of the organization and withhold some of their enthusiasm and commitment. In the long run, these disgruntled employees will leave the company unless they are "handcuffed" by stock options or pension arrangements. In some respects, however, the handcuffed employee is an even higher productivity risk because he or she will keep showing up for work, provide minimal contribution and possibly poison the workplace with resentment and cynicism.

What about paying employees too much? We all can think of situations where certain employees are overpaid, either because they were hired in at too high a salary relative to their market value, or because their compensation has crept up over the years and overshot their contribution. What if you were paying your entire workforce or a large part of it more than was necessary? How would you know it if this were the case, and what would you do about it?

If you are running a business that is "human capital" intensive, employee pay is probably one of your largest single costs of doing business, and it is critical that you have processes in place to ensure you are paying "just right" – neither too little nor too much.

What does it mean to pay "just right"?

Let's start by defining what we mean by "pay". For our purposes, "pay" means cash compensation, which includes base salary, annual cash bonuses and commission payments for sales staff.

Paying just right means that every employee is paid within a few percentage points- say 5% – of their value to you and to the marketplace for a comparable role. If you are accurate in paying staff to within 5%, you are doing a very good job because you are neither de-motivating staff nor unnecessarily escalating your cost of doing business.

How do you go about paying "just right"?

How do you decide what "just right" means for you? For starters, it's important to understand that cash compensation is just one piece of your overall employment offering that includes benefits, time off, work challenge, culture, leadership, career prospects, the physical workplace, training investments and many other aspects of employment that are important to prospective employees. You know that employees come to work for many reasons and pay is only one of them.

If you imagine that employment with your company is the "product" and your employees are "buyers" of that product, you need to ask yourself, "What kind of employees do I want/need to make my company successful, and how do I create an employment offering that will be attractive the right job candidates?" For example, if you run an "eat what you kill" sales organization, then you might want to create a "sink or swim"

What if you were paying your entire workforce or a large part of it more than was necessary?

environment with lots of cash upside, little management coaching and few benefits. On the other hand, if you are building a business that depends on loyalty, teamwork and innovation, then perhaps you want to create a workplace with middle of the market cash compensation, higher

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investments in benefits and training and a very collaborative, supportive and collegial culture.

So, the first step in paying "just right" is to be very clear on the level and type of talent that you need to attract, the kind of workplace you are trying to create to retain and engage that talent, and the role that pay plays in your overall employment offering.

The second step is to build a pay structure that aligns base salary and bonus with level of responsibility and performance. All things being equal, your pay structure should guide you to pay more for increasing levels of responsibility and for increasing levels of performance. Normally your structure will take the form of a set of salary ranges with a minimum, mid-point and maximum for each range. The salary ranges are determined with the help of industry compensation surveys, and are updated annually to keep pace with competitive trends.

You should also have a "job evaluation" tool that helps you measure the size of a job or role, as well as a set of guidelines that will help you decide if a particular employee should be paid near the bottom, the middle or the top of the pay range based on performance. The job evaluation tool is critical for ensuring that the pay ranges assigned to employees are consistent within and between functions and helps remove individual manager bias from the process.

Finally, you need a process to link pay to performance. By "performance", we mean both company and individual performance. You need to determine what factors will determine changes in individual pay, how salaries will be adjusted each year and the basis for annual bonus payments if applicable.

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Paying employees "just right" is not conceptually difficult but it does require good process, strong executive governance and disciplined execution. Paying "just right" will help you create a cost structure that supports the needs of your business, and attract and retain employees that are "just right" for your business.