Effective Governance in Sport: Learning from Failure

November 19, 2015
Canadian Olympic Committee
Montreal, Quebec

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TRANSFORM
PROVOKE

Topics I will address

- **1. Governance red flags for failure;**
- **2. The role of the Code of Conduct and sign off;**
- **3. Importance of risk and internal audit;**
- **4. Connection between risk, culture and pay;**
- **5. Whistle-blowing and a protected channel;**
- **6. Company culture and the board’s role;**
- **7. Communication, education and controls;**
- **8. Technology: social media, reputation risk;**
- **9. Tone at the top, and now in the middle;**
- **10. Questions and answers;**

There is not an excuse that I have not heard

- “It doesn’t apply to our sector or organization.”;
- “It costs too much.”;
- “It is too difficult to implement.”;
- “We have never done it this way.”;
- “Regulators lack jurisdiction to tell us what to do”;
- “There is no relationship between governance and performance.”;
- “It is the law of unintended consequences”;
- “It is one sized fits all approach.”;

Caveat:

I am an expert in governance, accountability & ethics, not in sport.

This is a resource deck and I will position it as such.

Theory meets practice

- Two sporting organizations;
- Health and safety, highly regulated company;
- Rail company;
- Two large IT companies;
- Two mining / oil companies;
- Global construction and aerospace companies;
- Pharmaceutical company;
- Religious organization with priests accused of wrongdoing;
- Two organizations with employees accused of sexual assault;
- Casino company;

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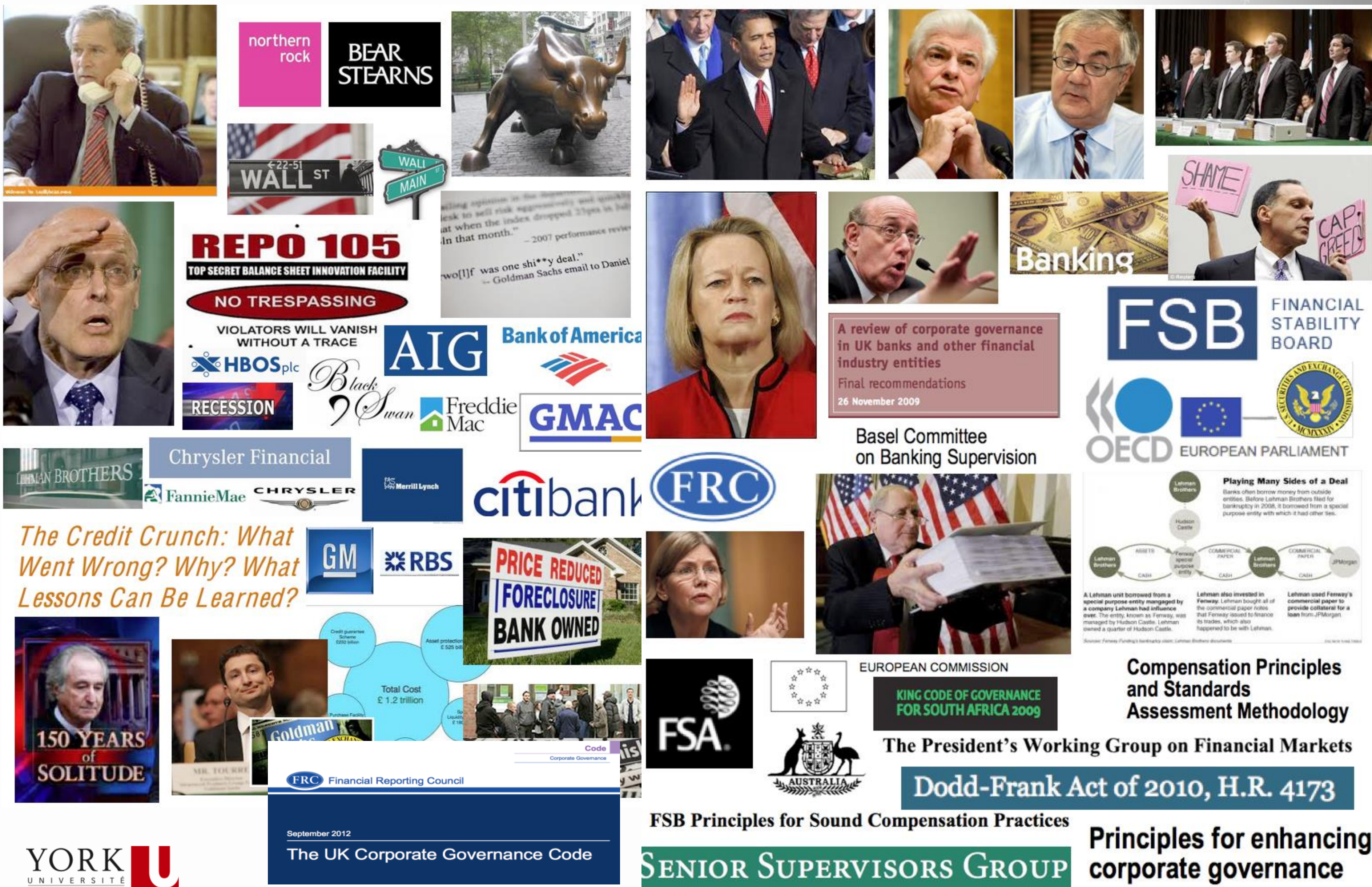
Continuing changes in governance



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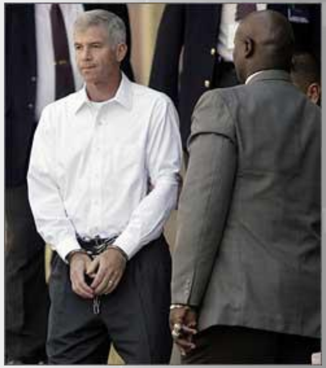
What does governance failure look like?

What was my role and what happened?

- Called in by board, regulator, police, monitor, judge, law firm;
- Bribery and corruption within the company and board;
- Property destruction and death;
- Stock manipulation and fraudulent financial statements (several);

- Sexual assaults (two);
- Improper expenses;
- Extensive lawsuits against directors: “I will [mess] up his life”;
- Significant fines and loss of reputation;
- Interviews of fraudsters (prison in three cases);



Methodology of my investigation

- Access to any personnel or any document;
- Directors and employees instructed: full cooperation;
- Confidential interviews and triangulation;
- Reporting to regulators and endorsement of recommendations;
- Recommendations and implementation: 6, 12, 18 month timelines;
- Broader: 150 organizations; > 500 interviews;
- Other experts, including forensic accountants;

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Findings: Red flags for governance failure

- Organizations who believe governance best practices do not apply to them, to their sector, etc.;
- Weak oversight functions and board line of sight;
- Weak risk oversight and internal audit in particular;
- Weak internal control environment, immature internal controls (existence, design, implementation);
- Tone at top not consistent, consequential (to come);
- Lack of documentation of risk appetite framework;

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Findings: Red flags for governance failure

- Absence of governance documentation and transparency to members;
- Board and members not approving management pay;
- Focus on performance not tied to risk or ethics;
- Lack of independent directors with no relations to sector, industry or management;
- Ignorant directors who are self serving, conflict seeking, and beholden to management;
- Over-tenured, entrenched directors and executives;

Findings: Red flags for governance failure

- A dominant Executive Committee and CEO;
- Defective background checks at CEO, staff and director appointment stage;
- Nepotism, social capture vs director competencies;
- Inadequate Code of Conduct: Design, implement;
- Culture, integrity & their controls not audited;
- No executive sessions by board and committees;
- Faulty tone at the top (see video);

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Tone at Top: A Good Example

Group-think and directors not speaking up

Red flags for governance failure, continued

- Whistle-blowing program run by management, and neither anonymous nor rewarding;
- Flawed internal investigation and no confidence in it;
- Wrongdoer: dominant, bullying & charming, charismatic, high performing;
- Wrongdoing starts small, then capture, then bullying; then slippery slope of wrong doing (see video);
- Dysfunctional behavior enabled rather than stopped;
- Toxic internal culture: Ignorant or complacent board;
- Poor crisis management (see video)

Crisis Management: A Good Example

Why don't people speak up?

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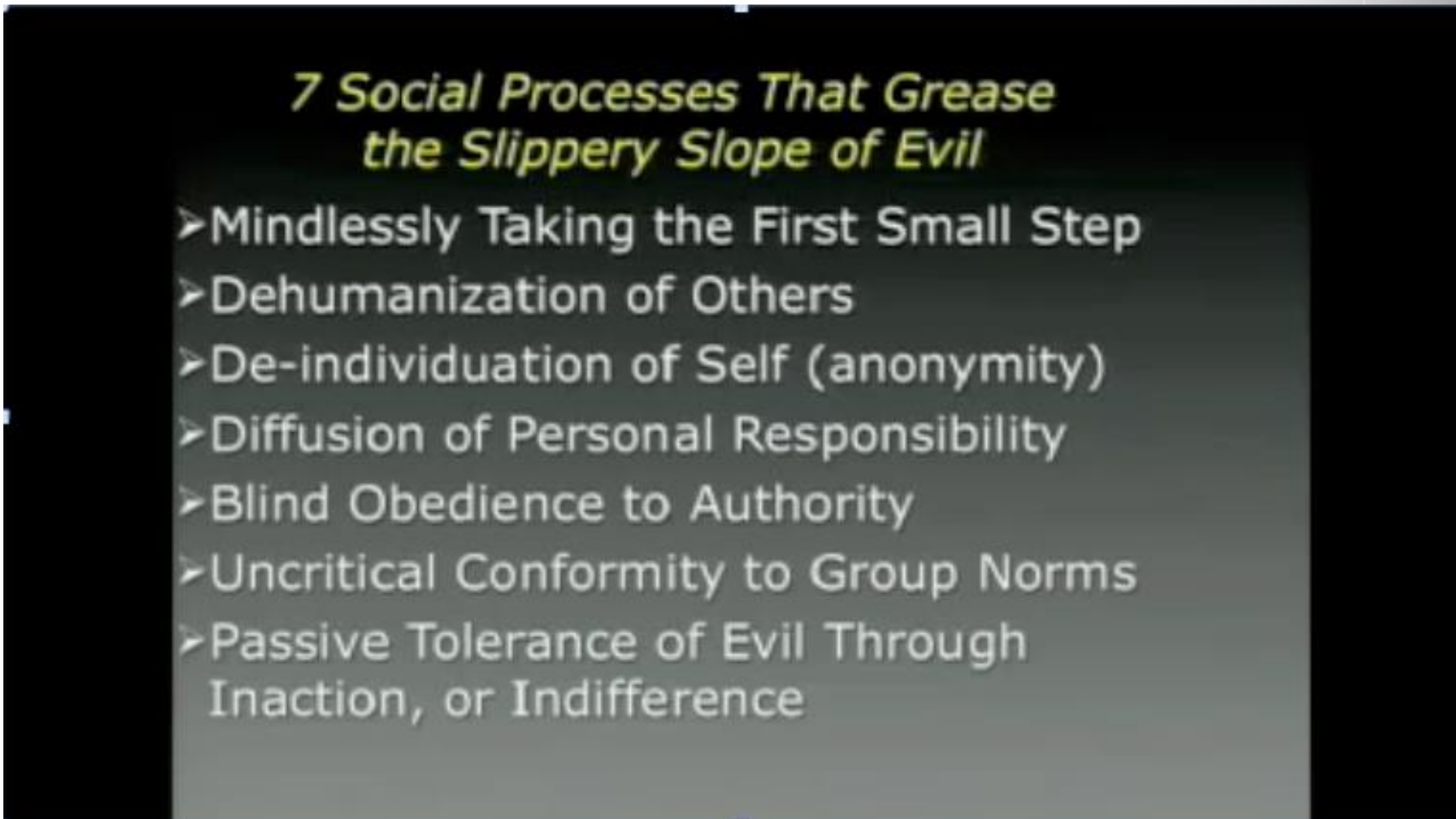
Speak up, speak up, speak up!



Management or the Board?

Ethics and compliance failure is always a failure of the board. It is not just a management failure.

There is no such thing as a poor company, only a poor board.

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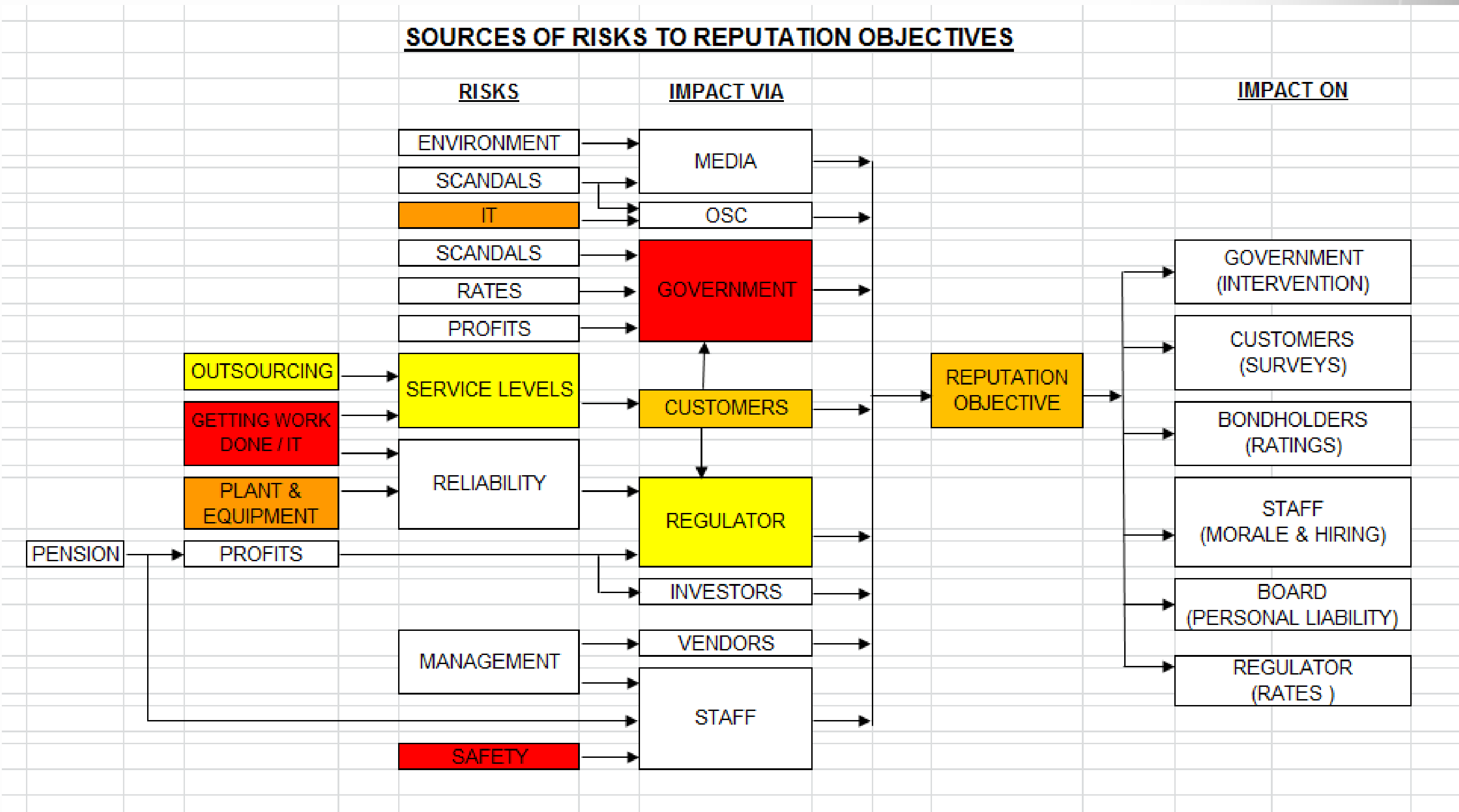
Red flags for governance failure, continued

- Corrupt regulators and governments vs race to top;
- No reputation or exogenous shock test;
- Industry and past practices justified and generalized;
- Focus on narrow rule correctness, not cumulative effect, spirit or principle;
- Ignorant audit committee who do not understand;
- Living beyond means and not taking vacations;
- Blocking third party expertise (very common);

Reputation Risk: Sources of Risk



Risk Rating Key

Very High
High
Medium/High
Medium/High

Note: The colours indicate the ratings to these sources of risks.

Uncoloured sources of risks were not rated as Medium or High at this date.

Source: J. Fraser, Enterprise Risk Management course, MFAc Program, York University, 2015;

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Anti-Corruption Red Flags

- Host country Transparency International scale of corruption: de-risk or banishment;
- Code of conduct, conflict of interest policy, related party transactions, sign-off statement, whistle-blowing: all defectively designed and limited controls to oversee;
- Defective D and O sign-off, financial disclosure and controls;
- Application of Code to agents: due diligence of counter-parties;
- No credit and background checks: directors, management, sponsors, donors, staff, other stakeholders;

Anti-Corruption Red Flags

- Poor employee and agent contracting and management;
- Use of success fees, commission fees, non-expert agents;
- No no gift policy and use of facilitating payments;
- No audit rights to suppliers, customers, and assurance;
- Limited use of expert consultants, for bribery, fraud, pay, expenses;
- Defective training, education of code roll out, especially in corrupt regions and to suppliers;
- Pressure, confidentiality, fiefdoms, no fly zones, and diffuse accountability;

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Anti-Corruption Red Flags

- Lack of record keeping, expenses and accounting practices;
- Focus of contracting is on personal relationships and unfair advantage, not on price, quality and service;
- "Side" agreements or informal practices not approved by the board;
- Use of personal emails, rather than company, and reluctance to document;
- Agent is not paid in the country in which the project takes place;

Anti-Corruption Red Flags

- Services that agent is to perform and scope of work are opaque;
- Agents who do not disclose the name of a principal from whom they have authority, or sub-agents;
- Lack of involvement of legal and compliance professionals at contract inception stage, bidding/contract stage, and payment stage;
- Exaggeration of qualifications within bidding process, and insertions of high profile personnel for the purpose of the bid;

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Again:

There is nothing a board cannot control. There is no more power we can give to boards. Ethical failure, I find, is always traced to a board not acting, or acting inappropriately.

Your "To Do" for Monday:

- Review my slides and select your top five bullet points that may apply to your board or federation;
- Have an in camera session of your board with only independent directors;
- Management must be instructed to leave the room;
- Have a conversation and prioritize;
- Take governance baby steps;
- Remember your leverage: Approval, Information, and Questions.

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Thank you!

THANK YOU!

Q AND A

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Short bio

Professor **Richard Leblanc** is an award-winning teacher and researcher, consultant, lawyer and specialist on corporate governance and accountability. He is a former recipient of Canada's Top 40 Under 40™ award, received a teaching award as one of the top five university teachers in Ontario, and was named to *Canadian Who's Who*.

- Professor Leblanc's research expertise is in corporate governance, specifically in the effectiveness of boards of directors. He will provide hands on examples of how to maneuver the challenges directors could face based on his extensive service as an external advisor to boards that have won national awards and peer endorsement from institutional shareholders for their corporate governance practices.
- His work, directly or indirectly, has impacted companies throughout the world, including those that have used Dr Leblanc's methodology to strengthen their governance effectiveness and accountability practices.
- Dr. Leblanc brings to business and professional audiences a depth of information from his extensive research and work with over 150 organizations; and training, assessment and development of over 1,000 directors and managers.