Boards of advisors can give smaller companies big competitive advantages

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Active boards of directors are used by approximately 50% of Canadian small and medium enterprises (SMEs). Advisory boards are used by approximately 10% of Canadian SMEs. Both can extend the competitive advantage and be of great benefit to SMEs, at a reasonably low cost. A good board can help management make better decisions and mentor start-ups.

By law, every incorporated company has to have a director(s). They are listed in the incorporation documents filed with either the Provincial or Federal Government. Many companies will leave it there and won't form an active board. Being a member of a board of directors is becoming increasingly risky due to the legal liabilities of directors. Each director on a board of directors has two basic legal responsibilities toward the corporation: to "act honestly, in good faith, with a view to the best interests of the corporation," and to "exercise the care, diligence, and skill that a reasonably prudent person would apply in comparable circumstances." These responsibilities apply to each individual director on the board. Should a director breach a responsibility, the corporation can sue the director for the damage caused by the breach.

A director has other legal responsibilities, too, such as avoiding conflicts of interest, maintaining the confidentiality of proprietary company information, declaring personal interests, disclosing pertinent information, complying with legislation, and adhering to company by-laws and shareholder agreements. Directors in Canada owe no separate legal duty to the shareholders, although the interests of shareholders are typically the same as the interest of the corporation.

Liability can apply to each individual director on the board. If the business takes a turn for the worse, a director may be held personally liable for any payroll that is owed to company employees (six months of payroll and twelve months of vacation pay) and any money owed to the government, including employee deductions such as CPP and EI, corporate taxes, federal and provincial taxes, and premiums. Depending on the jurisdiction and circumstance, a director may also be held personally liable to a corporation's creditors. Directors and officers insurance is available, but it's expensive and may not cover all liabilities.

Comparatively, there is little potential liability for individuals on a board of advisors because the members of a board of advisors are not legal directors of the corporation. A board of advisors may make recommendations, but lacks the legal decision-making power of a board of directors. As time goes on, it will become more difficult to get individuals to become directors. The alternative is to have a board of advisors. The board of advisors fulfils many of the functions of a board of directors, except it doesn't make binding decisions on behalf of shareholders, nor does it approve management decisions such as major investments, acquisitions, or CEO's compensation packages. A board of advisors provides advice and may make recommendations. A typical list of responsibilities of a board of advisors may include:

1. Help with strategic direction.
2. Act as a sounding board.
3. Help define goals and objectives and ensure they are met.
4. Provide an unbiased view of company actions.
5. Help with succession, recruitment, compensation, organizational structure, and role definition for senior management.
6. Provide social capital by extending the social and knowledge network available to the company.
7. Review major company engagements, such as major investments and acquisitions.
8. Review financial results and organizational performance metrics.
9. Bring discipline to the decision-making process of management.
10. Mentoring.
11. Bring in complementary skills the company doesn't have.
12. Help to assess the principal risks facing the company.
13. Review compliances that must be met.

The advisory board provides a forum where issues can be discussed with objectivity and where important topics can be reviewed. An advisory board typically has seven to nine members, with half from the organization's senior management and half from outside. Meetings vary from monthly to quarterly, depending on the company.

An advisory board should provide value and the key is to leverage the skills and experience of the external members of the advisory board. An advisory board formalizes a process that already happens in many SMEs, where the owner/manager utilizes an informal network of individuals to help make better decisions. Following is a quote on the value of advisory boards (from M. Levin, "Built to Scale"): "I wish I had recruited an advisory board many years ago. It would have prevented headaches and saved me a ton of money, because it would have helped me look at the big picture. Seeing how much we have accomplished in one year, I can only imagine how many strides forward we are going to make next year. My plans are to grow aggressively. I absolutely feel like it's a realistic goal now that I have my board helping me, because they have all done it."

An advisory board can become an external, low cost asset for the SME and can help the company grow and compete more effectively.

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This article was written for The Toronto Star, June 2013.