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The dissipation of corporate accountability: Deaths of the elderly in for-profit care homes during the coronavirus pandemic

Cameron Graham^{a,*}, Darlene Himick^b, Pier-Luc Nappert^c^a York University, Toronto, Canada^b University of Ottawa, Ottawa, Canada^c Université Laval, Québec, Canada

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ABSTRACT

The COVID-19 pandemic has raised serious questions about corporate accountability, exposing how poorly our systems of corporate accountability function under pressure. This paper examines one industry and jurisdiction where this problem is particularly visible, for-profit care homes for the elderly in Ontario, Canada (where the industry is called “long-term care” [LTC]). LTC companies continued to pay bonuses to executives and dividends to investors while COVID-related deaths mounted in their facilities. What does this tell us about how society holds companies accountable for their actions? This paper focuses on two highly institutionalized systems of accountability in the LTC industry in Ontario, namely healthcare governance and financial governance. We examine these two systems in the context of public pressure for regulatory action, pressure that has manifested in mainstream media coverage, social media outrage, and the threat of civil lawsuits. We compare the efficacy of healthcare and financial governance in this industry using a theoretical framework drawn from accountability literature, and explore the possibility of legal consequences for LTC corporations under corporate criminal law. We show how these systems together serve to dissipate corporate accountability through a fragmented, inadequate system of conflicting governance mechanisms, despite making a show of accountability rituals. We argue that these systems work together to divide the moral community in which corporations exist and where meaningful accountability might be possible, facilitating the misrecognition of the “corporate imaginary” as an accountable entity.

1. Introduction

In [long-term care] homes experiencing an outbreak, for-profit homes have seen nearly 10 times the number of fatal cases per bed than non-profit homes, and nearly twice that of municipal homes. (Tubb, Wallace, & Oved, 2020)

In April 2020, the Canadian Armed Forces (CAF) were called in to intervene in 25 long-term care homes¹ in Quebec and Ontario

Abbreviations: LTC, long-term care; CAF, Canadian Armed Forces; CCF, Complaints inspections, Critical incidents inspections, and Follow-up inspections; TSX, Toronto Stock Exchange.

* Corresponding author at: Room S346, Schulich School of Business, York University, 4700 Keele Street, Toronto, Ontario M3J 1P3, Canada.

E-mail addresses: cgraham@schulich.yorku.ca (C. Graham), dhimick@uottawa.ca (D. Himick), pier-luc.nappert@fsa.ulaval.ca (P.-L. Nappert).

¹ Long-term care (LTC) homes in Canada are institutional facilities where the elderly live and receive medical and personal care. In other countries, they may be called “nursing homes” or “skilled nursing facilities.”

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that had seen large outbreaks of COVID-19 (Government of Canada, 2020). The number of cases and deaths in these centres indicated a collapse of their capacity to cope with the pandemic. COVID-19 affects the elderly more severely than other people (Centre for Disease Control and Prevention, 2021), so given the widespread institutionalization of eldercare in Canada, it is perhaps understandable that long-term care homes should see larger numbers of COVID cases. Still, the number of deaths in long-term care (LTC) has been much higher than expected. Investigative journalist Nora Loreto compiled a database² of all the COVID-19 deaths in Canada, tracking 78% of them to LTC facilities during the first year of the pandemic. She found a disproportionate impact of COVID-19 on residents of for-profit homes, compared to non-profit and publicly-owned homes (Loreto, 2020). This has been confirmed by a separate study published in the Canadian Medical Association Journal (Stall, Jones, Brown, Rochon, & Costa, 2020). The failure of for-profit LTC facilities to protect residents from COVID-19 has prompted the filing of multiple class-action lawsuits by family members of LTC residents (Ontario Health Coalition, 2020). Yet for-profit LTC firms, which have received substantial financial assistance from the federal and provincial governments during the pandemic, continue to issue healthy dividends to shareholders (Lancaster, 2020). While their share prices dropped when the pandemic first hit Canada in March 2020, within a year and with resident deaths still mounting, they had recovered about half their lost value (see Table 1).

These circumstances raise serious questions about governance mechanisms intended to hold Canadian for-profit LTC companies accountable for their actions.³ What mechanisms were in place to hold LTC corporations accountable for the wellbeing of their aged residents? Why did these mechanisms fail? Why were shareholders allowed to profit during this failure? The magnitude of the crisis in for-profit LTC forces us to ask if these companies are culpable for these deaths and if so, what prevents criminal charges from being laid? This study attempts to answer these questions by examining the systems of accountability that govern LTC corporations, and to draw broader inferences about the possibility of corporate accountability.

The system of accountability for LTC corporations is a broad web of formal and informal mechanisms, including healthcare and financial regulation, criminal law, civil lawsuits, news media, social advocacy by family members, and the professionalization of medicine, nursing, and personal care workers. We focus on what we consider to be the two most important institutional pillars of this system, healthcare governance and financial governance.⁴ Because healthcare and financial securities are both governed at the provincial level in Canada, we chose to focus on the province of Ontario. Ontario is the most populous province, with the most LTC facilities and the most prominent capital markets. It is also a province where the impact of COVID-19 has been severe. This made it a logical choice for our study.

On the healthcare side, we examine how healthcare regulators use sporadic inspections and minimal reporting requirements to govern the LTC industry, which has been privatized and deregulated over the past several decades to create opportunities for rent-seeking by large investment funds. On the financial side, we examine financial reporting by LTC companies as well as the content of their conference calls with financial analysts, to see whether financial accountability mechanisms took COVID deaths into account in any way. Since these are two governance systems from which criminal law might be invoked, we also look at the necessary conditions for healthcare and financial regulators to trigger criminal investigations.

We use a multidimensional framework drawn from Brandsma and Schillemans (2013) to explore the roles of *information*, *discussions* and *consequences* in effecting accountability. This framework helps us perceive not just the obvious fact that accountability has failed in for-profit LTC, but *how* it has failed – or, in an alternative reading, how it has succeeded in dissipating corporate accountability. We show how these systems erect a facade of corporate accountability by creating separate instances of successful use of information, discussions, or consequences, while never accomplishing all three at the same time. This happens, we argue, because the system of accounting and accountability mechanisms fragments the moral communities in which meaningful accountability might be possible, while facilitating the misrecognition of the “corporate imaginary” (Roberts, 2021) as an accountable entity.

Corporate accountability research has traditionally concentrated on the binary financial accountability relationship between a corporation and its investors (see Barth, 2015), neglecting other aspects of the system of accountability around corporate conduct. Attempts to move beyond this binary approach by accounting and management scholars include the emergence of environmental, CSR, and triple-bottom-line accounting literature (e.g., Chung & Cho, 2018; Gray, Owen, & Maunders, 1988; Huang & Watson, 2015). Within this broad literature are some excellent studies (for example, Egbon, Idemudia, & Amaeshi, 2018; Gold & Heikkurinen, 2018; Grisard, Annette, & Graham, 2020; Jackson, Bartosch, Avetisyan, Kinderman, & Knudsen, 2020; Michelon, Pilonato, & Ricceri, 2015; Michelon, Rodrigue, & Trevisan, 2020) exploring the limits of transparency as a panacea for corporate malfeasance (Albu & Flyverbom, 2019; Flyverbom & Reinecke, 2017; Roberts, 2009). Our paper contributes to this stream by examining how information, even if transparently accessible to regulators and the public, fails to produce the imagined effects of transparency due to the way it is

² Downloadable at <https://t.co/rtyvfyff?amp=1>. Loreto used news reports and other investigative journalism techniques to document every reported COVID death in Canadian LTC facilities since the beginning of the pandemic.

³ We use “governance” to refer to the systems intended to oversee the conduct of LTC organizations. These systems involve regulation as one important tool of governance, alongside tools such as publicity, market pressure, and so forth. So, we do not use “regulation” interchangeably with “governance.” We use “accountability” to designate the intended product or goal of the system of governance.

⁴ While a comprehensive analysis of all the accountability relationships in the LTC field might be appealing in some respects, we determined that it would be impossible to conduct such research during the pandemic. For instance, only an on-site anthropological approach would let us observe informal accountability relationships, but in-person research would be dangerous for residents, staff, and the researchers, even if permission could somehow be obtained. Despite the limitations of our approach, focusing on healthcare and finance does provide us with an understanding of the interactions of two complex systems of accountability. As described in our methods section, our examination of media coverage gave our analysis important context to broaden our understanding.

Table 1
Share price recovery for Canadian LTC operators (Source: TSX).

Company	Pre-pandemic share price	Lowest pandemic share price	Share price as of 05 Mar 2021	Recovery (%)
Chartwell Retirement Residences	\$14.47	\$7.93	\$11.18	50%
Extendicare Inc.	\$8.67	\$5.10	\$6.89	50%
Sienna Senior Living Inc.	\$19.43	\$9.08	\$13.65	44%

consumed passively in institutional settings that impose no material consequences on corporations.

This paper contributes to the growing body of accounting research on the COVID-19 pandemic, which has already examined hospitals in Germany (Huber, Gerhardt, & Reilley, 2021) and non-profit care of the elderly in Australia (Twyford, 2022), as well as the roles of accounting in governing populations during the pandemic (Ahmad, Connolly, & Demirag, 2021; Ahn & Wickramasinghe, 2021; Sargiacomo, Corazza, D'Andreanatteo, Dumay, & Guthrie, 2021). More generally, the paper contributes to accounting research on the operation of accountability in settings where social outcomes are important, including the public sector (Sinclair, 1995), NGO accountability (O'Dwyer & Unerman, 2008; Oakes & Young, 2008), and Indigenous accountability (Chew & Greer, 1997; Jacobs, 2000). We show how the institutionalized mechanisms of accountability in the LTC industry fail both separately and collectively to hold for-profit corporations to account for the thousands of additional deaths of their elderly customers from COVID.

Finally, this paper contributes to research on the relationship between accounting and those who are rendered vulnerable (Burns & Jollands, 2020) by social, economic, and political processes of exclusion. This diverse body of research examines how accounting and auditing affect persons with disabilities (Duff & Ferguson, 2007, 2011a, 2011b; Nikidehaghani, Cortese, & Hui-Truscott, 2021), refugees (Agyemang, 2016; Agyemang & Lehman, 2013; Frey-Heger & Barrett, 2021; Gilbert, 2021; Pianezzi, Cinquini, Grossi, & Sargiacomo, 2022; Sargiacomo & Walker, 2022), and those who are homeless (Cooper, Graham, & Himick, 2016). Like Twyford (2022) in the Australian context and Wällstedt (2020) in the Swedish, this article on Canada extends a still-slender branch of accounting research in the field of elder care that goes back at least as far as Preston, Chua, and Neu (1997).

The paper proceeds as follows. We develop our theoretical framework, drawing on sources mentioned above. We then describe our data and our research methods, where we curated public records and documents that show how accountability is constructed and enacted in the LTC industry. Then we present our analysis of the data, organized around the separate accountability mechanisms that we identified. Finally, we discuss insights from our analysis, integrate them based on our theoretical perspective, and link our conclusions back to prior literature. We argue that the notion of corporate accountability is empty because corporations and the governance systems in which they are embedded are designed to dissipate accountability across a fragmented moral community, through misrecognition of the corporate imaginary, even as they make a show of the performance of accountability.

2. Dimensions of accountability

Some literature on corporate accountability takes for granted that we know what we mean by “accountability.” Accordingly, many such studies do not define it. When definitions are provided, they can sometimes seem tautological (e.g., “the giving and receiving of accounts”), though at least this grounds accountability in social behaviour (see Scott & Lyman, 1968). More nuanced definitions develop the relational qualities of accountability and the positive reasons for wanting to explain oneself to others (see Butler, 2005; Levinas, 1985; Schweiker, 1993).

Shearer (2002) does exactly this in arguing that the point of accounting and accountability is to help construct meaning in a moral community: “I accept that the production of lived reality is a hermeneutic or interpretive process. The stories we tell give meaning to our experience of reality ...” (p. 545). Accounts of ourselves are among the important stories we tell to each other to give meaning to our shared lives, says Shearer. She quotes Schweiker to define the giving of accounts as “providing reasons for character and conduct, ones held to be understandable to others and thereby rendering a life intelligible and meaningful” (Schweiker, 1993, p. 234). In other words, accounts are about the meaning of life, and that meaning is produced intersubjectively in a community of moral agents. Indeed, the discursive process by which this meaning is created is as important as the content of the accounts (Shearer, 2002, p. 546).

Bovens, Schillemans, and Goodin (2014) claim that a “minimal conceptual consensus” about accountability exists across academic disciplines, namely that accountability involves providing answers to those who have a right to demand answers (a power dynamic absent from some definitions), that this right arises from a principal-agent relationship, that accounts are provided ex post, and that accountability is consequential (that is, failure to provide valid justifications for one’s behaviour may lead to a penalty or punishment). While Bovens et al. may be right that this represents something of a consensus in accountability literature, we would argue that it is too binary to capture the moral complexity of a field like LTC, where the lives and well-being of the elderly are entrusted by family members to a corporation seeking to maximize its profit within a field that is, at least in Canada, supported by public healthcare funding and by temporary public pandemic-relief funding to employers. We need a model of accountability that acknowledges the importance of discursive processes in creating meaning within the complex moral community in which LTC is situated.

The model we find most useful for our purposes is the three-dimensional “accountability cube” proposed by Brandsma and Schillemans (2013). The dimensions of the cube are *information*, *discussions*, and *consequences* (see Fig. 1). Brandsma and Schillemans point out that conceptually these are three successive phases, where the accountable party (the “accounter”) first provides information about their actions, then discusses the information with the party to whom they are accountable (the “accountee”), and finally experiences some positive or negative consequences for their actions. In practice, say Brandsma and Schillemans, these phases may overlap, or be missing, or happen simultaneously, because accountability is messy in practice. Conceiving these dimensions as a cube is

therefore insightful by Brandsma and Schillemans, for it implies the “phases” are mutually constituting, or as they put it, “messy, iterative, and multifocal” (2013, p. 971). Discussions may lead to calls for new information, information provided may shift the scope of consequences, and so on.

The first dimension, then, is about the *information* contained in the account. The accountant must tell the accountee what has transpired. Doing so requires that the accountant know what information would be appropriate to provide, and be able to render that information accurately. Should the account focus on results, for instance, or processes? And what measurements, if any, would be appropriate? Brandsma and Schillemans focus on the quantity of information (little, much) in their diagram, but they assume that the information “provides an account of [the agent’s] conduct and behavior toward the accountability forum” (Brandsma & Schillemans, 2013, p. 955). Thus accountability relies not just on *more* information, but on *meaningful* information being provided in the context of the accountability relationship.⁵ Following Shearer (2002), what counts as meaningful information must be determined discursively in the moral community in which the accountability relationship exists. The information provided will therefore depend on the relative power of the accountant and accountee(s) in that community.

An accountability relationship can fail at this first step – the provision of meaningful information – for any number of reasons, including poor communication between the parties, uncertainty about the possibilities of action, uncertainty about cause and effect, or an inability to gather accurate information. Even if all these barriers to providing an account are surmounted, there will remain the inability of anyone to truly understand and account for their own behaviour at the deepest level (Butler, 2005; Messner, 2009). Furthermore, the way this dimension is defined, not just by Brandsma and Schillemans but by almost all theorists of the information content of accounting, presupposes an ontological unity on the part of the accountant. This, we argue, does not hold for corporations, which create the impression of ontological unity where none exists, fashioning that impression, that “corporate imaginary” (Roberts, 2021, pp. 3-4), from a complex set of structured relationships within and around the corporation. In particular, as we shall see below, the “accountant” shifts between the corporate level for financial accountability and the local level of individual LTC facilities for healthcare accountability. Nonetheless, information content is a crucial aspect of accountability and must be examined if we are to understand how corporations are held to account.

That being said, we must avoid fetishizing information by assuming that transparency is a sufficient condition for accountability. The idea that transparency is efficacious rests on the belief that if only the conduct of accountable parties could be made public, they would make ethical decisions. This reasoning is not completely supported by the evidence. As Donald Trump famously stated, “I could stand in the middle of 5th Avenue and shoot somebody and I wouldn’t lose voters” (Diamond, 2016). A theory of accountability therefore needs to go beyond the limits of transparency (Roberts, 2009) and ask what happens *before* an account is presented, when the accountable party is considering what to say, and what happens *after* an account is presented, when consequences are determined. This points to the other dimensions of the accountability cube.

The second dimension of accountability, *discussions*, is about engagement between the accountant and the accountee, centering on the information provided (or perhaps lacking) in the account. It is at this point where the presumption of a dyadic relationship between accountant and accountee in traditional notions of accountability becomes vividly clear. Yet a corporation is, as we have argued, not itself a unity, and its accountees are legion. The discursive move to privilege shareholders and reify them as “the” accountee is a crucial one, and we must recognize how this sets shareholders against the vast number of others who are affected by the corporation. The highly developed rituals of accountability to shareholders, particularly those related to auditing (Power, 1997), create a facade of accountability. The term “the shareholders” is itself a perilous concept, for it invites us to imagine a multitude of similar claimants, all of whom can vote at the annual general meeting, when in fact the shareholders are stratified into layers of relative power. Large institutional investors and corporate insider shareholders have far more influence than small individual shareholders. This is obvious, yet we routinely use the phrase “accountable to the shareholders” as if this meant something, and as if what it meant was democratic.

Brandsma and Schillemans emphasize the “intensity” of the discussions between accountant and accountee(s). They characterize intensive discussions as ones in which all parties have the chance to fully express themselves, and in which the information provided is “diligently assessed” (Brandsma & Schillemans, 2013, p. 955). As with the first dimension on the cube, we argue that for discussions to lead towards accountability, they must produce shared meaning in the community of moral agents in which the accountability relationship exists. What counts as a meaningful discussion will depend on that context and will thus be open to empirical investigation. This is what our investigation of accountability in the context of LTC attempts to do.

The work of Bebbington, Brown, Frame, and Thomson (2007) on dialogic accounting offers a particularly rich way of detailing what might constitute “meaningful” accountability discussions. Drawing on Bakhtin (1981), they explore a rich map of the many possible aspects of a dialogical encounter between accountant and accountee, which transcends the limitations of monological accounting as institutionalized in corporate financial reporting, for instance. For Bebbington et al., a dialogic accountability relationship can involve many modes of discourse that increase the meaningfulness of the encounter, establish deep personal understanding and respect between parties, deal with contradictions and obstacles, and allow for listening and reflection, all brought together in an interactive, evolving process. Some of these modes require active engagement by participants prior to the provision of an account (e.g., development and assessment of an inclusive design for the encounter, encouraging systematic and transdisciplinary enquiry, problematizing), some during the provision (e.g., active listening, mutual trust and understanding, awareness of others, respect, explaining and justifying, multidimensional representations, interaction, coevolution), and some after (e.g., reflective opportunities, action). The

⁵ We would argue that the qualitative characteristics of accounting information listed in the IFRS Conceptual Framework contribute to information being meaningful. These include relevance, faithful representation, timeliness, understandability, and so on (<https://www.ifrs.org/issued-standards/list-of-standards/conceptual-framework/>).

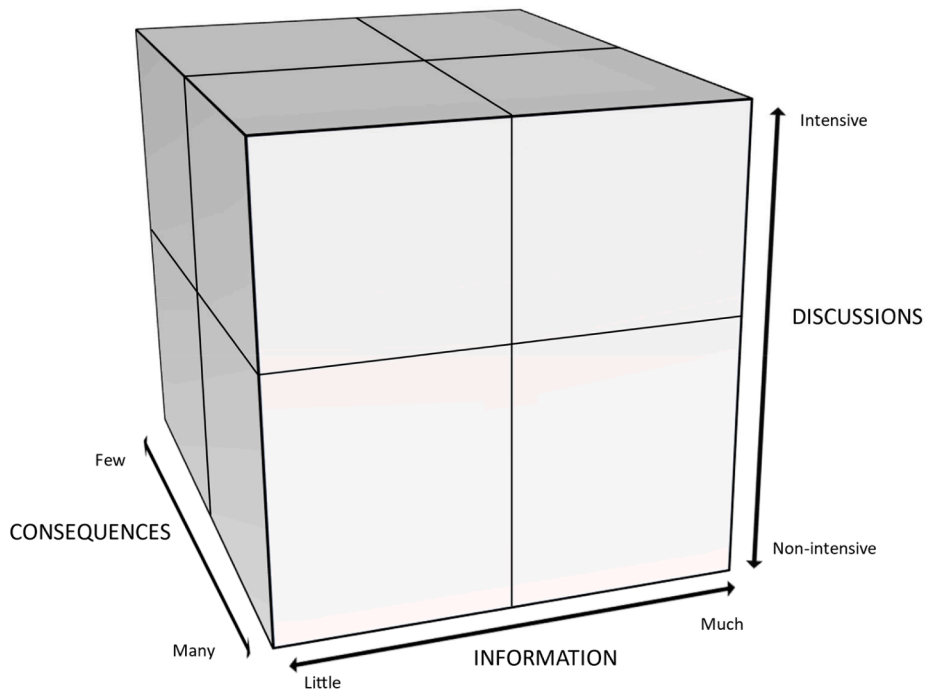


Fig. 1. The Accountability Cube (adapted from Brandsma & Schillemans, 2013, p. 961).

richness and complexity of the dialogic accounting framework can help researchers investigate the “discussions” dimension of the accountability cube.

The third dimension of accountability is *consequences*. If the accountable party suffers no negative consequences for misconduct and receives no reward for proper conduct, accountability is weak. Consequences may be internalized, leading a party to act so as to maintain social order, but they remain consequences for our purposes. Brandsma and Schillemans again focus on quantity in their diagram (few consequences or many), but this fails to acknowledge that consequences are often not additive. A hundred minor fines are no match for a single jail sentence when it comes to governing corporate behaviour. We again suggest, therefore, that a better way to think about this whether the community of moral agents in which the corporation is embedded finds the consequences to be meaningful. That is, accountability depends on whether meaningful consequences arise for the accountant if it fails to fulfill its responsibilities to the community. If a corporation pays a huge fine, for instance, but those most affected by its behaviour believe that the corporation sees the fine as simply the cost of doing business and does not change its behaviour, the community of moral agents will have determined that the consequences were meaningless. Investigating what makes consequences meaningful will require attention to the discursive processes of the community in question.

The discursive processes of accountability around a corporation are dominated by financial concerns. Financial accounting literature therefore often focuses on financial consequences, tied to the self-interest of managers. The financial reward to managers for increasing profits can be huge in corporate capitalism, through bonuses, stock options, and other incentive-alignment elements of executive compensation. The negative consequences to managers for failing to increase profits can include having their employment terminated, though this event may trigger pre-negotiated financial compensation.

What of the consequences for the corporation itself, though? Particularly, what negative consequences does a corporation suffer for events that fall outside financial discourse, such as the many COVID deaths witnessed in LTC? To understand this, we turn to literature on the regulation of corporate conduct and particularly corporate crime.⁶ The common approach to the regulation of corporate conduct relies on the assumption of good faith on the part of the corporation, which allows regulators to focus on informing corporations of their transgressions, educating them, and persuading them to correct their processes; punishment is a last resort (Braithwaite, 1989). This approach fits well with the neoliberal principle of self-regulation and minimal government intervention in markets, according to Bittle and Frauley (2018). Punishment of corporations under criminal law is not “practicable,” they argue (p. 614), because law and business, as joint participants in the field of private enterprise, share common goals. Capitalist democracies place law and business together at the centre of social governance, both practically and ideologically, resulting in a widespread misrecognition of both the impotence of regulation and the authoritarian, anti-democratic nature of corporations as natural (p. 615). Criminal prosecution of corporations is exceedingly rare, despite the symbolic erection of laws against corporate crimes, because “the

⁶ The authors are grateful to Steve Bittle of the University of Ottawa for his briefing on this literature. All interpretations and choices of citations are the responsibility of the authors.

very structure of law, with its attendant hierarchy of individualized, one-on-one forms of violence” (p. 624) is ill suited to criminalizing the violence of corporations. How, for instance, can a corporation exhibit *mens rea* if that basic legal concept depends on a notion of the rational individual? And how can anyone be held liable for corporate crime if the corporation is fundamentally erected on the premise of limited liability (pp. 625–626)?

We will pursue these questions below in our analysis of accountability in LTC. For each of the systems of governance, financial and healthcare, we will examine how information about corporate conduct is constructed, reported, and consumed; how discussions with the corporation during the accountability process take place, and how consequences are applied, ranging from minor demands for changes in operating procedures to the (im)possibility of criminal charges. Our argument, in brief, is that if corporate accountability is to be achieved, each of the three dimensions of accountability must be meaningful to the community of moral agents in which the corporation exists. We use the accountability cube as an analytical tool to examine how the two major systems of governance in LTC work together to facilitate the misrecognition of the corporate imaginary as an accountable entity, leading to the failure of corporate accountability. We turn now to an explanation of the methods we used in our research.

3. Context and research methods

3.1. Background – LTC in Ontario, Canada

This project began in the spring of 2020, around the end of the first wave of the COVID-19 pandemic in Canada. The extent to which the pandemic hit Ontario’s LTC homes had started receiving notice in mainstream media, particularly following the report by the Canadian Armed Forces (CAF) on the living and care conditions at five LTC homes, of which four were licenced as for-profit corporations. One of these for-profit homes was Altamont Care Community, operated by Sienna Senior Living, a corporation publicly traded on the Toronto Stock Exchange (TSX). Reacting to the CAF report, Ontario Premier Doug Ford threatened to pull Sienna’s license, adding: “I would expect, as a shareholder, to start holding the CEO and chair accountable. Because guess what? We’re going to hold them accountable” (quoted in [Bellusci & Bochove, 2020](#)). Around the same time, reports of lawsuits by family members of residents who had died began to surface in the broader media, suggesting other ways in which LTC homes were facing calls for accountability. These events led us to interrogate whether and how for-profit LTC operators would actually be held accountable.

In Canada, healthcare systems are a provincial responsibility and LTC is, accordingly, regulated by each province. In Ontario, LTC falls under the responsibility of the Ministry of Long-Term Care, which is mandated to regulate, license, and inspect 626 homes, of which 57% are owned by private for-profit organizations ([Canadian Institute of Health Information, 2020](#)). As of December 31, 2019, three publicly-traded corporations – Chartwell Retirement Residences,⁷ Extendicare, and Sienna Senior Living – owned or managed over 130 LTC homes. As of late 2020, the province had over 78,800 long-stay beds, a waiting list over 37,000 for these beds, and an average time to placement of 152 days ([Auditor General of Ontario, 2021, p. 15](#)). Governmental agencies determine the eligibility of patients and manage the waiting lists. Considering the aging demographics of Ontario, the number of seniors in need of LTC is expected to double over the next 20 years ([Ontario Long Term Care Association, 2019](#)).

In the Ontario LTC industry, the province funds personal and nursing care, with additional funding for “quality attainment,” reimbursement of lab service costs, partial reimbursement of certain expenses related to furnishings, equipment, capital development, and a variety of smaller categories ([Government of Ontario, 2021b](#)). Residents, however, must pay for accommodation costs. The province offers a subsidy to low-income residents up to the basic accommodation rate. Residents must pay extra for a semi-private or private room. The accommodation rates, which apply to all LTC homes in Ontario, were set by the province in 2019 and indexed to inflation (see [Table 2](#)).

Given this framework, it seems that to maximize profits, a for-profit LTC company must (a) attract residents willing to pay the up-charges for a private room and non-health-related services, and (b) reduce or eliminate costs not reimbursed by the province. For the fiscal year 2019, Chartwell, Extendicare and Sienna reported respectively a net operating income of \$31.7 million, \$77.4 million, and \$88.4 million for their LTC segments.

3.2. Data – sources and analysis

To examine the calls for accountability, we collected data in three main categories. These were: (1) healthcare accountability, focusing on government reporting of inspections of LTC homes, (2) financial accountability, focusing on financial reporting for three corporate entities that own for-profit care homes, and (3) media reports on these corporations and their care homes. While we were not pursuing a study of the “change” between the pre-COVID and COVID time frames, we nonetheless examined relevant reports that had been published during 2019 or the early months of 2020, in order to see whether significant changes in reporting format, content, method, or audience had transpired.

To investigate healthcare accountability, we downloaded from the official Ontario healthcare website inspection reports related to the three publicly-traded LTC corporations, for both 2020 and 2021. As just noted, this includes reports from the period of time just before the onset of the pandemic, allowing us to compare reports issued in a “routine” time period with those that took place during the pandemic. We focused on the individual facilities that had recorded a heavy toll of COVID-19 deaths and cases, or had been mentioned

⁷ In March 2022, Chartwell announced that it would sell its LTC segment by the end of 2022.

Table 2
Accommodation rates for 2019 at all Ontario LTC homes.

Type of accommodation	Monthly rate
Long-stay Basic	\$1,891.31
Long-stay Semi-private	\$2,280.04
Long-stay Private	\$2,701.61

(Source: [Government of Ontario, 2021a](#)).

in media reports of specific COVID-related incidents or problematic inspections. We chose this focus in order to understand how regulators held licensees accountable for incidents related to the pandemic. The inspection reports include information about the incident or complaint that led to the inspection, descriptions of the conditions found by the inspectors, which were often quite detailed, and information about the consequences imposed by the inspectors. We supplemented these with the CAF report ([Joint Task Force Central, 2021](#)), the special report on long-term care and COVID-19 by the [Auditor General of Ontario \(2021\)](#), and the final report of Ontario's Long-Term Care COVID-19 Commission ([Marrocco, Coke, & Kitts, 2021](#)). These reports provided us with an extensive and complete corpus of data to examine the accountability framework for healthcare governance.

To investigate financial accountability, we collected financial information for Chartwell, Extendicare, and Sienna, focusing on the 2019–2021 time period. We accessed and downloaded all the available annual and quarterly financial reports for this period, along with their corporate press releases and management information circulars (which disclose executive compensation, amongst other things). We also listened to the quarterly earnings presentations of each company, in which senior management engaged with financial analysts in a question-and-answer session. We collected reports about these firms published by sell-side financial analysts,⁸ which discussed short-term and long-term financial expectations for these corporations. This dataset allowed us to examine the accountability framework for financial governance.

Finally, we examined media articles related to the three publicly-traded LTC operators, retrieved from the *Factiva* database. We focused on media articles published from March 2020 through to 2022. These media articles helped in several ways. First, they revealed the existence of lawsuits which guided our data search by pointing us to operators who had experienced persistent issues. They also made us aware of ad hoc government investigations and reports, for instance the CAF report that was widely reported on by local media. Third, they helped us build our institutional knowledge and enhance the aforementioned dataset with complementary and contextual information. Finally, similar to the approach used by [Twyford \(2022\)](#) in her study of Australian non-profit care homes for the elderly during the pandemic, these media articles provide a “social account” that contrasts with the official versions provided by the corporations. It is here that most criticisms were visible, and that investigative reporters attempted to challenge corporate narratives.

Documents were downloaded and read in their entirety. We performed a close reading in order to discover those instances where the COVID cases and deaths in LTC were discussed or analyzed. All data was examined by at least two researchers in order to ensure consistency in analysis, and results were then discussed among all three researchers. Coding and analysis was an iterative and interpretive process, moving between theory and data multiple times. We used the accountability cube framework to examine what information, discussions, and consequences were evident. We also noted instances within the financial and the healthcare governance realms in which they “talked about” each other. For instance, when “profits” might be discussed when talking about lawsuits, or when the lawsuits might be talked about by financial analysts. This helped us to understand these two siloes of accountability and the (absence of) linkages between them. We now turn to our analysis of these three sets of data.

4. Analysis: accountability in operation

In this section, we analyze and compare our two chosen institutionalized settings where accountability of LTC corporations is (ostensibly) constructed, namely healthcare governance and financial governance. For each system, we examine the roles of *information*, *discussions*, and *consequences* in producing accountability. We follow this analysis with a discussion of similarities and differences between the two systems to explain how, separately and together, these systems serve to dissipate corporate accountability.

4.1. Healthcare governance

4.1.1. Information

All LTC homes in Ontario, regardless of their ownership structure, must comply with the *Long-Term Care Homes Act, 2007*, which updated the standards of care established in 1972 under the *Nursing Homes Act*. Under the *2007 Act*, the Ministry of Long-Term Care is required to inspect, without prior notice, each LTC home at least once a year. This legislation thus locates accountability at the level of the individual LTC home, not at the level of corporate ownership of the homes. As of December 31, 2020, there were 143 inspectors in the province for 626 homes housing over 78,000 residents, an average of 4.4 homes and 545 residents per inspector.

Until 2018, the Ministry conducted two categories of inspections. The first was the Resident Quality Inspection (RQI), a

⁸ We recognize that a more complete analyst data set would include buy-side analysts, however these are not publicly available.

comprehensive and proactive annual inspection of every home. The second was the CCF⁹ inspection, conducted only in response to complaints and critical incidents regarding the care of residents. In the fall of 2018, the Ministry discontinued RQIs to allocate resources to address the “backlog” of complaints and critical incident reports (Auditor General of Ontario, 2021, p. 24).

Though the backlog has now been significantly reduced,¹⁰ the Office of the Auditor General of Ontario observed that “proactive comprehensive inspections can yield more meaningful information and result in more profound improvements to a home’s systemic operations than complaint and critical inspections” (Auditor General of Ontario, 2021, p. 68). In other words, under the revised directive to conduct only CCF inspections, the Ministry chose a “management by exception” approach that assumes LTC homes meet standards of care unless reported otherwise. According to Ontario’s Long-Term Care COVID-19 Commission, this focus on complaints and critical incidents may provide a “false sense of assurance, as homes with low or no complaints do not necessarily reflect low risk or compliance” (Marrocco et al., 2021, p. 70).

This shift is important in relation to our examination of the role of information, for it disrupted regular information flows between healthcare regulators and LTC homes. Inspectors were asked to “stay focused” on complaints and critical incidents (Marrocco et al., 2021, p. 70), *a priori* constraining the nature and type of information available and circulating. Further, the very nature of the information collected changed. This is because in the absence of surprise comprehensive inspections, LTC facilities can prepare and rehearse prior to scheduled visits of inspectors, altering what is visible and revealed in these visits, which directly impacts the content of the information collected.

Nonetheless, we find salient information remains generally available to stakeholders. In 2019, a total of 2,843 CCF inspections were conducted (Auditor General of Ontario, 2021, p. 24) and all the reports are available online. Their content is very detailed. In various reports, the inspectors mention occurrences of abuse and neglect, malnourishment, unexpected deaths, staff shortages, and residents not receiving required medication. Although the content is mainly descriptive and factual, the wording is sometimes critical in tone. For example, in a complaint inspection report at the Camilla Care Community LTC home, operated by Sienna Senior Living, where 68 residents had died of COVID-19 during 2020, the inspector mentioned that “the licensee’s pattern of inaction related to infection prevention and control and outbreak management jeopardized the health, safety or well-being of one or more residents” (Ministry of Long-Term Care, 2020, p. 20). In addition to these inspection reports, the public can obtain information on the performance of LTC homes through Health Quality Ontario, the province’s advisor on healthcare quality. A list of all LTC homes in Ontario, measured on seven key performance indicators, is available to the public.¹¹ However, the indicators do not relate to infection prevention and control. Yet, non-compliance with Infection Prevention and Control (IPAC) requirements was the fourth-most-cited type of non-compliance in comprehensive inspections between 2015 and 2018 (Auditor General of Ontario, 2021, p. 69) and 96.5% of homes reported an outbreak of acute respiratory infections between January 2016 and December 2019 (p. 10).

It is also questionable whether information, at a micro level, is available to family members of residents living in LTC homes. While information about critical incidents may be provided to the public by the Ministry of Long-Term Care, family members expect LTC corporations entrusted to care for their loved ones to be transparent to them. For example, one family member said:

“After my grandmother passed away, we had a lot of questions and concerns and didn’t have the answers. The home refused to provide more information... Every day it seems she lost a worker. We reached a point where everyone who knew her needs was gone. My grandmother was dealing with strangers... I don’t understand why we had to fight for information. I appreciate the need to protect (the privacy) of front-line workers, but these are the same people interacting with our family members. What we experienced is not acceptable. My family feels that trust was broken” (quoted in Lavoie, 2020).

Thus, from an accountability perspective, we find that in the healthcare governance system, information is simultaneously salient and lacking. It is salient in the sense that inspectors produce numerous (long) reports and LTC homes are assessed on several performance indicators, all of which is available to residents, their families, and the general population. However, information is also lacking in the sense that it is collected only under a narrow regulatory framework around complaint/incident reporting, and the set of performance indicators is ill-equipped to capture the response of LTC home operators to unexpected system-wide crises such as COVID-19. Information that is available does not always flow to the members of the moral community (i.e., family members) who are most concerned about living conditions in LTC homes. Further, healthcare inspections focus on individual LTC homes in isolation, ignoring patterns of information across chains of ownership by LTC corporations. In this sense, there is a systemic disregard of cause and effect, since some of the problems in LTC during the pandemic have been linked to patterns of corporate ownership (Stall et al., 2020; Tubb et al., 2020). This implies a confusion over who the accountant is in LTC – the home or the corporation – further undermining the contribution of meaningful information to corporate accountability.

4.1.2. Discussions

Despite the aforementioned shortcomings of CCF inspections, our analysis suggests that intense discussions took place between inspectors and LTC operators prior to the pandemic. Inspectors had the power to enter LTC homes to observe and interrogate staff and

⁹ Acronym for Complaints inspections, Critical incidents inspections, and Follow-up inspections.

¹⁰ In September 2018, the backlog of critical incident reports and complaints was 7,800. It decreased to 1,280 by December 2019 (Auditor General of Ontario, 2021, p. 68).

¹¹ The performance indicators include the wait times for LTC homes, residents not living with psychosis who were given antipsychotic medication, residents who fell, residents who were physically restrained, residents with pressure ulcers, residents experiencing pain, and residents with worsened symptoms of depression.

management, sometimes for several days. This was particularly important considering that families and residents, who do not themselves have the ability or the power to insist on conformance to standards, rely on the Ministry and its inspectors to act as proxies.

To complement the inspections, Ontario's LTC accountability system was designed around a "regulatory and administrative burden placed on homes" (Marrocco et al., 2021, p. 72), which in theory could have produced meaningful discussions between counterer and accountee. However, the government's regulatory oversight was deemed counter-productive in practice because "it created a culture focused on adherence to rules and over-reporting but not necessarily relating to the priorities most relevant to residents' health, safety, and well-being" (p. 72). This accountability approach with its "demands of over-reporting" became "untenable" (Marrocco et al., 2021, p. 72) with the advent of the pandemic. On one hand, reporting obligations continued and were criticized for detracting home operators "from the care they are able to provide to residents" (p. 72). On the other, to limit the spread of the virus, families were restricted from visiting the homes, which not only eliminated a valuable source of resident care providers but also reduced considerably the possibility that non-compliances would be reported. In addition, between March 14 and May 8, 2020, ministry inspectors did not conduct on-site inspections. Instead, "the Ministry redeployed its inspectors to conduct 'monitoring calls' to homes, during which inspectors asked about the status of outbreaks, staffing levels and personal protective equipment (Auditor General of Ontario, 2021, p. 76). Operators "were initially wary of the inspectors in this new temporary role, and so did not want to openly communicate issues to inspectors for fear of being found not in compliance" (p. 76). Therefore, this measure seriously undermined the meaningfulness of discussions, as inspectors "could not verify whether the information being provided to them by the homes regarding any issues [...] was complete and accurate" (p. 77).

As Bebbington et al. (2007) argue, accountability is improved when parties develop mutual understanding and respect, and have the opportunity to listen and reflect in an interactive process. This requires time. Fundamentally, the low staffing levels among ministry inspectors and LTC staff, which has resulted from a constant neoliberal focus on "efficiency" in both government and industry, do not allow time for dialogue. This situation has been exacerbated by the pandemic, which raised the need for inspections dramatically while also decimating staffing levels due to illness.

By design, the system of healthcare accountability places the opportunity for meaningful discussions in the hands of ministry inspectors, who must function as proxies for other members of the moral community, which includes the LTC residents and their families, as well as LTC workers and their unions. This arrangement limits the opportunity for participation in discussions by the broader moral community. At the same time, during a crisis such as the COVID-19 pandemic, family members expect to be involved in the meaningful discussions. For example, during the second wave of the pandemic, in the fall of 2020, Extendicare homes were criticized by family members, including one who said: "... their main problem is the communication. We just don't know what's going on" (quoted in Crawford, 2020). Meanwhile, the *Toronto Star* reported the situation of a family member who tried to discuss with an Extendicare home management:

After her phone calls to the facility earlier this week were unanswered, she went down to the home on Saturday and found chaos. No one seemed to have any information or know what was going on. After demanding to know about the health of her grandmother, a receptionist told her that she had tested negative. And [she] couldn't go see her. (Henry, 2020)

In addition to this exclusion of important members of the moral community from discussions, the healthcare governance system also exists as a silo separate from the other main accountability system for LTC, financial governance. Discussions about healthcare do not include or extend to the financial community. This fragmentation of the moral community around LTC is an important characteristic of corporate accountability in this industry.

Overall, our analysis indicates that accountability systems designed around heavy reporting requirements and reactive discussions may be simultaneously counter-productive and fragile, especially during moments of disruption (Vollmer, 2013). Furthermore, the contribution of the discussions to accountability was undermined by a lack of meaningful consequences, which we discuss next.

4.1.3. Consequences

Inspection reports often produce direct consequences for individual LTC homes, in the form of non-compliance notifications. According to the Ontario Ministry of Long-Term Care (2021), the sanctions may include:

- written notifications, which create a formal record of the findings,
- voluntary plans of correction, which the facility agrees to undertake,
- compliance orders and work and activity orders, which mandate specific actions for the facility to follow, such as changing procedures or renovating the facility, and
- referral to the Director of the LTC regulatory authority, which happens when the incident or the required sanction are beyond the authority of the inspector.

Between January 2015 and August 2020, the majority of enforcement actions were written notifications (33,585 or 62%), followed by voluntary plans of correction (15,733 or 29%), compliance orders (4,920 or 9%) and director referrals (336 or <1%) (Auditor General of Ontario, 2021, p. 69).

Beyond the routine sanctions, the Director may stop the facility from admitting any new residents, revoke the facility's license, reduce or withhold provincial funding, or even take direct control of the facility (Ontario Ministry of Long-Term Care, 2021), as happened when the CAF was called in. As the above percentages indicate, however, referrals to the Director are infrequent, and the number of those leading to meaningful consequences is negligible.

Therefore, in most cases when non-compliance is reported, the LTC home faces no enforcement action. Follow-up inspections are

not required for written notifications and voluntary plans of correction, and there is no requirement for the home to submit the plan to the Ministry. The Auditor General of Ontario noted in her report that non-compliance is an issue, and that the Ministry chose not to implement fines or penalties. “We question the Ministry’s decision to not fully implement, nor utilize, its existing and potentially new enforcement powers” (Auditor General of Ontario, 2021, p. 75). The Ministry had privileged a “supportive” approach (p. 74), instead of imposing more meaningful consequences such as withholding funding or revoking a home’s licence. Since 2017, only one LTC home in Ontario has had its licence revoked for non-compliance (Wallace, 2020). According to a lawyer with the Advocacy Centre for the Elderly, “the reality is that operators know the government is unlikely to shut homes down” (quoted in Wallace, 2020), because of the scarcity of LTC beds. Even the act of calling in the military to resolve crises in particular homes served only as a momentary intervention, with no long-term consequences for the corporations involved.

In sum, the healthcare governance system has been fairly criticized during the COVID-19 pandemic for its failure to hold LTC homes accountable. Moreover, we argue, its accountability mechanisms are aimed at the level of individual facilities, and thus fail to hold LTC corporations accountable. Transparency is created by publishing explicit details about individual incidents at individual facilities, but no attempt is made to connect these incidents at the level of the corporation that owns the facilities. Discussions between the Ministry (inspectors) and the employees may in some cases be meaningful at the level of the local facility, but nothing reaches the level of senior corporate executives or their board of directors. LTC companies operate precisely in an industry where their customers are elderly, are individually at high risk to illness, and are housed together, compounding the collective risk of illness and death. The industry is therefore heavily regulated by government, notwithstanding the specific weaknesses in healthcare regulations discussed above, increasing the risk of government intervention in the industry. Civil litigation is also a risk when negligence or failure to comply with regulations leaves the LTC corporation open to the threat of lawsuits (at least prior to recent legislation in Ontario; see Section 5.1 below). The entire business model of LTC corporations, therefore, rests on adequately addressing all of these external factors, not ignoring them and dismissing them as uncontrollable and unpredictable. The COVID-19 pandemic worsened the already fragile situation at LTC homes. Considering the urgency of the pandemic, the Ministry had little choice but to support operators so they could continue to care for residents. However, as noted by the Auditor General, the “lack of enforcement by Ministry hampered effectiveness of measures” (Auditor General of Ontario, 2021, p. 64). Though the most severe consequence (revocation of licence) is available to the regulator, the economic connection to its use prevents it from ever being a meaningful potential sanction. We turn our attention, therefore, in the next section, to the economic aspects of governing LTC corporations.

4.2. Financial governance

An overarching assumption of neoliberalism is that markets self-regulate. The privatization of part of the LTC sector in the late 1990s by then Ontario Premier Mike Harris rested on this assumption. As noted above, current Premier Doug Ford reacted to the CAF report by suggesting that investors had the responsibility to hold LTC corporations accountable for their actions during the COVID-19 pandemic (Bellusci & Bochove, 2020). The capital markets’ interest in corporate ethics is beyond the scope of this article, but we are concerned with the accountability mechanisms of the financial markets. In this section we ask whether and how financial market actors, a heterogeneous group that comprises financial regulators, auditors, financial analysts, and shareholders, have the ability and willingness to respond to the operational failures that led to the deaths of so many LTC residents.

4.2.1. Information

In neoclassical economics, financial information is considered essential to the efficiency of financial markets (Fama, 1970, 1991; Kothari, 2001, p. 110). Financial accountability rests on the assumptions that transparency, articulated by accounting disclosures, reduces information asymmetry, and that aligning the interests of managers and investors reduces the agency problem (Jensen & Meckling, 1976). The role of financial information is therefore highly institutionalized and regulated by securities commissions, such as the Ontario Securities Commission. Publicly-traded corporations are required to disclose their audited financial statements periodically and publicly, and generally meet on a quarterly basis with analysts at earnings presentations. This locates accountability at the level of the corporation – the corporate imaginary – not at any site of operations, such as an individual LTC home. Despite the breadth of stakeholders, corporate financial information is shaped to the needs of financiers, particularly investors (Young, 2006). Within the dominant “accounting-based accountability system” (Dillard & Vinnari, 2019), non-financial information, such as environmental, social and governance (ESG) indicators, is often presented in a monological fashion suited to the needs of financial capital.

The role of information follows a similar logic for the three publicly-traded LTC corporations. Unsurprisingly, prior to the beginning of the pandemic, the focus was on profitability and on other financial indicators, such as dividend pay-out. The following excerpt from a report by the National Bank of Canada on Sienna Senior Living illustrates the generally optimistic mood from sell-side financial analysts about LTC operators prior to the pandemic:

[...] investors can gain exposure to a high-quality operator, with strong, defensible cash flows, limited capital requirements and a solid balance sheet, paying a healthy monthly dividend at an attractive valuation relative to peers. (Woolley & Kim, 2020)

This quote highlights the characteristics of LTC operators that were valued by investors. First, “strong, defensible cash flows” refers not only to the general strength of the business model, but also to the relatively low riskiness of LTC cash flows, even in negative operating circumstances. As mentioned before, demand for LTC beds in Ontario vastly exceeds supply, guaranteeing cash flows from customers, and an important share of revenues is provided by the Ministry of Long-Term Care, guaranteeing a base level of operating cash flows. Second, investing cash requirements are moderate while financing cash flows are tremendously liquid. Under the 2007 Act, LTC operators were not obliged to invest heavily in their infrastructure. (The market valued Sienna’s “limited capital requirements.”)

Third, the “healthy monthly dividend” refers to the \$61.5 million (66% payout ratio) distributed during fiscal 2019.

Though this sector is considered to have many financial strengths, in investor-focused annual reports, negative events are couched as unpredictable:

“The occurrence of a pandemic, epidemic, or other outbreak of an infectious illness or other public health crisis in areas in which we operate could have a material adverse effect on the business, operating results and financial condition of the Company” (Sienna Senior Living, 2020b, p. 62).

Government regulations and civil litigation are similarly reduced to the status of unpredictable risk factors. Reducing the serious litigation and regulatory oversight to levels of adverse effect downplays the unusual nature of the information about these risks, because it frames them like other types of potential risks which are typically addressed in financial reports. Despite the tendency of LTC companies to distance themselves from fundamental risk factors in their business model, we noticed changes in the information provided by LTC operators to investors during the pandemic. Press releases became more frequent, with LTC corporations providing regular updates to investors. The content also changed in at least three ways. First, LTC operators introduced a selection of morbidity numbers as performance indicators in their communications with investors and analysts. On March 23, 2020, for example, Sienna Senior Living issued a statement affirming that “Sienna has no known COVID-19 cases presently, however, we know that this may change, given the rapid spread of the virus” (Sienna Senior Living, 2020c). Things did change. By April 2020, all three LTC operators reported cases in some of their LTC homes and/or retirement communities through press releases. However, the severity of these outbreaks was not disclosed to investors at that time. The information provided was limited to the number of residences in outbreak. As such, a residence in which more than 50 residents died from the virus was classified alongside a residence with two cases.¹²

Second, following the announcement that the provincial government would provide full funding for vacancies in LTC facilities, and emergency funding to cover extraordinary costs related to the prevention and containment of COVID-19, LTC operators quickly adapted their narrative. They emphasized that the government funding is exclusively for direct care and resident programs. Chartwell commented that “no operator can make a profit for this funding. Return on invested capital can only be generated through accommodation revenue sources which are also set by government” (Chartwell Retirement Residences, 2020). However, they also began to use pandemic-related expenses as a distinct performance indicator, noting the amount recovered from the government.

Third, we noticed that positive-sounding regulatory numbers were brought into the financial disclosures, to pre-empt investor fears of increased healthcare regulation and emerging lawsuits related to COVID. For example, on their Q1 2020 earnings call, Sienna executives stated that the company had “recently been awarded a 3-year accreditation by the Commission on Accreditation of Rehab Facilities for the long-term care portfolio in Ontario, with a 99.5% performance to the accreditation standards” (Sienna Senior Living, 2020a). Chartwell disclosed similar regulatory numbers, indicating the company has been better-than-provincial-average on all six quality indicators (Chartwell Retirement Residences, 2020). No mention was made of COVID deaths.

These disclosure adaptations show how the information processes underpinning financial accountability, though highly institutionalized, can performatively respond to the needs of investors. In contrast to healthcare governance, where the information is produced by the inspectors, the financial governance system positions the corporation as the primary producer of information, within the constraints set by financial regulators. The corporation is therefore able to engage in a monological accountability based on accounting numbers (Dillard & Vinnari, 2019), through which it is able to control the narrative. Non-financial performance indicators, such as morbidity figures, are introduced only to the extent that they fit the narrative, particularly since they are not required to be reported or audited. Thus, such other critical indicators that may undermine the message to shareholders, such as the number of COVID-19 deaths, remain in silence (Chwastiak & Young, 2003). To get a complete portrait of pandemic-related numbers, such as cases and deaths, investors must rely on alternate accounts (Twyford, 2022) released by the Ministry of Health and tracked by investigative journalists. Within a year, more than 1000 residents had died from the virus at facilities operated by these three corporations (Loreto, 2020).

4.2.2. Discussions

At first sight, it appears that the intensity of discussions in the financial markets is high. Shares of publicly-traded corporations are continuously traded, providing the opportunity for investors to react immediately to new information. The annual report and financial statements are audited, and auditors can engage in direct discussions with management before issuing their opinion. On a quarterly basis, management discloses and discusses results with sell-side financial analysts during earnings presentations. Analysts then assess these numbers and disseminate their analysis and recommendations (sell, hold, buy) to investors.

However, a closer look at the roles of market actors raises questions about the meaningfulness of these discussions. Auditors only

¹² In rare instances, LTC corporations reported the number of active resident cases. However, these reports were mostly much later in the pandemic, when the number of cases was relatively low.

conduct an annual audit. Quarterly numbers are not audited, and during an unfolding crisis like the COVID-19 pandemic, the time span between audits appears considerably long. The audit is also generally limited to financial numbers. Management does not engage directly with investors, except for a few large institutional shareholders, and even they are increasingly structurally disinterested in engaging with corporate managers due to the evolution of passive investment management (Braun, 2016). Apart from the annual shareholders meeting, small shareholders have very few opportunities to ask questions to management.¹³ Power is delegated to the board of directors, who may not necessarily represent the interests of retail investors, given the influence wielded by institutional investors. Selling or buying shares might be the only way for smaller investors to express their opinions on how management operates.

This means that meaningful discussions are held by very few actors in this field, most of whom are proxies for the investors, such as financial analysts. However, the literature on financial analysts suggest that they may not see their role as holding corporations accountable, particularly for non-financial performance and that their added value depends on their relationship with management (Fogarty & Rogers, 2005; Graaf, 2018; Spence, Aleksanyan, Millo, Imam, & Abhayawansa, 2019). As a result, during the questions-and-answers sessions of earnings presentations, where the discussions could possibly be meaningful, analysts are frequently careful not to antagonize management (Graaf, 2018). Analysts are aware that some questions are sensitive in nature, and refrain from asking them (Abraham & Bamber, 2017). As industry insiders, therefore, they cannot provide an effective check on management, especially on non-financial ethical matters.¹⁴

Prior to the pandemic, LTC corporations' quarterly earnings calls were usually attended by between seven or ten analysts, who asked on average 30 questions per call.¹⁵ Most questions pertained to occupancy rates, market supply, and growth strategies. The pandemic introduced a new variable into Q&A sessions, but we do not find that the types of question asked substantially changed. Analysts did ask management on some occasions how they would manage outbreaks and what would be the operational impact of the pandemic,¹⁶ but they rarely challenged management regarding COVID-19-related performance indicators.

Instead, the focus remained on financial numbers, except for echoing already known information such as the CAF report. Yet even in that case, analysts noted that Sienna had achieved a near-perfect score conforming with CARF (Commission on Accreditation of Rehabilitation Facilities), and that the issues were mostly related to staffing, which "were severely exacerbated by the pandemic" (Kelcher & Kalmar, 2020c). Analysts relayed LTC operators' intentions to increase staffing levels and to implement additional measures and protocols.

We found that analysts mostly reproduced statements issued by LTC corporations in their reports to investors. For example, in April 2020, TD Securities reported that "Chartwell currently has COVID-cases at 18 homes (9% of its residences), 12 retirement homes and six LTC facilities" (Kelcher & Kalmar, 2020a). The analysts rarely mentioned the large number of COVID cases at these facilities, and when they did, they tended to pair this with positives, such as a "strong track record as an operator, including recently achieving a 99.5% conformity with CARF standards" (Abrams & Koutsikaloudis, 2020). Financial analysts, whose role is to create narratives (Leins, 2018), for the most part defended LTC corporations' management, even in the worst of the crisis. For example, following the CAF report, TD Securities, which maintained a Buy rating on Sienna, reported the following:

After reviewing the CAF report, we believe that the majority of the issues highlighted at Altamont were related to insufficient staffing. Staffing levels had been an issue for LTC residences before COVID-19, but were severely exacerbated by the pandemic, as many staff were forced to self-isolate. Management noted that it has implemented additional measures, processes, and protocols and that it has increased staffing levels and is seeing a flattening of the infection curve at both homes. (Kelcher & Kalmar, 2020b)

Further, we found that as vaccines became widely available, financial analysts pressured management to provide more details on their expectations to recoup pandemic-related expenses from the government, going so far as to question the relevance of maintaining a high-level of pandemic-related costs. In their report on Sienna following the 2020 Q4 results, for instance, Scotiabank analysts wrote that they "would like to see pandemic expenses come down as LTC homes become COVID-free" (Gupta & Unger, 2021). This points to the primacy of financial numbers in financial markets, even during a health crisis like the COVID-19 pandemic. Market actors may try to hold organizations accountable, but mostly to ensure that profit-maximization and returning cash to shareholders remain management's key concerns.¹⁷ When it comes to non-financial indicators, such as COVID-19 deaths, we noted that market actors either have the inability (e.g., small shareholders) or the unwillingness (e.g., financial analysts; institutional investors) to have meaningful

¹³ At the beginning of the Sienna 2020 Annual Shareholders Meeting, in April 2020, the company stated that it would not hold a question-and-answer session as "management team and staff are focus on managing the ongoing COVID-19 crisis which they will discuss during their remarks." Moreover, during the Chartwell 2020 Annual Shareholders Meeting, in May 2020, one participant asked why for-profit operators like Chartwell have dramatically worse COVID-19 infection figures and deaths than not-for-profit homes. In his response, the CEO emphasized the funding structure that does not allow the operators to make a profit from government funding, and that Chartwell has fared well on Health Quality Ontario indicators. According to him, the ownership structure is not the issue. Instead, "it is the type of physical plant that makes the difference," as more cases were reported in homes with 4-bed wards than newer homes.

¹⁴ We acknowledge that financial analysts may engage with management through direct and informal communication channels (Bassen, Kordsachia, Lopatta, Tammen, & Alexander, 2022) and that they may convey information back to investors through private channels (Spence et al., 2019).

¹⁵ Based on the calls for the 2019 fiscal year.

¹⁶ There were a few questions on the impact of potential civil lawsuits and on insurance costs related to increased risks.

¹⁷ During the Sienna 2021 Annual Shareholders Meeting, one of the two questions asked to management was: "will the dividend be maintained and possibly increased?"

discussions.

Furthermore, members of the broader moral community around LTC are excluded from discussions related to financial accountability. As with discussions in the system of healthcare accountability, the financial accountability system divides the moral community around LTC and prevents meaningful *comprehensive* discussions from taking place. Meaning is determined only by a fragment of the moral community, undermining the possibility of meaningful corporate accountability for COVID deaths in LTC.

4.2.3. Consequences

In cases of fraud or financial wrongdoing, financial regulators can impose penalties or even trigger criminal prosecution (Rockness & Rockness, 2005). However, most cases of alleged operational wrongdoings fall outside the scope of financial regulation. In these instances, particularly when other governance regimes such as healthcare fail, neoliberal ideology rests upon the premise that markets self-regulate and that investors will “punish” bad actors, notably by selling their shares.¹⁸

In mid-March, when the Ontario government called a state of emergency in LTC, the share prices of the three large LTC operators dropped significantly.¹⁹ These decreases, however, reflected the widespread crash in financial markets and the industry-specific uncertainty considering the aging populations served by the LTC operators, rather than the actual situation inside the homes. Once investors and the public had a better idea of the severity of COVID-19 outbreaks in for-profit LTC homes, stock prices further dropped, though with less severity than the initial drop. For example, Sienna’s stock price came under pressure following the CAF report, falling from \$11.02 on May 27 to \$9.84 on May 28, but it was already well down from its pre-pandemic price of \$19.43 (see Table 1). However, after hitting low points at the beginning of the summer 2020, share prices of LTC operators have rebounded considerably, notably because the deflated prices represented a “good” investment opportunity. On July 9, 2021, Sienna’s share closed at \$16.78, up 85% from its July 2020 low of \$9.08 (though the price has slipped to around \$14 at time of writing).

Consequences felt around the stock price were also mitigated by a concerted effort by both management and sell-side analysts to convince investors that, despite the severity of the COVID-19 pandemic in LTC homes, investing in LTC homes was a profitable investment. First, they placed the blame on decades of under-investment by the provincial government. For example, Chartwell’s CEO Vlad Volodarski said during the Q2 2021 Earnings Call that “this sector is being neglected for decades by various governments where the funding never kept up with the inflationary increases”. Second, although some suspended their dividend reinvestment plans to avoid issuing “common shares at the current depressed prices” (Sienna Senior Living, 2020d), they still increased the monthly dividends paid, distributing record amounts of cash to investors during the pandemic year (Lancaster, 2020). In response to a media inquiry, Sienna justified paying dividends in these terms:

“Dividends are similar to interest costs on loans – dividends are paid to shareholders who have provided the capital necessary to invest in the maintenance, upgrading and building of new long-term care residences.... At no point has the payment of dividends taken away from front-line care” (quoted in Tumilty, 2020).

While pandemic-relief funding was indeed intended to support resident care, stakeholders were nonetheless outraged by the dividend policy defended by the three corporations. One family member told the *Toronto Star*, “I am disgusted. It’s a definite slap in the face to all the people suffering inside” (quoted in Wallace, Tubb, & Oved, 2020). A palliative care physician added:

“You should have said this year we’re going to go for a loss because of what’s happening and we’re going to pour all that money into hiring staff, infection control, oversight and all of this because we have a humanitarian crisis on our hands” (quoted in Wallace et al., 2020).

The argument is that LTC corporations could have gone beyond the regulatory requirements and deployed their cash to prevent infections (Begley & Weagley, 2023). However paying dividends was legal, as government financial aid did not come with specific conditions regarding cash distributions. It was a tool to mitigate what negative consequences there were, appeasing shareholders’ concerns and sustain investor interest in the stocks. For example, financial analysts from Scotiabank wrote on March 16, 2020 that “we think investors are getting paid while waiting for the recovery to play out” (Gupta & Unger, 2020b).

Most analysts did not impose negative consequences on the corporations by downgrading their stock recommendation. While acknowledging the risks faced by LTC corporations, analysts overall maintained a positive outlook. Our analysis of their reports to clients suggests that to them, the pandemic is more of a “near-term headwind,” to use an industry euphemism, than a long-term structural issue. For example, a report from TD Securities mentioned:

While we acknowledge that there continues to be both near-term forecasting and headline risk, we do not believe the longer-term fundamentals of the industry have materially changed enough to warrant the share price moves. (Kelcher & Kalmar, 2020b).

This emphasis on “the longer-term fundamentals” highlights the future orientation (Chakhovich, 2019) of financial analysts and financial markets. The valuation models of financial analysts attempt to project future events and financial performance. Yet accountability is mostly oriented towards the past. Because of Ontario’s demographics and the scarcity of LTC beds, analysts could not

¹⁸ Alternatively, “customers” could punish the corporation by boycotting or switching to a competitor, but the long waiting lists for LTC that were mentioned earlier mean that residents cannot easily move to a different LTC home. The market is illiquid.

¹⁹ In a span of one-month, both Chartwell (52.48% decrease) and Sienna (49.97% decrease) lost half of their value, while Extencicare’s stock decreased by 31%.

conceive that the long-term business model of for-profit LTC operators would be significantly affected by COVID, though they acknowledged that new regulatory standards could emerge and impede profitability. The following excerpt from a Scotiabank report on Chartwell is representative of the perspective held by most financial analysts:

The long-term viability of the senior housing industry is very much intact and long-term demand drivers of the industry are undeniable. The households or the Municipalities are not set-up to take care of our Seniors and we will continue to rely on Retirement Homes and Long-term Care Homes post COVID. (Gupta & Unger, 2020a).

Indeed, one potential consequence of the pandemic for for-profit LTC operators is that it “could eventually lead to more public investment in the sector to allow upgrades to older, crowded facilities that need it most, which would benefit the companies” (Healing, 2020). In September 2020, the Ministry of Long-Term Care announced that it would “provide development grants, ranging from 10% to 17% of total project costs, to help cover upfront costs like land and other construction expenses (Auditor General of Ontario, 2021, p. 37). In other words, rather than being punished by the Ministry, for-profit LTC operators are likely to obtain grants to finance future investments: in its 2020 Annual Report, Sienna disclosed that it had made \$600 million in capital investments in Ontario, viewing this as “a major opportunity for Sienna and its shareholders to invest with purpose to enhance the lives of seniors we serve and enrich the work environment for our team members” (Sienna Senior Living, 2020b, p. 3). One analyst even considered the LTC redevelopment as “an opportunity to attract ESG capital” (Woolley & Kim, 2021).

In sum, the financial governance system has proven unable to deal with the pandemic in a way that would bring about accountability for the crisis. LTC corporations control the flow of information, focusing attention on their profitability and downplaying or ignoring COVID-related information. Discussions exclude small shareholders, allowing corporations to focus their attention on industry insiders such as financial analysts. Financial regulators are unable to impose direct consequences (except in cases of fraud), and the financial markets seem all too willing to forgive and forget, with stock prices rebounding substantially before the pandemic is even over as investors continue to receive large dividends. Moreover, with upcoming public investments to help renovate older facilities, LTC corporations appear poised to benefit financially from the COVID-19 crisis.

This concludes our analysis of the two parallel systems for governing LTC in Ontario. We turn now to a discussion of the implications of this analysis, drawing further on our theoretical framing.

5. Discussion

5.1. Analyzing accountability in LTC

Drawing on the above analysis, let us position these two governance systems within the accountability cube (see Table 3).

With respect to the healthcare governance system, our analysis has shown that *much* information is available to the inspectors and that this information is made public. However, a number of qualitative issues remain with this information. First, the information is highly relevant but it is produced by an intermediary - the regulator - rather than the accountant; this makes it difficult for the accountant to “own” the account (Butler, 2005). Second, the information is produced only in the context of a complaint or incident; thus, the accounts are reactive, irregular in frequency, and exclusive of routine behaviours below the threshold of a complaint. Third, the routinized and institutionalized form of the information collection relies upon performance measures that assess these facilities as going-concern operations; thus, this information is meaningful for routine healthcare incidents but is unable to signal the ability of a home to respond in crisis. Finally, information is only captured for individual homes, with no aggregation across corporate entities, making it unsuitable for corporate accountability. In sum, neither the public nor the regulator have the information necessary to hold these corporations to account during the pandemic.

We would assess healthcare discussions as *intensive*. Inspectors have the power to enter the LTC home to investigate incidents. They can also compel the home to produce records of care and can interview staff to get a detailed understanding of what has happened. However, even with highly meaningful discussions, some important elements of a more dialogic accountability are missing. For instance, inspections are heavily routinized, not offering reflective opportunities for the management and employees of the care home, because it is focused on specific procedural requirements in the healthcare regulations. They were also heavily reduced during the pandemic. Furthermore, the reactive nature of the inspections constrains not only the information provided, but also the nature of the discussions: these are known in advance and can be prepared for. Whereas the system *appears* to hold home operators accountable, it can distort their priorities. Discussions are focused on restoring compliance with a relatively unchanging set of healthcare standards, so the emphasis is on enforcement rather than developing with staff members, and families, a shared and reflexive understanding that incorporates their perspectives. It has been suggested that an approach focusing on quality improvement and resident care, and resident and family satisfaction, should be prioritized over the current approach (Marrocco et al., 2021, p. 72). Thus, the tendency towards monologic, routine interactions overshadows the otherwise meaningful discussions.

Table 3
Accountability in LTC.

	Healthcare governance	Financial governance
Information	Much	Much/Little
Discussions	Intensive	Non-intensive
Consequences	Few	Few

The consequences are *few* for LTC corporations, in our assessment, as most inspections result in trivial written notifications or voluntary plans of correction. Severe punishments, such as revocation of licence, almost never happen. The most meaningful consequence imposed on LTC operators during the pandemic was when direct control was taken of specific facilities by the CAF. While this generated a lot of negative publicity for the individual homes, for our study, the connection between these homes and LTC corporate owners was not clear because facilities were taken over on an individual basis, not on the basis of corporate ownership. Indeed, 20 of the 25 facilities taken over were in Quebec, creating the impression that this was a failure of the Province of Quebec, while the five homes in Ontario were identified by facility name (see [Government of Canada, 2020](#)), suggesting that the problems were local anomalies unrelated to corporate policies. Hence, while the reputation of the LTC sector was compromised, the corporations were not held to account.

With respect to the financial governance system, our analysis shows that *much* information is provided in relation to financial accountability, but *little* in relation to accountability for COVID deaths. The financial accountability system depends on the promises of transparency ([Roberts, 2009](#)). Information flows centre on financial reporting, which is regulated, standardized, institutionalized, and audited. However, the role of non-financial information, such as healthcare indicators, is negligible in this system of accountability.

Our analysis suggests that discussions are *non-intensive* in the financial governance system, even when focusing solely on financial data. Discussions are heavily standardized and mostly limited to quarterly earnings presentations where financial analysts can question management. Small investors have few opportunities to challenge management at all, let alone on non-financial issues. Financial analysts, who depend on access to management ([Abraham & Bamber, 2017](#); [Graaf, 2018](#); [Imam & Spence, 2016](#)) appear not to consider their role as holding firms accountable for non-financial issues. From the perspective of dialogic accountability, these discussions lack meaning because the modes of discourse are restricted to formal settings such as earnings calls, while the discursive processes do not evolve in the face of radically new information such as the pandemic deaths of residents and do not afford participants the opportunity to engage meaningfully prior to the finalization of the LTC corporation's account. Discussions of non-financial information are monologic and are largely ignored by financial market analysts.

Finally, our analysis indicates that the consequences for LTC corporations in the financial governance system are *few*. Financial markets are forward-looking in the sense that the stock price is affected more by expectation of future financial profits than by past events. While many shareholders sold their LTC shares at the outset of the pandemic – whether to “punish” the firms or simply to escape exposure to financial risk – those shares were purchased by other investors sensing an opportunity for a higher dividend yield. Senior executives, meanwhile, are often insulated from personal financial consequences. For example, two senior executives of Sienna Senior Living departed in June 2020, one of which was the CEO who received \$4.7 million in severance compensation, including \$2.4 million in cash.²⁰ Sienna also paid full bonuses to its remaining senior executives after the board decided to exclude COVID-related costs from the bonus calculations ([Milstead, 2021](#)).

These contradictions are possible because healthcare information is not aggregated at the corporate ownership level. As a result, corporations are not held to account for systemic health effects of their relentless search for economic rents. Healthcare accountability occurs, if at all, only at the level of individual LTC homes, which can be closed or forced into procedural changes by healthcare inspectors. The corporation is never sanctioned. Financial information is available at the corporate level, but it is irrelevant to healthcare regulators. Meanwhile, non-financial information is secondary for investors and analysts.

Even with perfect transparency – even if all the information needed to effect accountability was available in both the healthcare and financial governance systems – the lack of meaningful consequences in either system means accountability at the level of the LTC corporation is null. Minor changes in procedures can be enforced by healthcare inspectors, but the range of actions available to inspectors, up to and including forcing the closure of a home, is never fully used. In the financial accountability realm, the capacity of LTC firms to generate rich, uninterrupted distributions to investors means that negative consequences for the firm and its senior managers never materialize. Indeed, they are rewarded.

Our analysis of these two systems suggests that corporate accountability is a facade in for-profit LTC. Each of the systems scores relatively high on some dimension, creating the impression that accountability is being achieved, yet the fact that other dimensions fall short means a failure in accountability. This reveals an ontological flaw in the premises of corporate accountability, which are based on the presumption that accountability is a dyadic relationship between identifiable, unitary parties: an accouter and an accountee. In trying to hold a LTC corporation to account, the accouter dissolves into a formal corporate entity operating in the financial realm and a network of local homes operating in the healthcare realm. The accountee is different, too. While the Ministry of Health can be identified as a primary accountee in the realm of healthcare, the role of the residents and their family members in healthcare accountability is marginal. The accountee for the purposes of financial reporting is, as we noted, a collection of disparate shareholders, some of them institutional and influential, some of them small and powerless, all represented loosely by analysts who have a laser focus on financial performance. The “accountee” then is diffuse and fragmentary in nature, but narrow in focus, providing the LTC corporation with virtually no demands for accountability over COVID deaths.

5.2. Updating the accountability cube

The preceding discussion pushes us to reconsider the roles of information, discussions, and consequences in effecting

²⁰ Sienna claimed the departing CEO, Lois Cormack, was moving for “personal reasons” but she had already been announced as CEO of a new LTC corporation created by Marlin Spring, a private real estate investment company ([Marlin Spring, 2021](#)). The other senior executive, Joanne Dykeman, left after making disparaging remarks about the families of Sienna residents who died from COVID ([Oved, Tubb, & Wallace, 2021](#)).

accountability, particularly in regard to the production of shared meaning in a moral community (Shearer, 2002). Accordingly, in Fig. 2 we have updated the original diagram to refocus the cube on meaningfulness. Each dimension has the potential to be meaningful to the moral community in which a corporation exists. Each dimension can also fail to be meaningful.

This version of the cube is slightly simpler than the original one. More importantly, it offers researchers a way to organize an empirical investigation into whether the moral community around a given corporation finds meaning in the mechanisms and processes intended to produce corporate accountability. Clearly each of these dimensions is a spectrum. The moral community might locate itself anywhere along them, not just at either end. Indeed, the moral community, being heterogeneous, would not necessarily come to complete agreement on where it sees itself within the cube. However, reducing each dimension to binary terms allows us to consider each of the eight various sections, or octants, of the accountability cube as a distinct configuration of accountability mechanisms.

While the case of LTC in Ontario during the pandemic does not by itself allow us to examine each octant empirically, it does provide us with clues as to how we might theorize the octants of the accountability cube, making it more useful for future research. Drawing on the preceding discussion, in healthcare governance, information and discussions can be considered meaningful, but not consequences. In financial governance, only financial information is meaningful. Healthcare information is not, and neither are the discussions and consequences. Only if all three dimensions were meaningful to the moral community around LTC could accountability exist (see Table 4).

Even so, the accountability might only be partial because as we have seen, the accountability systems around LTC successfully fragment the moral community, preventing comprehensive accountability from being accomplished. Further, accountability will always be limited by the very human difficulty of providing an account of oneself (Messner, 2009). Accountability is never guaranteed, therefore, but at least we can say that when information, discussions and consequences are all meaningful to a moral community, the conditions for accountability exist. With this in mind, let us tentatively label the other octants in the cube, in hopes of making it more useful analytically.

When two of the three dimensions are meaningful, there are three configurations to consider. If information and discussions are meaningful but consequences are not, the accountability mechanisms serve only a ritualistic purpose (Power, 1997). If meaningful consequences are determined from meaningful information, but discussions lack meaning or do not even take place, we have a situation we might associate with an autocratic state where due process is not observed and democratic deliberation is absent. (Location in this octant is not limited to states, of course. Any moral actor, including corporations, can make decisions without consultation, leaving their moral community feeling powerless.) Finally, if meaningful discussions lead to meaningful consequences without the consideration of meaningful information, the result might be characterized as guesswork. This might be because the community deliberately ignores meaningful information or it might be because information is simply not available when a decision is needed.

When only one of the three dimensions is meaningful, there are again three possible configurations to consider. If consequences are meaningful but they arise without meaningful information or meaningful discussions, we have a situation reminiscent of the Salem witch trials, where the testimony of accused women was disregarded and they were put to death (Grund, 2012). If discussions are meaningful but the information and consequences are not, we might characterize that as idle gossip (notwithstanding the fact that

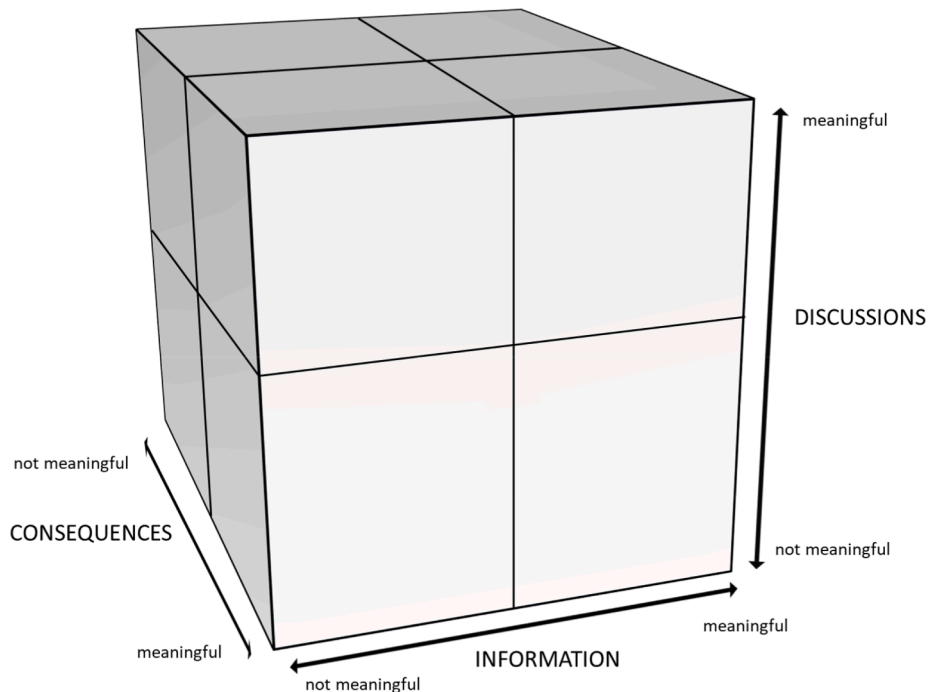


Fig. 2. The Accountability Cube Updated.

Table 4
Unpacking the Accountability Cube.

Information	Discussions	Consequences	Tentative Label
✓	✓	✓	Accountability
✓	✓	×	Ritualism
✓	×	✓	Autocracy
×	✓	✓	Guesswork
×	×	✓	Witch-hunt
×	✓	×	Gossip
✓	×	×	Hobby
×	×	×	Laissez-faire

✓ = Meaningful × = Not meaningful.

sometimes gossip can be cruel and consequential). Finally, when information is meaningful but discussions and consequences are not, we have a situation similar to that of a hobbyist who is immersed in the details of their hobby simply for private pleasure, perhaps with infrequent contact with other hobbyists and with no intent to change the world.

Lastly, when all three dimensions lack meaning, we have a *laissez-faire* situation. Anything goes. Some might characterize the situation of the LTC industry during the pandemic as being *laissez-faire*, but we would argue the situation is more nuanced than that. Meaningful information is gathered on local healthcare incidents and on routine corporate financial matters, but the healthcare information is gathered only reactively while the financial information barely acknowledges the many deaths of LTC residents. Discussions between healthcare inspectors and individual LTC facilities are meaningful, but discussions over financial information are so routinized and exclude so many moral actors that they are meaningless to much of the moral community around the LTC industry. The consequences for any LTC facility are limited by the unwillingness of regulators to shut down facilities, due to the impossibility of moving the residents anywhere else. Calling in the Canadian Armed Forces was certainly an extreme measure, but it was temporary. Furthermore, none of these consequences had a meaningful impact on the large for-profit LTC corporations that owned these facilities.

5.3. Public pressure and civil law

One of the chief disappointments of the case we have examined, from a corporate accountability perspective, is therefore the lack of meaningful consequences at the corporate level in either healthcare or financial governance. This raises the question of what would it take to create meaningful consequences for LTC corporations. One possibility is that public pressure might force regulators to act. Undoubtedly, as a result of the failure of LTC corporations during the COVID-19 pandemic, public pressure for action has grown: social advocacy groups, health experts, and families have turned to news media and social media to highlight shortcomings in healthcare quality during the pandemic. However, analyzed through the lens of the accountability cube, these attempts are unlikely to yield accountability. They rest on the promises of transparency and reputational consequences, but given the limited number of beds in the Ontario LTC system, public outcry alone is unlikely to affect LTC corporations. Only if regulators acted and imposed the most severe consequences at their disposal would there be any change in corporate behaviour.

A more precise venue for this kind of pressure is in the form of civil lawsuits. At the time of writing, we identified 10 different COVID-related lawsuits filed in Canada against LTC homes. Nine were against individual homes, the other against a collection of 96 different for-profit and non-profit homes.²¹ Eight of the 10 were class-action lawsuits. Three lawsuits were filed in Alberta, two in Ontario (including the one against 96 homes), four in Quebec, and one in Nova Scotia. The nine individual homes being sued comprised six for-profit homes, two public, and one non-profit.

Neither of the Ontario lawsuits proceeded, however, because in December 2020, contrary to Premier Ford's insistence that he would hold Sienna Senior Living accountable for its COVID deaths (Bellusci & Bochove, 2020), the Ontario government passed Bill 218 explicitly to absolve LTC operators of any liability for COVID (Government of Ontario, 2020).²² This act, which applies to both individuals and corporations, "provides that no cause of action arises against any person... [if] at the relevant time, the person acted or made a good faith effort to act in accordance with, public health guidance relating to COVID-19," so long as "the act or omission of the person does not constitute gross negligence."

These notions of good faith effort and gross negligence are important here because they set a very high threshold of liability for the actions or inactions of an LTC operator. "Good faith effort" is defined in the act as "an honest effort, whether or not that effort is reasonable," "Gross negligence" requires intent, or recklessness, or wanton disregard for harmful consequences. It is difficult to prove gross negligence on the part of an LTC home or individual employee, and more relevant here, on the part of the corporation. LTC firms did not depart from their usual standard of care, which had been more or less adequate prior to the pandemic and was only revealed to

²¹ <https://www.rochongenova.com/current-class-action-cases/long-term-care-covid-19/>.

²² The Province of Alberta, with its Bill 70, has since followed Ontario's lead (Government of Alberta, 2021).

be risky when the virus swept LTC facilities. Bill 218 has been widely criticized by families of LTC residents who have died from COVID. A lawyer involved in a civil case said, “For those individuals that are unable to prove gross negligence, there is no accountability, no responsibility” (CBC News, 2020).

5.4. Criminal law

Despite occasional public outcry about holding corporations criminally responsible for their actions, corporations rarely face criminal charges in Canada. Instead, they are generally governed via regulatory action rather than criminal justice: “regulatory justice ... emphasizes persuasion and education to ensure organizations comply with regulations.... Regulatory justice stems from the belief that ... corporations and corporate actors are not ‘true’ criminals” (Bittle & Frauley, 2018, p. 613).

Attempts to adapt criminal law to address the actions of corporations have faltered on several grounds. One of these is that corporations often fail the *mens rea* test for criminal culpability, the requirement that the offender must have a “guilty mind” or awareness that what they do is criminal. This is due to the fact that responsibility for decisions is dispersed over a large number of employees, whose individual *mens rea*, should it exist, cannot be easily equated to corporate *mens rea*. Furthermore, law and business are both part of the same hegemonic political and economic system. This means that some corporate business practices that might be considered criminal actions produce desirable economic outcomes, which are facilitated through corporate limited liability (Bittle & Frauley, 2018, pp. 614-615). It is therefore quite difficult to turn the legal system around and use it to punish corporate crime. Successfully prosecuting a corporation for a crime requires proving intent and *mens rea*, which involve a different burden of proof than regulatory charges. Regulation itself does not work unless the corporation is already committed to following regulations. If it is not, then regulatory fines simply become part of the cost of doing business. Criminal charges may be more effective in theory, but their rarity means the threat of this punishment is remote.

5.5. Misrecognition of the corporate imaginary

This leads us back to what Roberts (2021) calls the corporate imaginary. Financial accounting reifies the corporation, while corporate branding on LTC facilities create the impression that the corporation is being inspected when in fact inspections are performed in local siloes. As Roberts (p. 4) argues, accounting frames the boundary of the corporation as an economic one, such that whatever lies outside can only be viewed in instrumental terms, as something that either furthers or threatens corporate interests. Healthcare regulation furthers corporate interests because it serves to create the impression that the corporation is subject to the demands for accountability.

The system of healthcare governance simultaneously *reinforces* the idea that the corporation is held to account and *undermines* actual corporate accountability by only addressing the corporation in a fragmentary fashion, local instance by local instance. This is the same ontological issue faced by tax regulators who can only address a transnational corporation like Apple or Walmart at a national level, if that (Anesa, Gillespie, Spee, & Sadiq, 2019; Sikka, 2010).

While the systems of governance examined here misrecognize the corporate imaginary as an accountable entity, they also serve to misrecognize the notion of government oversight. That is, responsibility for these deaths in LTC rests not only on the individual LTC corporation, but on those in government who have for decades pursued an agenda of privatization that we can now see has decoupled the health of residents from industry regulation. This is a specific consequence of attempts to defund healthcare regulators in the interest of “efficiency” and unshackle the corporate sector in the interests of economic growth, substituting market forces for regulatory solutions. Market forces, however, do not work in an illiquid market, and in LTC, frail and elderly residents cannot easily move to a firm’s competitor, even if there were beds available elsewhere. There are not, due to demographic demand and oligopolistic supply. Furthermore, the two primary (and disconnected) markets in which LTC firms operate – financial and healthcare – fragment and disempower the accountees of LTC, who either as investors or residents lack meaningful participation in the narrow and restricted accountability systems that do take place.

6. Conclusion

Having examined the two key institutional systems for holding Canadian LTC corporations to account, the inescapable conclusion is that the two pillars of healthcare governance and financial governance work only with routine compliance. Neither is capable of addressing the grave misconduct of LTC corporations in the COVID-19 pandemic. Public pressure and media coverage have not shamed the corporations into reducing executive bonuses or reducing dividend payments. Civil lawsuits have been pre-empted by the Ontario government through Bill 218, drawing attention to the close link between government and business in the neoliberal state.

The neoliberal argument for self-regulation and minimal state intervention is that markets self-regulate, such that customers and investors will drive away “bad” corporate actors by moving capital to the best performing firms. Our examination of corporate accountability in LTC, however, shows that this perspective is severely limited. In the LTC industry, demand largely exceeds supply due to the ageing population, so customers cannot impose this kind of “oversight” on LTC homes. Indeed, forcing any one LTC home out of the market would have serious consequences for the individual and their family member by reducing supply. Demographic curves ensure that LTC corporations can continue to earn economic rents without having to excel at their core mission, caring for the elderly.

This paper contributes to corporate accountability theory by further developing the notion of the accountability cube (Brandma & Schillemans, 2013). We used it to move beyond the binary corporation-investor accountability relationship by questioning assumptions of transparency in relation to the role of information (Roberts, 2009), by noting the dyadic assumptions in relation to meaningful

discussions and linking this to literature on dialogic accounting (Bebbington et al., 2007; Dillard & Vinnari, 2019), and by drawing on corporate crime scholarship (Bittle, 2016; Bittle & Frauley, 2018) in relation to the dimension of consequences. We also theorized the relationship between the three dimensions of accountability in each of the cube's octants. This enriched understanding of the accountability cube framework will be useful to accounting and management scholars working on broader notions of accountability, including public sector, NGO, environmental and CSR accountability researchers. It provides them with a nuanced diagnostic framework for analyzing corporate accountability.

This paper contributes to research on corporate accountability for social outcomes. We have shown how mechanisms of accountability in the LTC industry have failed to hold for-profit corporations to account for the deaths of their elderly customers during the pandemic. This paper highlights how our fragile systems of accountability fail in such a time of severe disruption (Vollmer, 2013). It suggests that routine systems of corporate accountability are inadequate because they are reactive rather than proactive. They prioritize profit and efficiency over systemic resilience and robustness. They are reinforced by governments who, through economic and funding issues, are unable to enforce the most severe consequences at their disposal. The system instead dissipates corporate accountability in service of the corporate imaginary. Change can only come from outside such a system, as it has demonstrably absorbed and diffused the impact of even a crisis as severe as the COVID-19 pandemic.

Further research is needed to understand how the two accountability systems we examined here, around healthcare and finance, interact with other systems and social factors that might constrain the corporation. Labour power, for instance, is largely absent in LTC because many workers are precarious, having to work part-time for multiple LTC homes in order to earn a living, and only 240 of the over 600 LTC homes in Ontario have unionized workers (Canadian Union of Public Employees, 2022a, 2022b). A labour theory perspective would be helpful in understanding the role of labour power in holding LTC corporations accountable. Similarly, the role of the professions needs to be examined, to understand how the professional bodies for nurses and doctors might play a role in ameliorating LTC corporate practices.

From the perspective of regulatory practice, this paper highlights the systematic failure to connect the dots between healthcare information and financial information. As Table 3 suggests, the problem is that only financial information is considered important in financial governance. Healthcare information is ignored. There are two logical solutions to this. One is to mandate healthcare regulators to address healthcare failures at the corporate level, not just at the facility level. This could be accomplished by giving them the authority to suspend dividend payments to shareholders until egregious healthcare failures are resolved across the corporation. Such authority may be almost impossible to construct, however, given the determination of the Ontario government to absolve LTC corporations of responsibility, retroactively if need be. A second solution is therefore more likely, which is to cut the ties between for-profit corporations and the delivery of healthcare in the LTC sector. If LTC corporations were only permitted to profit from providing housing and meals that exceed regulatory requirements, and from non-medical services to the elderly, and all medical services were provided at arm's length by a separate, non-profit, healthcare provider that does not answer to the LTC corporation, then many of the problems we have seen in for-profit LTC during the COVID pandemic could be abated. Others have called for more stringent measures, including the nationalization of LTC, but such a step might require compensating LTC corporations for valuable land holdings (Freeman, 2021).

This points to the broader implications of this study for how corporations are to be governed in our society. For the consequences of corporate malfeasance to be meaningful, in any industry, they must be not only appropriately severe but likely. They will only become likely when information about corporate activities is connected across the institutionalized silos of accountability that now exist. There needs to be a mechanism for financial regulators to incorporate information from healthcare regulators, environmental protection authorities, transnational taxation authorities, and other spheres of regulation, and then act by imposing financial consequences directly on the corporation. Corporations have demonstrated that their priority is shareholder wealth maximization. Financial penalties, including but not limited to prohibitions against paying dividends to shareholders, may be the only consequence that gets the attention corporate managers and board members. Giving financial regulators capabilities that link together these dimensions of the accountability cube – information and consequences – would have implications in the third dimension, because corporations would have to hold deeper and more meaningful discussions with their entire moral community in order to reduce the risk of these new financial consequences.

Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Data availability

Data will be made available on request.

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