

# Building Better Boards

Roundtable discussion materials

February 28, 2019





# Introduction

This handbook has been developed in partnership with **Women Get On Board**, a leading member-based company that connects, promotes and empowers women to corporate boards, and **Global Governance Advisors**, a human capital management firm that provides governance advisory services and technology to boards.

An effective board is critical for companies to navigate both internal and external challenges — from improving operational performance to successful engagement with regulators, shareholders and other stakeholders. The following handbook has been developed as a tool for board members, general counsel and management to identify the characteristics of high-performing boards and develop strategies for improving board stewardship and decision-making. Topics include:

**Board culture and engagement**

**Optimal working relationships between boards and managers**

**Board composition and renewal**

**Effective meetings**

For more information on **Women Get On Board** please visit their website: <https://womengetonboard.ca/>

For more information on **Global Governance Advisors** please visit their website: <https://ggainc.com/>

## About Stikeman Elliott

Stikeman Elliott is a globally recognized leader in Canadian business law. As experts in Corporate Governance, we provide key insights into the trajectory of governance standards, and how to best enable management and board members to focus on their most critical tasks: long-term thinking about stewardship, strategy and risk.

## Our Board Diversity Initiative

As part of our ongoing commitment to diversity and the advancement of women in law and business, Stikeman Elliott launched our Board Diversity Initiative in 2017 to provide a forum for current and future corporate directors to learn and engage with each other on the issue of gender diversity on boards as well as other relevant topics. We believe we are uniquely situated to advance this issue by helping both current and future board members with opportunities to expand their skill set and by helping the companies that are looking to learn how to expand diversity in their leadership ranks.

## Meet Our Contributors



### **Deborah Rosati**

#### **Corporate Director & Founder, Women Get On Board**

Deborah Rosati is an accomplished corporate director, entrepreneur, Fellow Chartered Professional Accountant (FCPA) and certified Corporate Director (ICD.D) with more than 30 years of experience in technology, consumer, retail, cannabis, private equity and venture capital. An experienced Audit Committee and Nominating & Corporate Governance Committee chair, Deborah provides extensive knowledge as a Corporate Director in the areas of financial and enterprise risk management, corporate strategy, transformational changes, M&A, corporate governance and CEO and board succession planning.

Deborah currently leads and serves as a Corporate Director for Lift & Co.(TSX-V: LIFT) as Vice Chair and Chair of the Audit Committee. Deborah recently served on the Board of MedReleaf (TSX:LEAF) as the Chair of the Audit Committee (-acquired by AuroraCannabis (TSX: ACB)- July 2018, as well as she, chaired the Audit Committee, for NexJ Systems (TSX: NXJ) and was on the Board of Sears Canada (TSX: SCC).

She is the Founder & CEO of Women Get On Board, a leading member-based company that connects, promotes and empowers women to corporate boards. Deborah has been selected as a Diversity 50 2014 candidate and was recognized in 2012 as one of WXN's Top 100 Canada's Most Powerful Women in the corporate director award category.

Deborah's thought leadership on corporate governance, board diversity and entrepreneurship are profiled on her website: [www.deborahrosati.ca](http://www.deborahrosati.ca)



## **Paul Gryglewicz**

### **Senior Partner, Global Governance Advisors**

Paul Gryglewicz is a Senior Partner in the Toronto office at Global Governance Advisors. He engages with Boards and senior management advising them in the areas of Executive Compensation, Human Resource Strategy and Corporate Governance. Paul's work incorporates leading edge governance practices, mitigates risk and educates key stakeholders on sophisticated compensation systems.

Paul specializes in the strategic review, valuation and innovative design of compensation and corporate governance programs that support organizational strategy and objectives, as well as shareholders' interests. A recognized expert in executive compensation, governance and risk, Paul is sought after by both the media and learning institutions to share his insights.

Paul was previously a Senior Consultant in Hay Group's Executive Compensation practice, focused on advising clients nationally, primarily within the real estate, pension fund and investment management industries. His work is specialized in strategic compensation review and design, risk assessment, incentive performance calibration, board compensation and governance. Previously he was an Associate Consultant with one of Canada's largest independent compensation advisory firms, focused on strategic compensation review and design for a variety of organizations across Canada. Formerly, he spent several years as a Research Consultant with Addison Kelly Executive Search, representing senior business professionals on behalf of multinational organizations operating in the Energy, Telecommunications and Cable industries. Paul was also a Consultant with Carpédia International, a leading strategy consulting firm, involved in developing cost effective business solutions for the financial services and manufacturing industries. Currently, Paul is a faculty member and curriculum designer of the Human Resources Professionals Association and Human Resources Institute of Alberta's Executive Compensation Certificate Program. Paul is an instructor at York University where he co-designed and teaches the graduate level course Governance of Executive Compensation and Shareholder Accountability and he is also an active speaker for professional associations presenting on a wide array of executive compensation and governance related topics.

# Stikeman Elliott Participants



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Anne is Co-Managing Partner of the Toronto office and is responsible for leading business planning and legal operational excellence for the firm's Toronto office, working closely with various business teams.

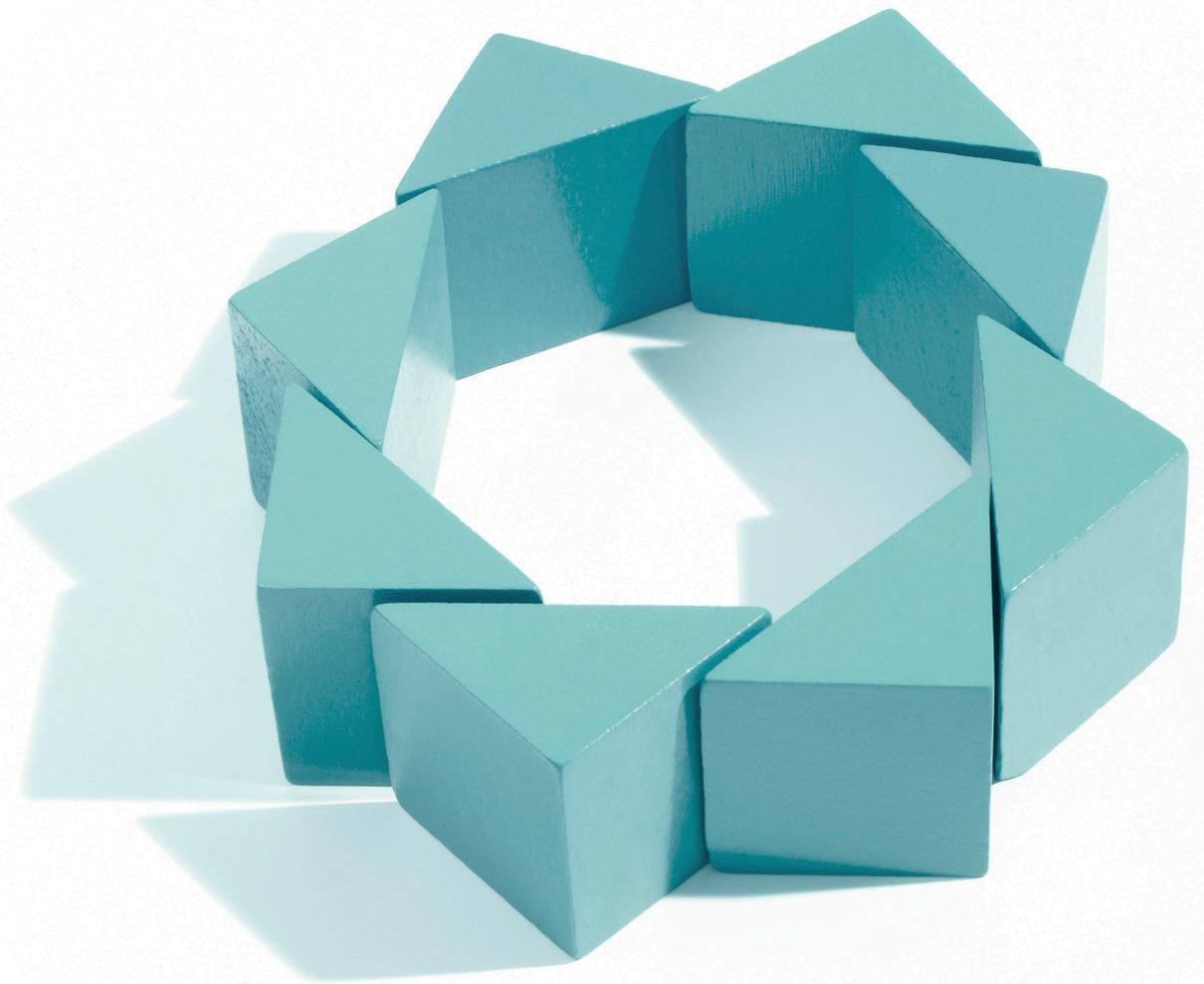


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Mairi is responsible for the development and execution of client programs and initiatives. She also works with other firm leaders to ensure the successful execution of major projects and improve day-to-day processes.

# Board Culture and Engagement





## Role of the Board

The Board of Directors is responsible for the stewardship of the Corporation and the oversight of management and activities of the Corporation. It has the statutory obligation to act with a view to the best interests of the Corporation.

Each director is responsible to provide constructive counsel regarding, and oversight of, the activities of the Corporation and management of the Corporation, consistent with a director's statutory and fiduciary obligations to the Corporation.

For more information on the duties and liabilities of directors and officers in Canada, see Stikeman Elliott's *Directors and Officers in Canada* guide available at <https://www.stikeman.com/en-ca/kh/guides/Directors-and-Officers-in-Canada>.

### Responsibilities include:

- Board processes
- Participation in the development of the company's strategy, goals, and business plan
- Oversight of regulatory matters, including safety, health, environmental and security matters
- Risk management
- Human resources and compensation
- Governance and compliance
- Reporting to shareholders

**According to a 2016 Global Board Culture Survey by Russell Reynolds, the top five behaviours that drive successful board culture and an effective board are:**

- 1 Courage to do the right thing for the right reason
- 2 Willing to constructively challenge management, when appropriate
- 3 Demonstrate sound business judgement
- 4 Possess independent perspective (avoids group think)
- 5 Ask the right questions

**The three differentiating factors of the most effective boards are:**

- 1 A strong chair who is an effective facilitator
- 2 Strong relationships with senior management
- 3 Long-term time horizon for strategic decisions (5 or more years)

# Orientation and Onboarding

from “The Secret to Successful CEO Succession Every Board Should Know” *GGA blog post, Aug 15, 2018*

Boards spend an unbelievable amount of time, energy and financial resources trying to find the right nominees/candidates that can add value and enhance governance oversight, but for many boards, the momentum ends once the vacancy is filled or when the infamous “orientation binder” is sent to a newly elected board member. Onboarding and orientation is a critical step which ensures that new board members familiarize themselves with the company, the industry it competes within, and the governance practices it’s ruled by. By not following up with a strong orientation program, boards are not preparing their new members to become true board contributors from day one, which means that they will take roughly their first year to catch up and self-learn as much as they can.

Your board should have an updated orientation package ready for new members the day they are elected (see sidebar). Ideally, this should be kept in an electronic format, updated regularly, and perpetually available to all members.

As well, a general orientation session should be offered as soon as possible to help review the high-level elements of the aforementioned documents and to review the Board and management’s roles and responsibilities. Understandably, it is the chair and committee chairs that attend and present at this session, but it is also a best practice to make these sessions open to all board members that can attend because it will not only provide a great opportunity for the new members to get to know the Board, but also provide a discrete refresher for any board members who may feel that they could benefit but are afraid to ask. Also, in attendance should be key executive staff members who can walk participants through their roles and specific area of responsibility. As an alternative, if a general session is impossible to establish, the second-best option is to set up a day or two of individual meetings with the Board Chair, each of the committee chairs, and key executives.

Ideally, all of this needs to happen well in advance of the new members’ first board meeting because, by doing so, there will be a higher probability of them participating and/or contributing at an impactful level right from the very beginning. They know that there was a lot of thought put into their election onto your board and that comes with an expectation that they are bringing value to your board. If you don’t help them build momentum from the very beginning, you diminish their potential and full capacity that your board has in effectively overseeing your organization.

## Components of an Effective Orientation Package

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A short historical overview of the organization including its mission, vision and values

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A year-to-date list of organizational accomplishments

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Staff organizational chart

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Charter/articles of incorporation

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Bylaws and committee mandates

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Most recent financial statements (quarterly and audited annual)

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Most recent strategic plan and approved budget

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Approved minutes from the last 3 to 6 meetings

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Current board member bios and photos

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A list of links to all overarching legislation

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All applicable governance policies including the board’s code of conduct

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A copy of the director’s & officers liability insurance policy

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Yearly calendar of all upcoming board meetings, committee meetings and important events

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# The Chair

Successful boards have Chairs that actively build cultures of performance and accountability by employing corporate governance best practices and supporting working relationships with company management that fosters company performance.

A Chair needs to possess a thorough understanding of exemplary corporate governance principles. A fruitful board chair will have and maintain a strong relationship with the CEO, becoming their go-to for advice, counsel and support. To be successful, they must have experience in the organization's industry. Exceptional board chairs will have the vertical knowledge and experience, on top of possessing the needed social and organizational skills to run a board meeting with ease.

In addition, according to a 2016 Global Board Culture Survey by Russell Reynolds, the effectiveness of the Chair was the biggest differentiator between the most and least effective boards (see sidebar on page 6).

## The most effective Chair behaviours were:

- fostering and facilitating high-quality debates
- encouraging independence
- actively seeking different points of view

These attributes will allow the Board to surface and debate all sides of an issue, permitting opinions to come forth respectfully, and creating a collaborative environment and to avoiding any chance of group-think. The board chair must be decisive and confident in tone and body language. They need to keep control of the meeting, without coming off as excessively demanding. An expert chairperson skillfully blends the ideas of board directors and clarifies their perspectives.

## Five HCM Questions for Boards of Directors *(How does your organization approach these five questions?)*

- 1 How can our board better impact the success of the organization?
- 2 Have we fostered an environment that encourages individual directors to think critically about their contributions and the relevance of their skills to the company strategy?
- 3 Are we using our annual board assessment and regular executive sessions to assess the culture and dynamics in the boardroom and identify ways to operate more effectively?
- 4 Does our board have a platform to analyze and scorecard senior management compensation plans?
- 5 Does our board have access to an oversight vehicle for shareholder engagement activity that makes valuable information readily available to the board — in real time?



# Optimal Working Relationships Between Boards and Management





# The Importance of Role Clarity

from “Making Sense of Your Role – Better Defining Board and Management Responsibilities” GGA blog post, Jul 5, 2018

One key problem area for boards of all sizes, in all industries, is the separation of roles between the Board and management. Often boards get too far down into the weeds on operational issues that can be better delegated to management and, as a result, do not spend the necessary time focusing on the important strategic issues facing the organization leading to friction with management or the loss of key executives.

It is important that the Board and management have a clear understanding of their responsibilities.

## Common Board Responsibilities

- Review and approve annual and long-term objectives for the organization.
- Review and approve policies and procedures that govern the organization.
- Review and approve strategic plan and annual operating budget.
- Hiring, firing and compensation for the Top Executive.
- Provide direction and strategic input to the Top Executive and management.
- Monitoring performance and risk of the organization.
- Setting and approving the organization’s overall Board governance framework.
- Review and approve required public disclosure documents.

## Signs of an Over-Active Board

Too much time is spent in Board meetings discussing operational issues

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Board meetings are constantly running behind schedule

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Your Top Executive’s relationship with the Board is strained

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You find yourself, as a Board confused, over your responsibilities vs. management’s

## Common Management Responsibilities

- Initial formulation of annual and long-term objectives for the organization.
- Initial formulation of policies and procedures that govern the organization.
- Prepare Board reports and draft annual operating budget.
- Provide continuous input into the strategic plan of the organization.
- Hiring, firing and compensation for staff below the Top Executive.
- Managing risk and monitoring performance of the organization.
- Preparation of required public disclosure documents for the Board's review.
- Run the day-to-day operations of the organization.

### Example

Consider the responsibilities of the Board and management as it relates to setting the annual operating budget. Management develops the budget by considering all the potential areas to allocate funds on while balancing that with consideration of the fiscal constraints that the organization faces. Management must also draft the budget quickly enough so that the Board has adequate time to review and ask questions about the budget before it needs to be finalized. Once the budget is drafted and presented to the Board, by management, it is the Board's role to ask management good questions about the assumptions, omissions and estimates used to draft the budget, for example:

- What did management consider including, but ultimately decide to exclude from the budget and what was their rationale?
- What is the impact on the budget if a certain estimate is missed?
- What are the key variables that will impact the organization's ability to meet the budget?

Better defined roles lead to a positive working relationship between the Board and management, which should lead to better decision-making, a collaborative approach to solving issues, candor in speaking about difficult issues and a high level of trust on both sides.

## Successful CEO Succession – A Board's CEO Negotiation Playbook

*from "Orientation Pays Off" GGA blog post, Jan 7, 2019*

After establishing a CEO search committee and retaining an executive recruiter it is critical that the Board have a solid frame-of-reference on competitive pay structures for their future CEO.

Boards should discuss compensation up front with their recruiter – even if uncomfortable given the recruiter's compensation is tied to the compensation of the new CEO.

Best practice is to retain an independent compensation advisor to validate the CEO competency profile and to help craft the CEO search strategy.

Your compensation advisor will conduct a compensation review for each of the sectors of interest covering not only active CEO's within the industry, but other key executive roles – to help understand the various pay levels by industry and by executive

## The Negotiation Play Book

With market and peer compensation data in hand the compensation advisor will work with the Board and articulate the budget for the new CEO – what the Board will ultimately be willing to offer to close the right candidate. When negotiating a compensation package with the winning candidate the Board must understand its candidate's deal breakers – for example buying out forfeited equity or pension service credit.

# Board Composition and Renewal





# Board Skills Matrix: An Essential Tool

from “A Strategic Approach to Filling Board Positions Is Critical — Regardless of Your Gender” *Deborah Rosati blog post, May 16, 2018*

Research shows that the right board composition can enhance decision-making processes and augment an organization’s performance and market reputation. Conversely an improperly composed board pose a reputational risk for your organization.

From a gender diversity perspective, the conversation is shifting from why we need more women at the table to how we can accelerate progress. At AGMs companies are fielding increasing queries about diversity, in particular what companies are doing to increase the number of women on their boards and what they are doing about women in leadership, a root cause of this issue. Furthermore organizations such as ISS and Glass Lewis are indicating they will recommend a “withhold” vote for the chair of the nominating committee (or chair of the board, in absence of a nominating committee) where a company has not disclosed a formal written gender diversity policy and/or where there are no women directors on the board. (see below — *Board Renewal and Advancing Board Diversity*)

That said, companies still need to be strategic in their approach — which includes identifying the skills required before the board search begins.

A Board Skills Matrix strengthens an organization’s overall governance practices by identifying the current skills, knowledge, experience and capabilities of current board members. The matrix is a relatively simple table that lists all board members along the top with a board’s view of the essential skills and experience required by the Board to be most effective (see sidebar and sample matrix on the following page).

Use of a board skills assessment can greatly assist, not only with identifying the skills required before the Board search begins, but also as a means to encourage board diversity through a different lens. This includes considering non-traditional skills and competencies that may be best filled by women or other diverse candidates. Underlying the entire skills assessment exercise is a thoughtful focus based on the vision and goals of the organization, as well as considerations such as risk mitigation, in order to arrive at the ideal complement of the Board.

## Matrix Skills & Qualities

Executive Leadership  
(CEO, CFO, CTO, COO)

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Board Experience

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Accounting/Finance

---

Industry Experience

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Investment Banking/M&A

---

Risk Management

---

Human Resources

---

Corporate Responsibility

---

Legal/Regulatory/Corporate  
Governance

---

Strategic Planning

---

Marketing/Public Relations

---

IT & Security

---

Public Policy

---

Gender

---

Age

---

Ethnicity

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Community Connections

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Personal Style

# Sample Board Matrix

Skill or Quality	Directors							
	A	B	C	D	E	F	G	Total
Executive Leadership (CEO, CFO, CTO, COO)								
Board Experience								
Accounting/Finance								
Industry Experience								
Investment Banking/M&A								
Risk Management								
Human Resources								
Corporate Responsibility								
Legal/Regulatory/ Corporate Governance								
Strategic Planning								
Marketing/Public Relations								
IT & Security								
Public Policy								
Woman								
Visible Minority								
Age								

# Board Renewal and Advancing Board Diversity

from “Disclosing Our Way to Diversity: Canadian Disclosure-based Approaches to Greater Gender Diversity on Boards”  
Ramandeep Grewal, April 2, 2018

Research clearly demonstrates that in addition to being an important social and equity issue, board diversity also improves board and company performance. Strong female leadership is consistently related to a higher return on equity and that these results are amplified for companies with at least three women on their boards. Female board membership is also positively related to strong talent management practices and resultant productivity gains, suggesting that the number of woman board members may be a valuable indicator of the strength a company’s organization-wide approach to human resources.

In 2014, certain Canadian provinces implemented a regulatory regime to attempt to improve the representation of women on corporate boards. Under the “comply or explain” regime all TSX-listed and other non-venture Canadian public companies are required to annually disclose whether the following have been adopted:

- (i) director term limits and other mechanisms of board renewal;
- (ii) written policies regarding the representation of women on the board;
- (iii) the board or nominating committee’s consideration of the representation of women in the director identification and selection process;
- (iv) the issuer’s consideration of the representation of women in executive officer positions when making executive officer appointments;
- (v) targets regarding the representation of women on the board and in executive officer positions; and (vi) the number of women currently on the board and in executive officer positions, both in number and percentage.

As Canadian securities regulators continue to measure and publish progress under their comply or explain regime, companies are moving from early adoption of diversity policies to considering targets and goals to achieve better gender representation.

## Are you an agent of change?

from “Board Diversity – Are You An Agent Of Change?” Women Get On Board Blog Post, Feb 20, 2019

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Do you perform an annual board assessment of your current board composition, and do you have a diversity of thought, skills, experience, gender, age, industry and geographic?

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Have you defined what board diversity means to your company in terms of the commitment and needs?

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Do you have set term limits and age limits for your current board?

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Do you have a board diversity policy that sets out targets for women representation on your board?

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Do you go outside your current network when looking for new board talent?

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Do you have an internal diversity champion?

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Do you perform an annual board performance evaluation for board renewal?

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The Canadian federal government is also posed to implement a type of “comply or explain” disclosure model for board diversity under new amendments to the *Canada Business Corporations Act*. However, unlike the existing securities disclosure regime, the regime invites issuers to disclose how they consider the representation of a broader range of groups, including aboriginal peoples, persons with disabilities and members of visible minorities, in addition to women, on boards and in senior management.

As noted above, there are signs that market participants are starting to demand change. Large institutional shareholders have been vocally making board diversity a priority and appear to be willing to use the tools available to them, from voting policies to shareholder proposals, to hasten progress. Proxy advisory firms have taken notice, adopting more aggressive recommendations for the 2018 and 2019 proxy seasons. Non-profit organizations and advocacy groups, including the Catalyst, the Coalition for Good Governance (CCGG) and the Thirty Percent Coalition are contributing to the swell of support for faster progress towards more gender-balanced boards.

Do you keep an evergreen list of diverse board candidates for board renewal?

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Do you have a board succession planning process?

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Do you ensure there are diverse board candidates in the board search process? (Women Get On Board offers a board shortlist service to companies who are committed to advancing gender diversity in the boardroom.)

# Effective Board Meetings





# Creating Effective Board Meetings

from "How to Create Effective Board Meetings" GGA blog post, Jul 30, 2018

Effective Board and Committee meetings are one of the key factors that allow a board to operate efficiently and help drive better decision-making. There are six actions that boards/committees can take to ensure that an effective meeting is run:

**Develop a clear meeting agenda:** This includes identifying the topic and issues to be discussed during the meeting, so that the meeting's purpose is clear. The agenda should also include any actions that are required to be taken by the Board/Committee as part of the meeting (i.e. is a topic "for information only" or "does it require a decision"). Identifying who will lead the discussion of each topic must be added to each agenda item. Lastly, each agenda item should have an associated timing, so that Board/Committee members have a sense of the timing and importance of the issues to be discussed.

**Provide enough notice and appropriate materials for members to be prepared:** As a best practice, meeting materials and the agenda should be sent out a minimum of one week before the associated meeting to provide members with sufficient time to review the materials. Some of the boards I have worked with will even send materials out two weeks beforehand and have a pre-meeting internally to discuss materials before the actual meeting date.

**Keep the meeting on time and on topic:** While this task is one that ultimately is the responsibility of the Board/Committee Chair, it is important that the timelines provided in the agenda are followed. Meetings should not stray too far outside of their purpose. For example, if your Audit Committee is discussing the organization's budget, the discussion should not stray into discussing a specific personnel issue around the CEO's performance or compensation, which are unrelated to the topic at hand. If you find your meetings starting to stray off topic, acknowledge the member's concern as being important but that it be taken off-line and discussed at a later time. This ensures that your meeting stays on schedule and respects all Board/Committee members time.

## Technology Solutions That Improve Meeting Effectiveness

The tools for governance security and facilitated board meeting administration have evolved.

Cloud-based platforms ensure secure administration, storage and dissemination of materials, and powerful communication channels. They help to protect the work of the Board and the interests of its stakeholders.

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Meeting materials

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eSignature

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Online Voting

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Video conferencing

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Board evaluation and scorecards

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D&O questionnaires

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**Ensure each member is able to voice their views and opinions:** While this task largely falls on the Board/Committee Chair, it is important that all members feel their opinions matter and are provided sufficient time to discuss their views. If you find one to two members dominating the conversation, make sure that once they have finished their point that you then ask other members, who have not had the chance to speak, to weigh in on the topic and provide their perspective. This helps ensure that all members feel like they are providing value to the Board/Committee and that a comprehensive discussion of all potential views can be had amongst the group.

**Ensure that results are accomplished and/or action items identified:** It is important that any actions required of the Board/Committee relating to the agenda are generally accomplished, during the meeting. This means bringing items to a close after an appropriate discussion has been had to ensure things are kept on track. If it is felt that more time is needed to discuss a specific issue, a follow-up action item should be identified, so the Board/Committee has specific direction on what the next steps are to come to a resolution.

**Include some social interaction and networking time:** It is important that you allow Board/Committee members to have some time outside of the scheduled agenda to interact and network with each other. This helps to create a positive atmosphere and culture within the Board/Committee, which will help ensure that all members feel respected and trust can be built. Many boards will schedule Board dinners the night before/after a Board meeting for all members to interact. This can also be done through scheduling team-building exercises either between meetings or at strategic off-sites where the Board and management are discussing organizational strategy.

# Useful Resources

**Global Governance Advisors Blog**  
<https://blog.ggainc.com/>

**Women Get On Board Blog**  
<https://womengetonboard.ca/blog/>

**Stikeman Elliott Knowledge Hub**  
<https://www.stikeman.com/kh>

**Canadian Coalition for Good Governance**  
<https://www.ccg.ca/>

**Institute of Corporate Directors**  
<https://www.icd.ca/Home.aspx>





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