

20 Questions
Directors Should Ask about
Governance Committees

20 QUESTIONS

How to use this publication

Each “20 Questions” briefing is designed to be a concise, easy-to-read introduction to an issue of importance to directors. The question format reflects the oversight role of directors which includes asking management – and themselves – tough questions.

The questions are not intended to be a precise checklist, but rather a way to provide insight and stimulate discussion on important topics. The comments that accompany the questions provide directors with a basis for critically assessing the answers they get and digging deeper as necessary.

The comments summarize current thinking on the issues and the practices of leading organizations. Although the questions apply to most medium to large organizations, the answers will vary according to the size, complexity and sophistication of each individual organization.

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Preface

In recent years, a range of regulatory and private sector initiatives has significantly expanded the governance responsibilities and practices of boards of directors. Today, investors, regulators and other stakeholders are increasingly scrutinizing the effectiveness of boards of directors in discharging these governance responsibilities, and their expectations for boards continue to increase.

Many governance committees now focus attention on ensuring compliance by the board and the organization with applicable rules and regulations. Some governance committees, however, have broader mandates and play an increasingly important role in helping boards to optimize their governance effectiveness.

To assist boards of directors in understanding the role of the governance committee and thinking broadly about a possible mandate and responsibilities for such a committee, the Risk Oversight and Governance Board (the Board) of the Canadian Institute of Chartered Accountants (CICA) commissioned this publication. It is provided to help boards of small and large public companies, both venture and non-venture issuers, private companies, not-for-profit organizations and public sector entities. It is intended to be used by individual directors and boards as a whole.

The Board acknowledges and thanks the members of the Directors Advisory Group for their invaluable advice, David W. Anderson, MBA, PhD, ICD.D, for authoring, Peter Stephenson, PhD, ICD.D for special editorial assistance, the CICA staff who provided support to the project and Hugh Miller who carried out the editing.

Brian Ferguson, FCA
Chair, Risk Oversight and Governance Board

Introduction

As a board, do we have the right directors, with the right experience, knowledge and motivation to help us deliver value to the organization? Are we able to effectively set strategic direction with management and oversee and evaluate management's execution of strategic plans? Are we confident that we have delegated responsibilities effectively across committees? Are we effective in overseeing risk mitigation and staying on top of emerging risks? Do we receive useful feedback through regular evaluations that help us enhance the value we provide? Are we developing candidates to take leadership positions on our board? Do we have an effective and productive relationship with management? How well do we understand stakeholder expectations and is our board proactively engaging with stakeholders in a way that is both productive and mutually beneficial?

These are just some of the challenging issues that today's governance committees are helping their boards to address.

Governance committees have evolved considerably over the past two decades. Initially, as nominating committees, their role was to ensure that the board nominated directors with the appropriate skills and abilities to enable the board to carry out its responsibilities. In the early 2000s when legislators and regulators introduced a series of new regulations, the committee, often renamed the governance and nominating committee, was given an expanded role that also included overseeing the board's and company's compliance with the many new and changing rules.

Today, many governance committees, as they are now known, are taking on additional responsibilities for anticipating critical emerging issues and challenges affecting their boards and organizations. A growing number of boards also delegate to their governance committee the tasks of fine-tuning the board's own make-up, structures and operations—functions that affect the board's ability to deliver value to the enterprise.

This publication discusses a variety of concepts and practices relevant to governance committees. Some have been widely adopted, while others are examples of the way that a few boards have chosen to respond to the opportunities and challenges facing them. On the whole, the publication focuses less on how governance committees operate, and instead lays out a

philosophy and related practices to help ensure a governance committee's effectiveness—and to assist directors in deciding how their governance committees can best aid their boards in preparing for and responding to new challenges.

To help directors better appreciate the governance committee's role, the questions in this publication are grouped and presented in a sequence:

- Understanding the role and potential value of the governance committee
- Building an effective governance committee
- Composing the board and creating conditions for its success
- Enhancing the board's performance effectiveness
- Emerging roles to help boards create long term value

Readers should consider the governance practices and concepts discussed in this publication in the context of their own board and organization. No set of practices will be appropriate for all boards; each must decide for itself how best to address the circumstances facing it, keeping in mind its organization's purpose, objectives and current strategies as well as the role set out for the board in the organization.

Directors should decide the most appropriate place for those responsibilities—with the governance committee, another committee of the board, or with the full board. In some instances, additional discussion is provided in recognition of the unique circumstances of certain organizations, such as crown corporations or entities with a controlling shareholder.

While this publication discusses governance concepts and practices in the context of the governance committee, the most important consideration for readers should be determining ways their board can bring the greatest value to its governance role. The ideas presented in this publication are not prescriptive. Instead, they are intended to inspire governance committees and their boards to consider a full spectrum of value-enhancing roles, adopt those that are appropriate, and build on them when possible.

Part A: Understanding the role and value of the governance committee

The governance committee is unique among the board's committees. While most committees address a single aspect of the board's mandate, the governance committee focuses holistically on the entire board. On many boards, the governance committee functions as a centre for self-reflection to build and enhance the board's effectiveness.

1. What are the governance committee's responsibilities and what value does it bring to the board?

When legislators and regulators began introducing a range of new rules in the early 2000s, the role of the traditional nominating committee was expanded. Often renamed the governance committee, this committee also became responsible for overseeing the board's and organization's compliance with the many new and changing laws and regulations. Today, this range of responsibilities may include:

- developing and recommending to the board the organization's approach to governance issues, including a set of corporate governance principles and policies with respect to board membership, operations and processes;
- recommending policies and procedures to promote a culture of integrity throughout the organization, including reviewing compliance with the codes of conduct of the board and the organization (or ensuring that the responsibility for such a review is delegated to and carried out effectively by another committee or the board as a whole);
- overseeing the board's relationship with management, including recommending procedures to allow the board to function independently of management;
- reviewing policies regarding director indemnification and protection, including director and officer insurance;

- helping ensure the board's and organization's compliance with all applicable listing requirements, government legislation and other regulations;
- reviewing and recommending approval of the disclosure of corporate governance practices;
- considering ways to address increasing stakeholder interest in the affairs of the organization; and
- helping to establish parameters for director compensation.

While the mandates of governance committees now include oversight of the board's governance practices, these committees still retain their original responsibility for identifying and recommending nominees to the board. In recent years, this role has also expanded. Now, many governance committees act as a performance catalyst to their boards—recommending practices that will improve the board's effectiveness, which include:

- considering and making recommendations to the board concerning its competencies and skills and the structure and mandate of the board and its committees;
- reviewing the aggregate skills and competencies of the board and identifying and recommending nominees to the board who will fill skill gaps and enhance those competencies;
- overseeing an orientation program for new members of the board and a continuing education program for all members of the board; and
- establishing procedures to evaluate the performance of the board, its committees and each of its members and overseeing the evaluation process.

2. How can the governance committee help the board enhance its relationship with management?

Boards of directors and senior management have complementary leadership roles in the organization and both are more effective and successful when there is a collegial and productive working relationship between them. The governance committee's role in helping the board and board chair build and maintain such a relationship with management includes helping to ensure that

effective processes and tools are put in place (and if necessary, delegated to the appropriate committee) for:

- setting objectives with the CEO and evaluating the CEO's performance against those objectives;
- developing oversight guidelines to clarify the delegation of powers to the CEO and clearly prescribe the scope of management's responsibilities;
- supporting the board chair in developing and maintaining a strong working relationship with the CEO;
- ensuring that management provides the board with the information it needs, at the appropriate level of detail, in the format the board requires and in a timely fashion;
- encouraging an alignment of purpose, vision and strategy among shareholders, directors and management; and
- establishing an ethical tone at the top, including ensuring that a code of conduct is developed and embraced by the board, management and the organization.

Governance committees also have the responsibility for helping the board to operate independently of management, in part through:

- establishing policy consistent with regulation regarding the membership of independent directors on various committees;
- ensuring the board has access to appropriate outside advisors;
- implementing meetings of the independent directors without management present (i.e., *in camera* meetings); and
- managing the director nomination process.

3. What is the role of our governance committee?

Some jurisdictions outline specific responsibilities for the governance committee. The New York Stock Exchange, for example, requires listed companies to have a nominating/corporate governance committee composed entirely of independent directors. The tasks the NYSE mandates for this committee are ones that enable it to enhance the board's effectiveness. They are to:

- identify individuals qualified to become board members, consistent with the criteria approved by the board, and to select, or to



recommend that the board select, the director nominees for the next annual meeting of shareholders;

- develop and recommend to the board a set of corporate governance guidelines applicable to the corporation; and
- oversee the evaluation of the board and management.

The Canadian Securities Administrators recommend board governance practices outlined in National Policy 58-201, *Corporate Governance Guidelines* (some of which are included in Question 1). These guidelines, however, do not set out a specific role for the governance committee (apart from a description of the role and responsibilities of a nominating committee).

A fundamental decision for each board to make, therefore, concerns the role it wants its governance committee to take. Is it the traditional role of a nominating committee, to focus on ensuring compliance with listing regulations and other rules, to act proactively on activities to build the board's effectiveness and maximize its value, to help the board build an effective working relationship with management and stakeholders, or a combination of these responsibilities? If the board decides not to allocate any of the above responsibilities to its governance committee, it must determine how those tasks will be handled, whether by other committees or by the board as a whole.

The choices the board makes should reflect its own objectives and circumstances, and those of the organization. Many of the responsibilities outlined above are discussed in greater detail in this publication. Those discussions may be of assistance to boards in determining how they will allocate these tasks.

Part B: Building an effective governance committee

Governance committees today are under increasing scrutiny amid growing expectations for the committee's performance.

As with the board and its other committees, one of the most important determinants of the governance committee's success is the quality of its members.

4. What skill sets does the governance committee require?

Members of the governance committee require all of the skills and attributes of every good director: high professional integrity and ethical standards, a well grounded understanding of the business, a motivation to serve the interests of the organization, independence of mind and a willingness to devote the time and energy required of the role.

Governance committee members should also strive to maintain a collective, up-to-date understanding of the governance expectations of the market, regulators and other stakeholders; an awareness of key governance issues and trends, particularly in the organization's industry; and experience in working with boards and management.

In addition, important attributes for individual members of the committee include:

- **A governance mindset and an ability to make governance relevant to the business.** An interest in the concepts of governance and the ability to translate an understanding of the board's role vis-à-vis owners and management into practical measures that assist the board in executing its mandate and changing possible perceptions that good governance processes come at the expense of business.
- **A passion to shape the board's philosophy and behaviour.** The conviction to combine sound judgement with the courage and willingness to shape the board's philosophy and behaviour.

- **A respect for external perspectives.** An appreciation and understanding of shareholders' and other stakeholders' interests and their implications for the organization (see Question 17).
- **Tactful, persuasive communication.** The ability to discuss board service and performance issues in a respectful way with other directors, which may include counselling colleagues on and off the board.

FOR MORE INFORMATION, SEE THE CICA PUBLICATION *20 QUESTIONS DIRECTORS SHOULD ASK ABOUT BUILDING A BOARD*

5. Who should sit on the governance committee?

There are different strategies for staffing the governance committee. Some boards, for example, ask their newest members to sit on the governance committee since that gives them a good perspective for learning about the board and the way it operates, and about the organization and its needs.

An important consideration when selecting members of the governance committee is the committee's mandate. For example, some boards give their governance committee the responsibility for coordinating the board's agenda and activities so the board manages its affairs efficiently and productively. Given this mandate, having the chairs of the board's other standing committees sit on the governance committee provides them a forum for considering the full governance picture and planning the board's workload and deliberations. Governance committees with this mandate, however, must take care that their coordinating activities do not render them *de facto* executive committees.

Since one of the governance committee's key responsibilities is the nomination of new directors, many governance committees are composed solely of independent directors. A notable exception is in controlled companies where the controlling shareholder often sits on, or names a designate to sit on, the governance committee. In all types of organizations, there are benefits to inviting the CEO or another related director to

attend portions of the governance committee's meetings to enhance the committee's understanding of the organization and its needs.

A key consideration when selecting members of the governance committee is the skills, interests and expertise of each director. Committee members should have a keen interest in the committee's mandate and be able to work collaboratively with the committee chair to help improve the board's effectiveness. (See Question 4 for a further discussion of the attributes of a good governance committee member.)

6. Who should chair the governance committee?

Identifying the right person to chair the governance committee is an important determinant of the committee's success.

Just as different boards follow different strategies for staffing their governance committees, different strategies and practices are pursued when choosing the governance committee chair. There are, however, some emerging practices for selecting the governance committee chair that are consistent with the committee's expanding role.

One of these practices is to require that an independent director chair the governance committee. This is particularly important if related directors sit on the committee; an independent chair helps the committee maintain an appropriate level of independence, particularly with respect to the nomination of new directors.

Because of the significant workloads of the governance committee and the board, and some boards' desire to have the governance committee serve as a "check and balance" on the power of the board chair, an increasingly common practice is for the governance committee to be chaired by someone other than the board chair. Separating the roles of the board and governance committee chairs allows the board to appoint a director whose passion is to focus specifically on the committee's mandate, particularly given the increasingly specialized expertise required of the committee and its members. For this arrangement to be effective, however, the roles of the board and governance committee chairs must be clearly differentiated in order to reduce potential conflicts. As well, the two chairs must be able to work cooperatively and manage their relationship to the board's advantage. (See the discussion in Question 12 regarding the relationship between the board chair and governance committee chair.)

In some instances, however, it may be preferable to have the same individual chair both the board and the governance committee. This is often the case with crown corporations, many of which do not control their own director nomination process. Having the same individual in both roles helps focus the board's relationship with the Minister and avoids confusion that may arise when two individuals advocate to the government on the board's behalf.





Part C: Composing the board

The responsibility for recommending new directors to the board remains one of the governance committee's primary roles. It is also one of the most significant ways the committee has to enhance the board's effectiveness in providing strategic value to management and oversight of risks to the organization.

Without the right people on the board, even the best structures and processes won't guarantee the right decisions.

7. What is the governance committee's role in building an effective board?

The governance committee plays a central role in building and managing the board's effectiveness through its responsibility for attracting, evaluating, developing and retiring directors.

Organizations and their needs change over time. The governance committee should develop a strategy to anticipate these changes and manage and adjust the board's composition as necessary so the board continues to have the collective expertise and chemistry it requires to carry out its responsibilities effectively.

To build its board composition strategy, the governance committee needs to confirm:

- the board's role in strategy and risk oversight for the organization;
- the aggregate expertise and knowledge required of the board;

- the skills, competencies, expertise and relationships required of individual directors, and the board's priorities regarding those skills and the trade-offs among them;
- the frequency for reviewing board composition, and
- the frequency of director turnover as an opportunity to adjust the board's composition.

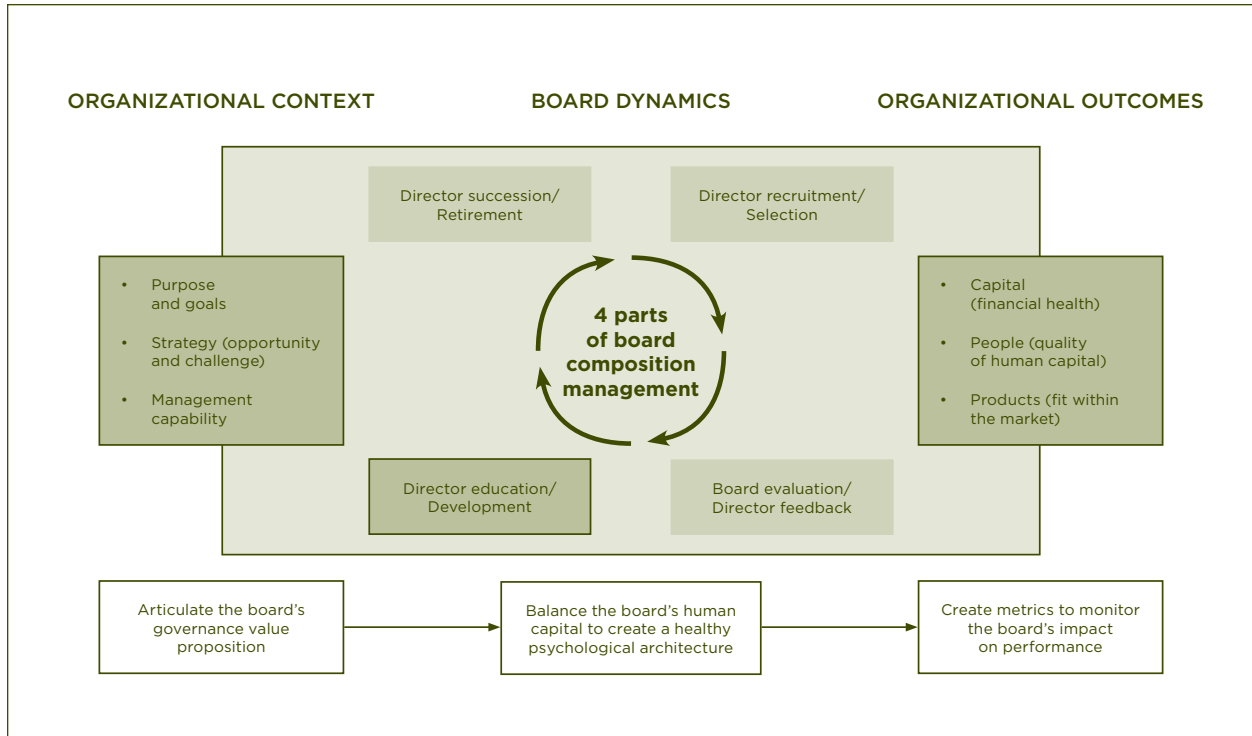
The board composition strategy should reflect the board's role within the context of:

- the organization's purpose and goals,
- the organization's business strategies, and
- management's capabilities and relationships.

A board composition strategy provides the governance committee with a framework for translating the organization's needs into the board's requirements, and then into director attributes. With this framework, the committee can guide action in four key areas that build a better board:

- a. Director recruitment/selection (Question 8)
- b. Director succession/retirement (Questions 9, 10)
- c. Director education/development (Questions 11, 12)
- d. Board evaluation/director feedback (Question 13)

Although the creation of a board composition strategy may at first appear challenging, most boards have many of its components already in place. The purpose of the strategy is to integrate these components within the context of the board's own dynamics and the desired organizational outcomes (as illustrated in the diagram on the next page).



Crown corporations

For many crown corporations, the process for recruiting and removing directors differs from that of public corporations. In most cases, the board has little influence over the government's decisions on director tenure. Nonetheless, the board chair should communicate with the government to ascertain its priorities and thus anticipate decisions that will affect the board's mandate and membership. A proactive board may gain further credibility—and hence additional influence—with the government by setting out the specific skills and experience the board needs, in light of the organization's mandate, to provide good governance. The board may also provide names of potential directors who meet these criteria, with the understanding that the government will add the requisite political dimension when making the appointment decision.

8. How can the governance committee assess potential directors?

The governance committee's first and best opportunity to build board effectiveness is through the nomination of high quality directors. For this reason, the committee should establish a robust nomination process for assessing potential directors and ensuring that they have the appropriate attributes that will enhance the board's ability to carry out its responsibilities.

In developing its nomination process, the governance committee should:

- **Adopt a strategic perspective.** The nomination criteria should be based on the board's mandate, its current and anticipated needs and the organization's strategy and objectives.
- **Seek input from stakeholders.** Conferring with current and past directors, the CEO and other stakeholders can help to fine-tune the nomination criteria and better ensure that they are relevant to the organization.
- **Assess the board's current skills and expertise.** A solid understanding of the knowledge, expertise and strengths of current board members can be used to identify any skill gaps to be filled by future directors. A skills

matrix, often used to guide the committee in nominating new directors, can also be used in planning development activities for current directors (see Question 11).

- **Define and prioritize the nomination criteria.** The committee needs to identify the attributes, competencies, experiences and relationships desired from new directors. These objectives can be grouped and ranked in order of importance based on the organization's needs and any gaps in relation to the characteristics of current directors. This process provides the governance committee with a helpful tool for assessing and comparing nominees. The committee should also consider the combination of criteria that would represent the best fit for the board should it be necessary to trade one off against another. (Examples of nomination criteria include business and organizational experience, functional expertise, business knowledge, interpersonal and team skills, availability and motivation and human diversity.)
- **Undertake a robust search.** To help facilitate the search process, many governance committees maintain "evergreen" lists of potential director nominees. Executive search consultants can also help in identifying and pre-screening potential candidates, and may help in identifying candidates from under-tapped talent pools who would create or sustain diversity on the board and bring different perspectives to its deliberations.
- **Assess potential directors.** Candidates should be evaluated against the ranked list of attributes, competencies, experiences and relationships.
- **Recommend to the board qualified candidates for formal nomination.**

9. How long should directors serve on the board or a committee?

Ideally, directors should serve on the board or a committee for as long as they have the interest and motivation to do so and are contributing value. In practice, however, a planned approach is usually required to manage board and committee tenure in a way that optimizes the board's talent and helps ensure that the directors' collective skills and expertise are relevant to the organization and its evolving needs.

In developing its approach to board and committee tenure, the governance committee could apply a combination of the following factors.

PERFORMANCE EFFECTIVENESS

Since the needs of the board and committees change over time, individual directors may be highly effective under some circumstances but not others. A key criterion in determining a director's tenure, therefore, should be performance, as determined through valid assessments of board and/or committee effectiveness and the director's own contribution. Performance should be considered relative to the board's or committee's specific objectives, how well a director's attributes match those objectives and a targeted competency development plan for directors.

ROTATION PLAN

Periodically changing the membership of the board and its committees helps reinvigorate the board and its committees by bringing in new directors with fresh perspectives and new ideas. At the same time, however, the rotation plan should ensure that enough directors remain on the board or a committee to provide continuity. A planned rotation schedule can also support succession planning by allowing directors to take on successive leadership roles.

DIRECTOR INTERESTS

Directors' interests may change over time for personal reasons or because changes in the organization or operating environment create different needs and priorities. Directors should voluntarily step down from a committee or the board if they are no longer sufficiently motivated to fulfill the contribution expected of them.

TERM LENGTH

While term limits can be challenging, with complex implications, some boards do find it helpful to set minimum and maximum terms of board and committee membership.

A minimum tenure should provide directors with sufficient time to learn about the board and/or committee mandate, the way it operates, and to become fully conversant in the specific fields of expertise. Typically, directors require more time

to become strong contributors when the board or committee mandate is more substantial and when they serve on boards of more complex organizations. Prior experience and orientation plans can shorten a director's learning period.

Maximum tenures (either term or age limits) are used by some boards as a non-judgemental way to retire members and rotate memberships in order to rejuvenate the board and its committees. Term maximums should reflect the fact that there are benefits to continuity of board and committee memberships; directors who execute mandates competently and have a historical perspective of activities and decisions can enhance the effectiveness of the board or a committee. Directors who remain too long on the board or a committee, however, run the risk of their skills becoming obsolete. Holding onto a seat prevents the introduction of new members with new perspectives.

BOARD AND COMMITTEE CHAIRS

The tenure of the board and committee chairs should be determined using the criteria listed above.

In controlled companies, it is not unusual for the controlling shareholder to sit on the board and the governance or other committees and their tenure is often lengthy. Extra care should be given, therefore, to determining the tenure of other directors since rejuvenation and new thinking are important. It is also important that independent directors be of sufficient stature to interact effectively with the controlling shareholder.

10. How can the governance committee assist directors in retiring from the board?

At some point in every director's career, the time inevitably comes to step down from the board or a committee. The transition of directors off the board or a committee, therefore, should be viewed as a natural part of the board's evolution. Nevertheless, many directors are reluctant to leave a board position when the time comes

for them to do so, particularly if they feel it is a judgement regarding their contribution.

With a well-managed succession process, stepping down from a board position should neither be surprising nor disrespectful to the individual nor be disruptive to the board.

The governance committee should be responsible for managing the director succession process as part of its overall board composition strategy (see Question 7). A good time to begin the process of transitioning a director off the board is the day that director joins the board. Expectations should be set at that time about how the director's tenure will be governed, such as a fixed term, a performance review, the director's own interests or a combination of these factors (see the discussion in Question 9).

To remind directors that the appropriate mix of people and skills will change over time, the board and governance committee should:

- **Reinforce the performance mindset of directors.** Hold periodic discussions with directors about the changing needs of the board and the organization, highlighting any gaps and overlaps in the current membership.
- **Remind directors that board service is time-limited.** Annually reviewing directors' expected retirement dates with the board reminds directors that all of them will eventually retire, gives each director and the board time to prepare for that director's retirement, and eliminates the inference that retirement is only due to poor past contribution to the board.
- **Confirm with each director, via the board chair, the expected time remaining in his or her tenure.** This should be discussed with each director at the time he or she receives their annual performance feedback.
- **Encourage directors to discuss their changing needs, interests and commitment.** Directors whose interests have changed or who no longer feel as motivated as they did in the past should be encouraged to step down from positions that no longer inspire them.
- **Keep messages about tenure consistent.** The governance committee and the board chair must work together to avoid delivering contradictory messages to directors about their tenure. When the time comes for a director to leave the board, the board chair should lead this discussion.

- **Ensure directors receive, via the board chair, the full thanks of the board for their contribution.** Directors who leave the board should do so feeling their past contributions to the board are recognized and appreciated.

When board chairs retire

Directors concluding their tenure as board chair pose a special challenge for the governance committee. With their knowledge of the board, management, stakeholders and the critical issues affecting the organization, a past board chair's continued contribution as a director and potential advisor to the new board chair can be very valuable. On the other hand, their past authority and influence within the board may make it difficult for them, other directors, and the new board chair to function effectively.

The governance committee should recommend to the board a policy regarding the possible role of a past board chair. Usually, retiring board chairs do not remain on the board. If, however, the retiring board chair's perspective is considered to be vital to organizational performance, the governance committee may recommend that a past board chair remain as a director or be retained in an advisory capacity for a short term.

Part D: Enhancing the board's performance effectiveness

Through the nominating process, the governance committee gains useful knowledge about directors and can use this knowledge to customize approaches for developing directors' skills and expertise to further improve the board's performance.

11. How can the governance committee assist in director development?

Organizations and their boards operate in an environment that changes frequently, challenging directors to adapt and grow in order to continue contributing effectively. Nonetheless, the time intended for directors' development is often sacrificed so the board can focus on current issues.

The governance committee is ideally positioned to identify director development as a priority and to take a lead role in planning, coordinating and investing in director development. Its responsibilities may include recommending to the board the objectives, means, evaluation criteria and budget to provide the necessary development activities for directors.

Over time, a holistic view should be taken to monitor and address development needs and priorities for individual directors, committees and the board as a whole.

In addition, the expectation should be set that directors' development is an ongoing activity. All directors, not just new members of the board, should participate in development opportunities that include:

1. An initial board orientation

New directors become more effective contributors faster when they are provided with opportunities to learn about the business (its business model, competitive landscape and regulatory environment), the organization (its people, strategies and risks) and its stakeholders and their interests. Arranging site visits and meetings with key executives and other stakeholders provides new directors with a first-hand understanding of

the organization. In addition, new directors need an understanding of the board and its committees and the expectations for their own performance (e.g., ethics and integrity, commitment and contribution, performance and development).

2. Ongoing director education

With the evolution of an organization's operating environment, including the introduction of new rules and regulations and changes in stakeholders' expectations, even the best directors face the risk of their knowledge and skills becoming less useful. With input from committee chairs, other directors, executives and advisors, the governance committee should determine and prioritize areas of ongoing development for directors. Learning sessions may include external courses and seminars as well as internal activities, such as periodic education sessions within board meetings, executive seminars outside of board meetings, retreats, site visits and in-house expert workshops.

3. Individual director initiative

While the board should encourage and facilitate opportunities for directors' development, directors should recognize that they also bear responsibility for their own development. The governance committee should support directors' efforts to keep their own knowledge, skills and experience up to date.

12. How can the governance committee help the board chair sharpen the board's performance focus?

The board chair has the primary responsibility for keeping the board focused and functioning effectively. The governance committee, however, has a unique opportunity to observe the overall functioning of the board and the board chair. Through its role in nominating, evaluating and developing directors, the governance committee gains a perspective that enables it to provide useful insights to help the board chair further fine-tune the board's meeting management and decision-making processes.

By observing the way the board uses time in its discussions, how it seeks out and processes information and perspectives and how it makes decisions, the governance committee can provide feedback to the board chair to help keep

discussions focused on the right matters and at an appropriate level. In addition, as it conducts the board evaluation process, the governance committee can ask directors constructive questions about the board chair's effectiveness and solicit ideas to help the board chair positively influence the board's performance.

In the heat of providing oversight and advice to management, high level linkages between an organization's goals, strategic choices and desired risk profile may be missed. Governance committees can offer support to the board chair to help keep the board focused on the integration of strategy and risk.

13. What is the governance committee's role in board evaluation and feedback?

On many boards, the governance committee has the responsibility for ensuring that the board evaluation and feedback process is carried out. Since this process is an essential tool for performance improvement, it fits naturally within the governance committee's mandate for managing board composition (see Section C) and improving board effectiveness (see Section D).

The governance committee can assist the board chair in enhancing the board's performance by ensuring there is alignment among the board's needs, what is asked of directors when they join the board, the scope of the evaluation process, the feedback directors receive through an evaluation process and the development activities provided to directors.

The responsibility for the board evaluation process is often shared by the board chair and the governance committee since both have a mandated authority to address the board's performance. While the board chair most directly influences board performance, the governance committee's mandate often includes advising the board on ways to improve its effectiveness. Consequently, many board chairs choose to be involved in the evaluation and feedback process, most often pertaining to individual directors.

A designated “point person” (such as the board or governance committee chair, corporate secretary or external consultant) often coordinates the collection of data and compilation of results. Feedback intended for the board chair is typically gathered and shared with the board chair by the governance committee chair. If the board and governance committee chairs are the same person, either another member of the governance committee or the chair of another committee takes on that responsibility.

With the board’s approval, the governance committee should determine the resources and budget required for an effective evaluation process. Often, the corporate secretary may provide valuable logistical support and an external consultant may provide expertise and third-party objectivity.

To maximize the effectiveness of the evaluation and feedback process, the governance committee should:

- **Articulate the evaluation’s purpose and principles.** The purpose should be performance improvement and its principles should include confidentiality of data and results, the time-sensitive nature of the data, a developmental focus in the use of data and a commitment to take action.
- **Decide the scope of the process.** Directors, particularly the board and committee chairs, can be invited to share their experience and interest in feedback in order to gauge their appetite for evaluation. Most boards provide feedback to the board as a whole and its committees. The next level of evaluation typically provides individual performance feedback to the board and committee chairs, individual directors and the CEO (in his or her role as a director). The governance committee should identify the specific performance dimensions and topics to be probed in the evaluation so the feedback provided to directors is focused on what is most relevant to them. The feedback process should also be timed so the results can be used in the annual planning process.
- **Choose the sources of feedback.** Asking individual directors to provide feedback allows them to reflect on the value of their own contribution and how it could be improved. Executives who interact with directors can offer a valuable management perspective

on board performance. Board advisors, such as external counsel, the external auditor and other consultants may offer professional perspectives on board performance, including comparisons to other boards.

- **Decide how feedback will be obtained and reported.** Feedback can be obtained via surveys, interviews and roundtable discussions, and findings reported through written and oral presentations.
- **Determine who will receive the feedback reports.** The governance committee can receive and comment on a draft of the feedback summaries. For transparency, however, the full board should receive a final report on the board, its committees and the board chair. Feedback about individual directors should only be seen by the director in question and whomever else it was agreed would see an individual director’s evaluation at the outset of the process.
- **Involve the board chair in individual feedback.** The feedback process should be used to enhance the relationship between directors and the board chair. If the governance committee has been given the responsibility for managing the evaluation process and the information it collects, the committee should ensure the board chair has the help he/she requires to prepare for one-on-one feedback discussions with each director.
- **Act constructively on the feedback.** Engaging in board evaluation provides evidence that directors take their duties seriously, particularly when the board follows through by using the feedback to refine its performance. Insights from the feedback should, therefore, be integrated into the developmental activities of each director and translated into the action plans for each committee and the board. High priority objectives for performance improvement (see Question 11) may be included in a subsequent evaluation to demonstrate accountability.

FOR MORE INFORMATION, SEE THE
CICA PUBLICATION *20 QUESTIONS
DIRECTORS SHOULD ASK ABOUT
GOVERNANCE ASSESSMENTS*

14. What should the governance committee do if a director is not performing or not interacting effectively with other directors?

A director who is not performing or not interacting effectively with other directors is one of the most difficult challenges a board may have to address. Boards are close-knit teams that rely on collegiality to function well, which makes it difficult to give a negative assessment to a colleague, particularly when the individual is well known, long serving and has a history of good performance.

Despite the care taken to recruit, evaluate and develop successful directors, situations will arise when a director's performance does not meet expectations.

The governance committee has a responsibility for recognizing and working with the board chair to resolve director non-performance. Typically, it is the board chair who communicates directly with the individual to address issues of director non-performance. The governance committee's role is to help the chair assess all directors' behaviour in a consistent and fair manner by ensuring that their performance is evaluated against the specific and documented expectations that were created when the directors joined the board (these expectations may have been refined through board evaluation feedback as discussed in Question 13). The evaluation and assessment process will have additional credibility when it evaluates performance against established criteria, provides independent verification of the feedback and offers developmental support to an under-performing director.

Communications about a performance issue should be delivered to the director in a professional manner and followed up with an action plan for improvement, if appropriate, based on input from the governance committee, the board chair and the director involved. On an agreed-upon schedule, specific feedback should be provided to the director arising from the action plan.

In some cases, a board chair and director may conclude on a mutual basis that the best course of action is resignation. In less urgent cases of unresolved under-performance, the governance committee may simply not nominate a director for re-election.

An under-performing board chair

An under-performing board chair affects the functioning and health of the board. The governance committee should provide the board chair with feedback regarding his or her performance against the expectations set out in the chair's mandate. If the board chair also chairs the governance committee, another committee member or a chair of another committee should provide feedback to the board chair (see Question 13).

15. Should the governance committee have a role in chair succession?

The board's authority gives it the right to appoint its own leader. Given the powerful impact a board chair can have on both the board and the organization, deciding who takes on this role may be the most important decision a board can make.

When choosing a new chair or reconfirming an existing one, boards must balance the benefits of leadership continuity with revitalization. The governance committee can help the board manage this challenge by seeing that the board puts in place a sound process for board chair succession. Such a process helps focus the board on its leadership needs and the qualities of individual candidates. By introducing clarity as to how the process works and operating with transparency, the governance committee can increase the trust and the legitimacy of the outcome.

To support the board in choosing its leader, the governance committee should recommend for the board's approval:

- **A board chair mandate** that accurately reflects the demands of the role and specifies the anticipated tenure (reappointment to the role should be confirmed by the board upon recommendation by the governance committee, itself based on board chair evaluation);
- **A governance committee mandate** that includes responsibility for managing the board chair succession process; and
- **A board chair succession process.**

For the board chair selection process to be successful, it must be seen to be fair. This can be better achieved when the expectations and processes are set in advance, consistently applied and transparent.

The governance committee's role in overseeing the chair succession process should include:

- evaluating the board chair's performance annually;
- discussing the expectations of the board chair annually with the board to create a shared understanding of what is required for the chair's effectiveness (these discussions may be led by the governance committee chair and are typically conducted without the board chair present);
- reminding directors of the board's policy on chair succession and the specific performance expectations of the board chair, as defined in the board chair mandate;
- facilitating a discussion between a departing chair and the board to offer a realistic overview of the time and activities involved in the position;
- canvassing the board to identify directors interested in assuming the role;
- recusing a member of the governance committee from overseeing this process if they are a candidate or delegating the responsibility to a set of other disinterested directors;
- creating an opportunity for candidates to address and be questioned by the board; and
- seeking a consensus decision from the board (absent the candidates and current board chair) or holding a vote in the absence of consensus.

The governance committee can prepare a pool of candidates for board leadership by:

- recruiting people to the board who have the potential to fill the role of chair (see Question 8);
- planning the movement of directors among board leadership positions to give exposure to potential board chairs (see Question 7);
- refining director competencies through a director development process (see Question 11); and

- evaluating director performance, including board leadership qualities, and providing developmental feedback to directors who aspire to board leadership (see Question 13).

A well-planned and executed board chair succession process increases the chance of selecting someone who is suited to the organization's unique governance demands and matches the stature of the office.

16. How can the governance committee help the board keep its mandates, policies and practices up-to-date?

The board expresses its expectations, commitments and values through its mandates, policies and practices. As organizations grow and as legal and regulatory contexts change and new stakeholder interests are asserted, these mandates, processes and practices must keep pace with and, even better, anticipate the changing circumstances (see Section E).

The governance committee has an important role to assist the board in fine-tuning its mandates, policies and practices to ensure they fully comply with existing laws and regulations and help to maximize the board's effectiveness. This role may include:

- reviewing board and committee mandates, policies and practices to ensure they are comprehensive in covering the board's mandate, are in accordance with the board's governance philosophy, are internally consistent and reflect the scope of what they actually do;
- monitoring the development of new or changing governance practices, including changes in the organization, its business and industry; stakeholder expectations; best practices; and new legislation, regulations and stock exchange listing requirements in order to keep the board's mandates "performance-relevant"; and
- working with the board chair and other committee chairs to create an annual calendar to coordinate work on critical issues brought forward under these mandates, policies and processes.

Part E: Emerging roles of governance committees

The roles of the board and governance committee have changed considerably over the past decade and there are indications that the governance committee's responsibilities may be extended even further.

For example, some governance committees keep aware of and consider the effect that emerging issues may have on the board, as this knowledge is necessary for identifying and nominating directors with the expertise to make a relevant contribution to the board. A growing number of governance committees now apply their knowledge of emerging trends and issues to act as their board's "forward looking radar," providing the board with an early warning of significant issues with the potential to affect the board and the organization.

This section examines some of the new and evolving roles of governance committees.

17. How can the governance committee enhance the board's relationship with institutional shareholders and other stakeholders?

For many years, boards of directors had limited interaction with shareholders (often confined to Annual General Meetings) and often none at all with other stakeholders. Today, however, both shareholders and stakeholders seek very different relationships with boards.

Among shareholders, a growing number of institutional investors are demanding greater contact with directors and more influence over their decisions (e.g., having a "say on pay"). They pay close attention to who sits on boards and on what committees, and they take note of the decisions the board makes. Some even judge individual directors by the nature and outcome of major decisions.

In this environment, directors and shareholders must find new and better ways to engage proactively and productively. Shareholders want to shorten the communication lines between them and the board to exert greater influence, while boards need to know how shareholders perceive the board and the organization, the way they are performing, and issues of greatest shareholder concern.

Given management's traditional role of speaking for the organization, this may be uncertain territory for many directors. An advantage to having the governance committee act as the board's "forward looking radar" is that it positions them to help the board identify, understand and address emerging issues. The governance committee may recommend a shareholder engagement philosophy for the board that suggests appropriate and constructive interaction between boards and shareholders. Such an approach would ensure that board and committee chairs and the organization's executives fully understand the rules and expectations relating to disclosure and their respective roles and responsibilities.

Other stakeholders, such as corporate social responsibility and environmental advocates, also expect their voices to be heard at the boardroom table. These stakeholders are increasingly aware of their ability to affect an organization's reputation and performance. In turn, shareholders are becoming much more sensitive to stakeholder effects on financial and non-financial measures when assessing corporations.

For these reasons, many companies now frame their behaviour in the language of corporate social responsibility and good corporate citizenship. It is important, therefore, that directors understand the interrelationships among stakeholder interests, corporate social responsibility, perceptions of corporate citizenship, corporate brands and consumer choices in the market.

Boards need a solid understanding of stakeholder concerns to be able to fully assess the risks and opportunities facing the business. The governance committee may, therefore, consider corporate social responsibility in the business context to assess the implications for the company. Similar to a shareholder engagement philosophy, the governance committee can develop a stakeholder engagement philosophy for the board and help the board manage relationships with key stakeholders.

Boards need to understand shareholder and stakeholder perspectives and interests, as these form the context within which business is conducted. Directors, therefore, need to better appreciate the inputs to and consequences of organizational decisions and how they are reflected in both financial and non-financial measures of company performance.

18. What is the governance committee's role in CEO succession?

Although one of the board's most important responsibilities is to appoint the CEO, few directors believe their board does a good job at managing CEO succession. Today, some governance committees are helping their boards adopt a more disciplined approach to CEO succession planning.

An important first step is for the board to embed the responsibility for CEO succession within a specific committee mandate. A review of committee mandates and membership helps to identify the appropriate committee. Many boards delegate the responsibility for CEO succession to a human resource-focused committee or the governance committee.

Even when responsibility for the CEO succession process is assigned to a specific committee, the full board should undertake a structured CEO succession planning discussion at least annually. This attention by the board helps to reduce the risk of leadership discontinuity and increases the benefits of executive leadership development planning.¹

To further strengthen their CEO succession planning processes, the governance committee can help the board to:

- set the clear expectation that CEO succession is a full board responsibility (and is not to be left entirely to management or a specific committee);
- evaluate the current succession process, both on paper and in practice;
- find opportunities to observe CEO succession candidates and judge their performance;
- nominate directors who have an interest in leadership development or expertise in talent development;
- commit adequate resources to support the board's succession efforts;
- review periodically the talent outside of the organization to help ensure that the board's choices are made in the context of the best available talent;

¹ This is generally true in the context of public and private boards. Boards of crown corporations or controlled companies may be constrained in CEO succession decisions; even in these circumstances, a sound succession process may yield helpful suggestions to decision-makers.

- involve the CEO in the process and encourage the CEO to drive succession planning and leadership capacity building throughout the organization; and
- encourage dialogue between the board chair and CEO so they work collaboratively to shape the CEO's legacy and contributions to the organization.

FOR MORE INFORMATION, SEE THE CICA PUBLICATION *20 QUESTIONS DIRECTORS SHOULD ASK ABOUT CEO SUCCESSION*

19. What role can the governance committee play in preparing for a crisis?

No matter how diligently they work to identify and mitigate potential risks, boards and organizations may still encounter sudden and unexpected crises. For this reason, organizations should have an up-to-date crisis management plan that outlines how they will respond to a crisis, including identifying individuals on the board and in management who will play key roles in managing the crisis and speaking for the organization. The board itself must know when and how to act in the uncertainty of a crisis.

Management is responsible for developing the organization's crisis management plan; the board's responsibility is to see that such a plan is in place. Although the governance committee is not the crisis management committee of the board, from its responsibilities for nominating and evaluating the board, the committee is in a unique position to know the skills and competencies of board members that may need to be drawn upon in the event of a crisis. It can also help to ensure there is clarity about where responsibility falls for crisis preparation or in the event of a crisis.

Governance committees that adopt a forward-looking stance to monitor emerging issues can provide their boards with early warning of issues the board may face and help the board prepare for sudden events, such as the loss of the CEO, a corporate takeover or a shareholder revolt.

In the event of an actual crisis, the governance committee can advise the board chair about:

- the directors whose skills, experience or relationships are relevant to the situation;

- the contingency plans that exist and may be relied upon; and
- the approaches to the crisis that would constitute good governance and be consistent with regulatory requirements and the board's own ethical standards.

FOR MORE INFORMATION, SEE THE CICA PUBLICATION *20 QUESTIONS DIRECTORS SHOULD ASK ABOUT CRISIS MANAGEMENT*

20. How can the governance committee help the board in deciding directors' pay?

Boards spend a considerable amount of time deciding executive compensation but give much less attention to director compensation. With the increasing attention shareholders are devoting to executive compensation and their growing expectations for board effectiveness, director pay may soon come into the shareholder spotlight.

Directors face growing time pressures and increasing public scrutiny, and director pay has risen as a result. Despite that, many directors believe that their pay does not match the level of effort, value and reputational liability inherent in their role. Although directors determine how much they will be paid for their board service, most are highly aware of conflicts of interest and, therefore, avoid the attention and possible criticism associated with significant pay increases.

Traditionally, the board's human resource or compensation committee had responsibility for director compensation since their focus is primarily on human resource and compensation issues. Today, however, many boards consider delegating the responsibility for overseeing director compensation to the governance committee for two main reasons:

- to avoid the perception of conflict that may arise when the same people set executive performance benchmarks and related executive pay and then set their own pay (particularly if options are involved); and
- to integrate director pay into the holistic mandate that is focused on board effectiveness and is responsible for director recruitment, nomination and evaluation.

To help the board anticipate director compensation trends and build legitimacy into director pay decisions, the governance committee should:

- articulate a philosophy of director pay (e.g., uniform base amount for all directors with additional pay for board and committee chairs);
- consider the criteria and forms of payment, including determining methods of pay that ensure directors' independence of management (e.g., cash or equity, not options or equity grants based on performance vesting);
- undertake comparative studies of director pay at similar organizations; and
- test pay philosophies and decisions with major shareholders to gain an owner perspective.

FOR MORE INFORMATION, SEE THE CICA PUBLICATION *20 QUESTIONS DIRECTORS SHOULD ASK ABOUT DIRECTOR COMPENSATION*

Conclusion

The responsibilities of the governance committee have grown considerably over the past two decades and the committee's role continues to evolve in response to the changing expectations of stakeholders and developments affecting boards and organizations. The value of the governance committee can be realized in the way it helps the board define its mandate, how it constitutes itself, how it acts to shape the board's composition and seeks to enhance the board's functioning, and how it adapts to evolving roles that may help the board to perform more effectively. As with the board as a whole and its other committees, the governance committee is most effective and contributes meaningfully when its mandate is tailored to the needs of the board and the organization and the committee is populated with directors with the best skills, expertise and enthusiasm to execute that mandate.

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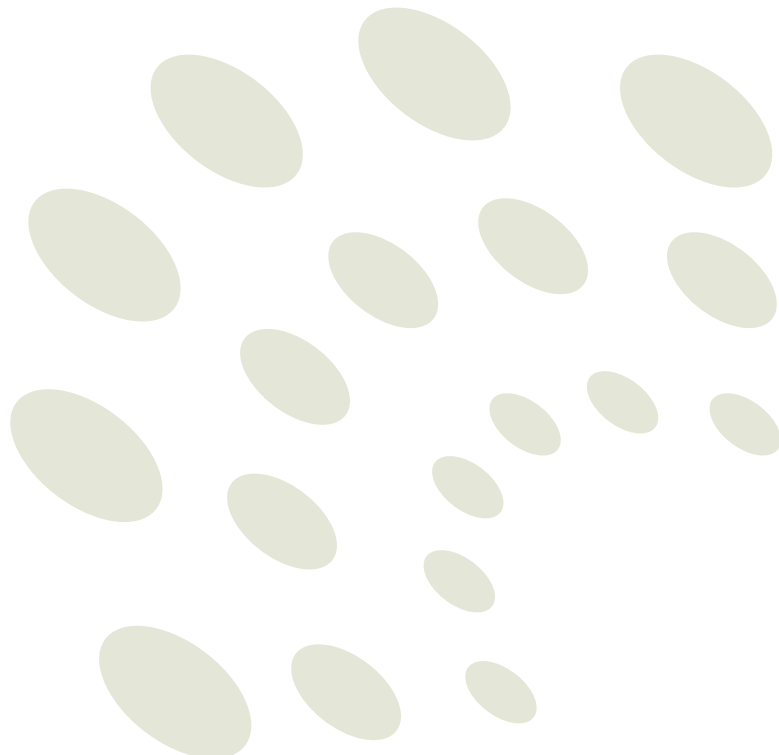
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