

The Journey to Director Development and Board Betterment

To help mark the 25th year of publication of *Directors' Responsibilities in Canada* (www.osler.com/directors), a collaboration between Osler, Hoskin & Harcourt LLP and the Institute of Corporate Directors, the law firm assembled a panel of veteran directors to discuss the dramatic transformation of boards over the last quarter century. Business journalist **Gordon Pitts** recorded and edited the two-part roundtable discussion, with the first instalment running in the last issue. In this final session, the panelists look at the internal workings of boards in terms of recruitment, performance management and the role of that all-important director credential – personal judgment. They also provide perspective on the governance challenges ahead in a world of powerful, and often competing, stakeholders.

The PARTICIPANTS

Brian LEVITT

(moderator) is vice-chair of Osler and chair of the Toronto-Dominion Bank. Based in Montreal, he has been a director of public companies for more than 25 years.

Nancy HOPKINS

practices corporate law in Saskatoon. She is a director of Cameco Corp., as well as Growthworks Canadian Fund Inc. and Growthworks Opportunity Fund Inc.

Dallas HOWE

is chair of Potash Corp. of Saskatchewan and owner of DSTC Ltd., a technology investment company. Based in Calgary, he has served as a director of Canadian companies for many years.

Raymond ROYER

is a seasoned director and corporate executive based in Montreal, who served as president and CEO of Domtar Inc. and president and COO of Bombardier Inc.

John THOMPSON

became the first non-executive chair of the TD Bank in 2003. He served as executive vice-chair of IBM Corp., with responsibility for worldwide technology, manufacturing and strategy.

Andrew MACDOUGALL

is a corporate law partner in Osler's Toronto office, playing a leadership role in the firm's corporate governance practice.



RECRUITING DIRECTORS

Nancy HOPKINS: Looking back, I think of the number of board members who were there just because they were close friends of the CEO. You don't see that now to the same extent, and the board has the much better capacity to select a CEO who can truly serve the business. It is not the CEO's friends who are doing that.

Raymond ROYER: When I read about the attributes of today's directors, it should come back to the same thing – judgment. I don't know why nobody talks about sound judgment – that is really the key attribute here.

John THOMPSON: And for me judgment is the sum total of people's experiences. They have to be smart and show that, but you also look for somebody who has some scars on him or her – to quote a speaker at the ICD [National] Conference, who has 'wolf bites.' In the [recruiting] interview, you ask people about past experiences and you look for not just things related to your industry, but also more general good judgment.



Dallas HOWE: Beyond the normal assessment tools, we spend a lot of time with in-depth, one-on-one discussions with a prospective director. The things I look for are balance, perspective and, as others commented, common sense, which sometimes isn't that common. The judgment part I qualify by saying it should be independent judgment. Someone at board meetings should be independent of management, of circumstances and perceived conflicts. Without independent judgment, they might not come forward at the right time or do the right thing.

ROYER: You go back to the definition of a leader, who is someone with the confidence to stand alone. At board meetings, too many times there is collegiality and not enough speaking out. But when you ask questions about something you do not understand, it stimulates other people to ask questions. Directors have to have that courage to ask questions they do not always have answers for.



DIVERSITY AND VALUES

HOPKINS: There were some views about board diversity even 20 years ago. I joined the Cameco board in 1993 and at that time the province of Saskatchewan had a number of shares in the company. The province had two requirements – there should be at least one Aboriginal person and one woman on the board. To the extent governments had influence – in Crown corporations, for example – the diversity concept was there. It just didn't come to the corporate world for some time.

THOMPSON: Twenty-five years ago, if you had enlightened chairs (who were usually the CEOs), they did it by instinct. They often made sure the board had diversity. But in other cases, they were not enlightened. What really changed was the growth of strong governance committees that did director recruiting from the board level, rather than from the management level.

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HOWE: It’s part of getting perspectives. You don’t need to go into quotas and all that, but if you keep diversity in the back of your mind when looking for perspectives, it kind of takes care of itself. On the Potash board, we have four women, two Hispanics and an Aboriginal person. We never went out recruiting for those things, but we were looking for the best person based on the matrixes.

Brian LEVITT: It’s a by-product not just of public scrutiny, but internal scrutiny. Twenty-five years ago, people working in companies were not aware of the board. Today, the board has to be seen to be doing what it is telling management to do. We are saying to management: ‘For the company to succeed, you need to attract and retain the best people.’ And a focus on diversity is about removing barriers to getting the best people.

Andrew MacDOUGALL: One thing learned from director education programs is the importance of not having boards engaged in groupthink. When you translate that to diversity, you realize we don’t believe in diversity for the sake of diversity. It’s because, if we get qualified people with diverse backgrounds and experiences, recognizing the need for good chemistry, we are going to get richer decisions.



MEASURING THE DIRECTOR

THOMPSON: Looking back, the values and ethics of boards have clearly been changing. I remember 25 years ago saying at a meeting that the board should have a code of conduct. After the meeting, one of the older directors took me aside and said: ‘We don’t want too much of that Billy Graham stuff here.’

HOWE: Years ago, the attitude towards performance management of directors could be summed up in one word: tolerated. You would respond if people were underperforming, but a lot more could have been done. Now, in my experience, it is a pretty robust evaluation, done collectively, and with the chair one-on-one with every director.

ROYER: There are many ways now to evaluate the work of board members. But I don’t like it where everybody tries



to cut everybody down. I’m always afraid of the effect of 360-degree evaluations or whatever. And you need a good chair who is, you hope, a non-executive chair and can assume responsibility for what is being done at the board.

LEVITT: I like the practice of having the chair talking individually to each director, because it is important what directors think of their colleagues. If you have one or two people who the others think are not performing, are not applying themselves or don’t understand what is going on, it tends to bring down the whole level. You don’t want to have high school behaviour, but it is important for the chair to get that information, not only from directors but from management.

THOMPSON: When we started doing that at TD, in my second year as chair, I fussed with how to do it – I didn’t want just a bunch of negative criticisms coming in. We tried a survey on board performance, and part of it sort of asked about other directors. Nobody said anything really worthwhile. They were worried about it, rightly so, that we would get divisiveness. Instead, you want constructive comments.

I went to the board and said ‘I don’t want anything written down and I will talk to each of you. We should talk about the other directors, but I don’t want you saying ‘so-and-so is a jerk.’ Instead, I want something like: ‘This person is a real good director but he could be even better if he did x.’ And that worked much better. I found that in the second round they were interested in knowing how other directors thought they could improve. It took it out of that high school thing.

LEVITT: You sometimes find people who look good as potential directors, but they’ve never been on a board before, and you wonder what will happen as they get into that role. This kind of feedback can help a person in the early going.

HOPKINS: And the understanding of a need for orientation of new directors wasn't the same 20 years ago. It started out with 15-minute conversation with the corporate secretary and it now has blossomed into something quite different, including ongoing education in industry and governance matters. It is just a totally different scene in getting them up to speed.

CHALLENGES AHEAD

Role definitions

THOMPSON: Boards need to be careful as they get better doing their job, that they don't let outside influences push them into the role of managers. You hear regulators say, 'I am going to force a board into the realm of management, and to take the risk decisions on behalf of management.' Some of this stuff involves trying to push boards into roles they should not have. You see this from institutional shareholders as well, when they say, 'We don't like our relationships with management because they don't tell us anything – so we will put pressure on the board.' You have to be careful as an independent chair not to let that line creep; it would be bad for governance and for the operation of the company.

Stakeholder management

ROYER: There are also a lot of advertisements out there about being a good corporate citizen, which broadens the role as well. There is momentum there that seems to be picking up. But the duty of the board is also to look after shareholders.

THOMPSON: It depends on where you are. In the U.S., it is very much on behalf of the shareholders. In Britain and Europe

generally, it is 50-50 between shareholders and the general social group, but in Japan it is 90 per cent in favour of the board representing society. In Canada, it has moved a bit away from the U.S. model to the European. Watch the creep, and know where your responsibility lies.

HOWE: Or you are on the board of a company which has an international tax strategy and there is a social uprising about companies operating in places like Switzerland and not paying as much tax. In the U.S., politicians are saying they have to stop tax inversion. Is it your duty to your shareholders to follow the law but also optimize earnings worldwide, or do you bend to the social pressure?

HOPKINS: I've been a director for a company that requires a social licence to operate, and that is a hugely important thing, particularly in extractive industries. It is a fundamental part of the board's obligation to look after the best interests of the company in the long term. The duty of the board is to the corporation, but that social licence to operate is at risk if they don't act responsibly from an environmental perspective, if they don't hire locally and improve employment opportunities for local people.

Information flow

THOMPSON: With all the new technology, it is easy to provide so much information to directors. So how do you condense it down, and get quality not quantity? The mark of good management is: Can you say that in two pages, instead of 200 pages?

LEVITT: It gets back to what management would want to know if they were directors. That's what should be provided. When you get that mass outpouring of information, it means someone doesn't have the courage to decide what is important.

It is appropriate to end this discussion on the theme of courage, which underlines the fundamental change in corporate governance in the past 25 years: Directors can feel empowered to clarify, question and probe like never before. It is fascinating to speculate where that courage will take us over the next 25 years.

Gordon Pitts is a business journalist and author of the book, *Fire in the Belly, How Purdy Crawford rescued Canada and Changed the Way We Do Business*. He is writer-in-residence at the DeGroote School of Business, McMaster University.