

Building a Board Evaluation for a Sophisticated Board is an excerpt from the new book, *Board and Director Evaluations: Innovations for 21st Century Governance Committees*. It is provided with the compliments of the Author. The full eBook is currently available in prelaunch at www.boardadvisor.net. Its official release on Amazon and other platforms worldwide is scheduled for August 16, 2021. This material is subject to copyright and may not be reproduced without the Author's written consent.

BOARD AND DIRECTOR EVALUATIONS

**Innovations for 21st Century
Governance Committees**



Beverly A. Behan

Board Advisor LLC - New York



Board and Director Evaluations: *Innovations for 21st Century Governance Committees*

eBook now available in pre-launch at www.boardadvisor.net. Worldwide Amazon launch (eBook, Paperback, Hardcover) scheduled for August 16, 2021.

Here's What People are Saying About the Book:

"Beverly Behan's experience working with nearly 200 corporate boards has provided her with significant insight into how good boards can become great boards. Her answer: a comprehensive board evaluation process. This book skillfully discusses the process of designing and implementing an effective board evaluation and provides a comprehensive discussion of how to build a better board. It is a valuable resource for corporate directors and governance professionals." – **Nelson Peltz, Founder and CEO of Triun Fund Management, LP and Chair of the Board, The Wendy's Company.**

"*Board and Director Evaluations* offers clear, no-nonsense advice on designing a meaningful, truly effective evaluation process. There are plenty of innovations to consider – from Board 2.0 to New Director 360s. It's a must read for Lead Directors, Board Chairs and Nom & Gov committee members. Beverly Behan has once again challenged us to make the boards we lead and serve on realize their fullest potential and set a tone of excellence at the top of the organizations we govern." – **Georgia Nelson, Director of Ball Corporation, Cummins Inc., Custom Truck One Source and Sims Limited**

"Advice is always better when it's based on a wealth of experience – and that is what clearly comes out in Beverly's new book. As someone who has benefited both personally and corporately from her skills and expertise, I would highlight that board and director evaluations, when effectively designed, can be an indispensable tool in board-building. This book provides innovative ideas to help any board make the most of this exercise." - **David Sutherland, Chair of the Board, United States Steel Corporation**

"This book hits it out of the ballpark. Easy to read, super insights and great suggestions for building a better board." - **Herb Wender, Chair of the Board, Radian Group, Inc.**

"This book is a refreshing departure from much governance literature in that it's easy to read, offers great ideas and practical advice that can transform any board or director evaluation from a rote, box-ticking exercise to something that's really useful in terms of board team-building." – **Muneer Satter, Former Senior Partner, Goldman Sachs Merchant Bank**

"If you want a head's up on what the hot topics in corporate governance will be a few years from now, read what Beverly Behan is writing today. Her thinking is always at the leading edge of boardroom improvements and *Board & Director Evaluations* continues that trend." – **Ralph Ward, Publisher Boardroom INSIDER**

"A true masterpiece on the topic of board evaluations from a global governance guru. Don't even attempt doing board/director evaluations until you have read this seminal work." - **Dr. Chris Bart, Founder, The Directors College of Canada and Chairman, Caribbean Institute of Directors & Caribbean Governance Training Institute**

"Having chaired Nominating & Governance Committees of both private and public company boards, I highly recommend this book to other chairs seeking to get more value from their board and director evaluations. The author's 25 years of experience in working with boards in this area really shines through; she's written a clear, easy to read book filled with fresh ideas that can transform board and director evaluations from a "box ticking exercise" to something that's genuinely worthwhile. - **Karen Kaplan, Chair & CEO, Hill Holliday Group**

"Board and Director Evaluations offers insightful thoughts and advice that even veteran Board Chairs and committee chairs can incorporate into their daily practices. Most practical of all are Behan's evaluation tools, which are useful to Boards of Directors for ongoing reflection and performance improvement." – **Milton Carroll, Chair of the Board, Health Care Service Corporation**

"In today's world, a high functioning board is essential to a company's success. The important tasks of selecting the right CEO, engaging in the formulation and execution of the company's strategy and overseeing the company's risk profile, to name a few, require a board that operates seamlessly. Board and director evaluations, when designed and conducted effectively, are critical for a board in meeting its key responsibilities. Bev's book is the go-to source for effective board and director evaluations: Easy for any board to follow and implement. A must read for directors and C-suite executives."- **Howell Estes, Chair of the Board, Maxar Technologies.**

"Bev Behan has prepared a truly practical guide for chairs and members of governance committees. As a former member of seven commercial boards and chair of several governance committees, I found the book to be an easy read with plenty of helpful, real-world examples." – **Arthur D. Collins, Former Chair & CEO, Medtronic (NYSE)**

"As we embrace the merit of diverse boards, our paradigm has shifted somewhat in board composition decisions; potential and vertical strength are increasingly becoming the funnel through which new/diverse director candidates are considered. Many high potential candidates will have little prior boardroom experience and we, as Board Chairs and Nom/Gov Chairs must champion the success of less experienced Directors. Beverly Behan's approach of interview-based evaluations offers a "leg up" for today's new Directors and is something all boards should consider to make the most of their new board talent. And don't wait too long. Constructive Board Chair and peer feedback within 6-8 months should become the norm." – **John Cassaday, Chair of the Board, Manulife/John Hancock; Chair of Compensation and Leadership Development Committee, Sysco Corporation.**

"Beverly Behan is not only one of the top advisors to CEOs and boards in the country, she is a brilliant writer on corporate governance. Her latest book is full of valuable insights and examples on best practices in board selection and evaluations. It's a pleasure to read. "– **Kimberly Till, former CEO Harris Interactive (NASDAQ), Director, Catalina Marketing and former Director of four companies.**



Join Our Mailing List!

It's free to sign up:

<https://mailchi.mp/c24f65eb265f/board-advisor-llc>

We'll keep you up to date about new articles, books, workshops, discounts, and other items of interest. And don't worry about "email overkill"; we know how annoying that can be. You'll only hear from us if we have something that we think might be of interest to you.

Building a Board Evaluation For a Sophisticated Board

An Excerpt from Board and Director Evaluations:
Innovations for 21st Century Governance Committees

By Beverly A. Behan
Board Advisor, LLC – New York

Copyright © 2021 by Board Advisor, LLC

All rights reserved. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law.

ISBN 978-1-7347190-6-2 Paperback

ISBN 987-1-7347190-8-6 Hardcover

ISBN 978-1-7347190-5-5 eBook

Board Advisor, LLC

New York, New York

www.boardadvisor.net

To contact the author with any questions you may have relating to Board and Director Evaluations, speaking engagements (in person or by videoconference), bulk orders of the book and/or for any other inquiries relating to this book or the subject matter herein, please email:

Beverly.behan@boardadvisor.net

Editor: Mary A. Metcalfe, M.S.

Introduction

Many board leaders today disparage their board evaluations as a “box ticking exercise”. But it’s useful to remember their origins: Board evaluations came into widespread use in the early 2000s in response to regulations from the New York Stock Exchange requiring listed companies to conduct annual self-evaluations of the board and its committees.¹ They were largely viewed as a compliance exercise – to meet the stock exchange requirements, provide reassurance that the board was fulfilling its mandate, complying fully with committee charters and that “everything’s okay”. And most of the time, everything is *okay* – just not *great*.

If you want to use your board evaluation as the fulcrum to take your board from “good to great”, create meaningful improvements in how the board functions, or get after some gnawing boardroom issues, you’ll need to redesign your board evaluation so that it’s no longer simply a compliance vehicle but something that taps into the wealth of insights around your board table and achieves director alignment on a range of important issues. Many board evaluation surveys are simply the wrong tool for these purposes; it’s like using a putter when you need a five iron.

I often say that I have the greatest job in the world because I have the privilege of working with some of the smartest, most accomplished and most interesting people in the world – people who serve on the Boards of Directors of public companies. Well-designed board evaluations leverage the insights of these sophisticated business leaders - and most are delighted by an opportunity to engage in a far more meaningful process. Revamping your board evaluation can not only elicit terrific suggestions to further enhance the board’s effectiveness and keep a great board vibrant, it can also be a terrific team-building exercise for the board.

During the COVID-19 lockdowns, directors around the globe became proficient in the use of Zoom and other videoconferencing technology – a development that will enable many boards to consider transitioning their board evaluations to an interview format, which typically gets directors more engaged and taps into their insights about the board in a meaningful way, yielding highly constructive and actionable feedback. That’s one development that I believe makes the new book particularly timely. The other is a real need to have our boards operating at the top of their game as the world economy emerges from the COVID-19 pandemic.

I hope you’ll find this excerpt interesting – and that it will stimulate your thinking to further enrich your own board evaluation process. Don’t hesitate to get in touch if you have any questions or comments: Beverly.behan@boardadvisor.net. If you want to learn about more innovations in board-building – Board 2.0, the New Director 360 and effective Director Evaluations – the full eBook, *Board and Director Evaluations: Innovations for 21st Century Governance Committees* and our On-line Workshop, *Innovations in Board-Building* are now available worldwide at: www.boardadvisor.net. While you’re there, you can download some of our complimentary white papers, including *Board Leadership: Champions vs Preservationists* and check out the latest videos from the Board Advisor Mailbag. One recent visitor called our website “a corporate governance wonderland.” I hope you’ll stop by!

¹ Securities and Exchange Commission, *NYSE Listed Company Manual*, Section 303A.09.

Building a Board Evaluation for a Sophisticated Board

When you're working with a board comprised of smart, successful, and sophisticated directors – which we typically find in the S&P1500 and other public companies around the world – I find it helpful to think of board evaluations not as a report card, but as a platform for a terrific board discussion; a team-building exercise for all directors, which may even incorporate feedback from the senior management team, as well. It should set up a robust and multi-dimensional conversation about the board and how it's working that all directors can get engaged around.

From that discussion, decisions can be made about where the board is adding significant value at present – and what changes could be implemented to make the board even more effective going forward. The components of the board evaluation process that I use and have refined over the past 25 years are summarized in Table 1.

Table 1: Comprehensive Board Evaluation Process

Steps	Description
Interview Protocol	<ul style="list-style-type: none"> ✓ Should include all 8 key parameters of board effectiveness ✓ Preliminary discussions with Board Chair, Chair of Gov, CEO to ensure protocol is tailored and relevant; not “cookie cutter” ✓ Determine if corporate executives will also be interviewed – if so, a parallel interview protocol needs to be created
Interviews	<ul style="list-style-type: none"> ✓ Zoom or other videoconferencing technology can now be used instead of in-person interviews
Summary Report	<ul style="list-style-type: none"> ✓ Interview feedback is analyzed and summarized in a board evaluation report; typically 10+ pages in length ✓ Surfaces key themes including board strengths/contributions as well as opportunities for further improvement ✓ Actionable, specific and constructive – but protects confidentiality
Debrief/Discussion	<ul style="list-style-type: none"> ✓ Initial debrief with “sponsorship group” (typically Board Chair, Chair of Governance, CEO, GC/Corporate Secretary) ✓ Board evaluation discussion in working session with full board (60–90 minutes). Report distributed in pre-reading
Action Plan	<ul style="list-style-type: none"> ✓ Action Plan created from the board evaluation discussion with the full board; summarizes the initiatives/action items the board has decided to undertake/initiate in response to the board evaluation feedback ✓ Describes how each action item will be addressed, where responsibility will lie to move the item forward, and a timeline

Interviews vs. Surveys

Board evaluations were introduced with the use of survey forms - and the majority of S&P1500 boards still use them, today. Board evaluation surveys have been refined and improved over the past two decades. But my own preference for nearly 15 years has been to use structured interviews for board evaluations – and Zoom opens the door for more boards to consider this approach.

A survey typically consists of a series of closed-ended questions which participants are asked to score on a 1–5 scale with some room for write-in comments. Survey feedback results in numeric reports that are often difficult to translate into meaningful action steps. Interviews, on the other hand, typically yield richer feedback and insights that get to the nub of the issue. Table 2 illustrates these differences:

Table 2: Surveys vs. Interviews

Survey-Based Board Evaluation Format	Interview-Based Board Evaluation Format
<p>Topic: Board Pre-Reading Materials</p> <p>Question: Are you satisfied with the board pre-reading materials?</p> <p>Score: 2.7</p> <p>Write-In Comments:</p> <ul style="list-style-type: none"> • “Improvement needed here” • “Materials are too lengthy” • “Not well organized” 	<p>Topic: Board Pre-Reading Materials</p> <p>Question: Could the board pre-reading materials could be improved in any way?</p> <p>Interview Comments:</p> <ul style="list-style-type: none"> • “There are no executive summaries, and it takes me to page 30 before I really distill the key point. This wastes my time.” • “There is a lot of industry jargon and acronyms in the pre-reading material. It’s clear to me that management simply repurposes the materials they took into the executive committee and not tailoring them for a board level presentation.” • “More use should be made of appendices for financial data. I want to see this data, but I would prefer five pages summarizing the key points; then let me refer to an appendix for more details if I want them.”

Interviews are also far more engaging for participants, who typically enjoy taking the time (generally 45–60 minutes) to share their views about the board. Board members, by and large, are highly intelligent businesspeople who nearly always have good insights and terrific ideas on how to make a great board even better. The idea that directors are “too busy” to engage in this dialogue is nonsense; most board members welcome these conversations and sincerely appreciate the opportunity to provide thoughtful feedback about various facets of the board’s operations.

Senior Management

Most Chief Executive Officers in the United States, Canada, the United Kingdom and many other countries serve as members of their governing boards and therefore routinely participate in the board evaluation process. Over the past decade, however, it has become increasingly popular to also gather feedback from top company executives who are not board members, but regularly attend board and committee meetings.

While some directors bristle at the thought of management “evaluating” the board, most find it illuminating to include management feedback in the board evaluation. Senior executives nearly always provide perspectives that complement those of directors and frequently surface new ideas that the board finds very worthwhile. This accounts for the expansion of the practice in recent years.

Including senior management also demonstrates the board’s openness to feedback and nearly always earns kudos from the executive team. Moreover, it gives the board an opportunity to get management’s perspective on the “tone at the top” the board is perceived as setting – and its congruence with the corporate culture, a topic of frequent governance articles and even an NACD Blue Ribbon Commission Report in recent years.²

Typically, there are three to five executives who regularly attend board meetings, including the Chief Financial Officer and General Counsel. Regular attendees have enough exposure to the board so that they can provide excellent insights and perspectives on a full range of issues being canvassed in the board evaluation. Including executives who only present to the board once or twice a year is debatable, as they may answer the board evaluation questions based on speculation rather than actual experience.

It almost goes without saying that if a decision is made to include senior management in the board evaluation, the process needs to be externally facilitated to ensure confidentiality and candor. No savvy corporate executive is going to tell the Board Chair – or any other director, for that matter – that the “tone at the top” set by the board is anything but glowing.

Yet it’s vital for any board that truly wants to attain excellence to understand what the corporate executive team really thinks: Sometimes directors discover that the board is being “scapegoated” by the CEO for tough decisions – creating a fissure in the board/management relationship. Other times, board members come to realize that their habit of looking at unrelated items on their iPads during a board presentation has not gone unnoticed. And in many cases, the board is gratified by heartfelt commendations and genuine respect for tough decisions and important insights they brought to bear.

If senior executives are included, a decision will need to be made as to whether and how the board evaluation results will be shared with them. Some boards have no follow-up whatsoever with management; others invite those executives who provided feedback to attend some portions of the

² National Association of Corporate Directors, *Report of the NACD Blue Ribbon Commission on Culture as a Corporate Asset* (October 3, 2017). Accessed September 28, 2020, www.nacdonline.org/insights/publications.cfm?ItemNumber=48252.

board meeting where the evaluation is discussed. It can be useful to postpone that decision until the board evaluation priorities emerge from an analysis of the feedback: If one of the major issues relates to CEO succession planning, for example, this discussion is probably best restricted to the board, itself. Enhancements to board pre-reading packages and improving the flow of presentations in board meetings, however, lend themselves particularly well to a joint board/ management discussion.

New Directors

Some boards exclude new directors from their board evaluation until they've served on the board for at least a year. However, I'm of the view that all directors – even relatively new recruits – should participate. A robust board evaluation serves as a team-building exercise for the board; leaving someone out defeats that purpose.

New directors are clearly not in a position to answer the same sort of questions as other members of the board due to their limited tenure. Instead, their feedback should focus on director recruitment and orientation – areas where they have the most recent experience and can provide particularly valuable insights. New directors can also be asked for their first impressions of the board's working dynamics, the board/management relationship – and might even suggest helpful practices from other boards they've served on or worked with.

Zoom/Videoconferencing

Videoconferencing neatly facilitates board evaluation interviews – and provides some distinct advantages over both in-person interviews and those conducted by phone. During the COVID-19 lockdowns, board members were forced to learn how to use Zoom and other videoconferencing platforms – BlueJeans, MicroSoft Teams, etc. Most directors have now become so comfortable with these vehicles that they don't just use them for business; they use them for personal chats with friends and family too.

Telephone interviews have significant drawbacks – chief among them, the inability to see the other person. When participants can look each other in the eye – even if it's on a screen – there's greater potential to build rapport and foster more open dialogue. A seasoned interviewer can immediately recognize from body language where there's something more to the participant's answer that needs to be explored with a few probing questions. The interviewee, on the other hand, can typically pick up on whether their point has been genuinely understood and intercede to offer clarifications.

As many board members live across the country – even around the world – in-person interviews have always been a challenge. Travel costs can be significant. Some boards schedule interviews with out-of-town directors around a board meeting – when the entire board is present at company headquarters. But this practice stretches out the evaluation across two board meetings (one to conduct the interviews, the second to debrief on the evaluation results). Squeezing the interviews between committee meetings is never optimal; when directors are in town for a board meeting, they are pre-occupied with the agenda items at hand. Videoconferencing does away with all these concerns.

The advantages of using Zoom for a board evaluation became immediately apparent in discussions with a global company based in the UK that had a new CEO. This board wanted to undertake “a more

worthwhile and credible board evaluation than what we've done in the past." Their board members reside in Britain, Sweden, the United States and Singapore. Through the magic of Zoom, we were discussing a 6-week timeline – something that would never have been feasible with in-person interviews, not to mention the travel expenses involved. Suddenly, an interview-based board evaluation is genuinely workable for a global board – with far lower costs and an accelerated timeline.

External Facilitators

For more than 20 years, I've served as an external facilitator in conducting board evaluations for listed companies in North America and around the world. So, I'm the first to acknowledge my bias on this question. However, it's an issue that cannot be ignored when it comes to the design of an effective board evaluation – so I'll do my best to address it, as thoroughly and objectively as I can.

The 2018 *UK Corporate Governance Code* recommends that board evaluations of FTSE 350 companies be externally facilitated at least every three years.³ This is clearly the direction board evaluations are heading, whether other countries adopt similar regulations or simply come to acknowledge this "best practice". In recent years, boards in the United States and other countries have demonstrated unprecedented levels of interest in working with an external facilitator on their board evaluation. Three of the main reasons are:

- **Candor, Confidentiality, and Credibility:** An experienced external facilitator can nearly always elicit more candid feedback than even the most well-respected Board Chair. This becomes even more important if senior management are included. Candor is fundamental to an effective board evaluation; if directors and executives aren't forthright and open in expressing their views, the entire process lacks credibility and has marginal value.
- **Experience Working with Other Boards:** Having someone facilitate the board evaluation who's gone through this process with dozens of other boards can be extremely useful. An experienced external facilitator can offer practical insights on designing an effective process and avoiding common pitfalls. Moreover, when themes emerge from the board evaluation, itself, they can discuss approaches that other boards have used in tackling similar issues and the pros and cons of each.
- **Workload:** I once served as a resource for a Governance Chair who wanted to drive a comprehensive board evaluation personally. I helped him to design the interview protocol and debriefed with him after his discussions with directors, to summarize the feedback. When he finished his interviews, I conducted the analysis and wrote the board evaluation report for him. This process was a vast improvement over anything his board had done previously – and directors roundly applauded his efforts. However, even with this level of support, the Governance Chair found that the workload was far greater than he'd anticipated and vowed to

³ Financial Reporting Council, *The UK Corporate Governance Code* (July, 2018), 9. Accessed October 20, 2020, www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf.

have the interviews conducted externally next time, while he weighed in on key aspects of the process, reviewed the report, and co-facilitated the board discussion of the evaluation findings.

In choosing an external facilitator, it's essential to talk to references, particularly board-level references. Don't be surprised, however, if a seasoned board consultant refuses to provide references at an early stage of a consulting bake-off; most have Non-Disclosure Agreements. Moreover, their references typically consist of Board Chairs, other board members and/or CEOs whose permission is generally requested each time their contact information is given out.

Be wary of client lists, a popular marketing tool used by some professional services firms. Make sure to ask whether every name on that list is a client that the consultant(s) actually conducted board evaluation work for. One Governance Chair of a board in Montreal asked this question when presented with an impressive client list from a reputable North American search firm. When he did, the original list of more than 40 clients was reduced to eight; the firm had conducted search assignments, not board evaluations, for the other 32.

Once the board has narrowed its consideration to serious contenders, recent references should be furnished by finalists. In speaking to references, be sure to ask not only about their experience in working with the consultant but also about the impact of the work: What was achieved from the board evaluation? What kinds of issues did they end up tackling? How did this help the board to become even more effective? Don't hesitate to ask the consultant to provide a sample Action Plan from an actual board evaluation assignment (scrubbed of identifiers, of course) or for an excerpt of a board evaluation report. This gives you a sense of the kind of deliverables you can anticipate.

Frequency

Conducting an externally facilitated board evaluation every year is unnecessary. After all, a well-executed board evaluation should yield an Action Plan that may require 18–24 months to implement; repeating the process a year later typically delivers only marginal returns. As mentioned earlier, the 2018 *UK Corporate Governance Code* recommends external facilitation for FTSE 350 companies every three years, which is the model many boards in the US that use an external resource have naturally adopted.⁴

During the intervening years, they use a simple and internally conducted evaluation process that involves either a survey or phone call from the Board Chair or Corporate Secretary. This often follows up on the Action Plan from the earlier, more comprehensive process and may include questions such as: Are you satisfied with the board's progress in adopting the initiatives laid out in the Action Plan? Are these initiatives having a positive impact – or not? What else could be done in these areas?

Boards of NYSE-listed companies are obligated to conduct an annual board evaluation by regulation. However, the NYSE rules are silent in terms of the board evaluation process itself. As such, boards of NYSE companies have complete freedom to change their process – undertaking a very comprehensive

⁴ Ibid, 9.

evaluation one year and a more limited process the next two. Most other stock exchanges around the world, whether in a “comply or explain” jurisdiction (like the UK and Canada) or otherwise, provide similar flexibility. Even those countries that prescribe an annual board evaluation for their listed companies don’t typically prescribe the methodology for conducting it. The Nasdaq doesn’t even require its listed companies to conduct board evaluations – offering complete freedom in this regard.

Discovery Issues

In the early 2000s, when board evaluations were first required by the NYSE and adopted by many other boards as a “best practice”, there was tremendous concern about the discoverability of board evaluations during litigation. This is a legitimate concern. From what I can see – and based on the views of many General Counsel I’ve worked with over the years – board evaluations are not protected or privileged and could be compelled during a lawsuit.

Some boards that were particularly fearful in this regard insisted that their board evaluations be “oral reports only, with nothing written down.” Although popular in the mid-2000s, few boards that I know of have continued in this vein. Some boards chose to have their evaluations conducted by or sent to outside legal counsel, in the hopes that doing this would provide protection as either an “attorney work product” or through “attorney-client privilege”. However, these sorts of privilege claims have never been upheld in a court of law. Holly Gregory, a partner at Sidley Austin LLP wrote the following in her fine article “Rethinking Board Evaluation” with respect to claiming attorney-client privilege for board evaluations:

Using an attorney may preserve the ability to argue at a later date that attorney-client privilege attaches. However, this argument has not been tested, and boards and committees should not rely on this protection.⁵

The requirements to successfully claim solicitor-client privilege on a board evaluation may present a “high bar” when this argument finally does come before a court; board evaluations are not typically conducted in anticipation of litigation. That said, whenever I’ve had a client who wanted to retain me through their outside law firm, so as to preserve the ability to try to assert the privilege claim, I’ve been happy to structure my engagement in this way.

The issue of discoverability merits consideration at the outset of any board evaluation – even an internal one. And it should definitely be explored with any external facilitator you’re thinking of working with. If this happens to be a law firm and their response to your concern is “solicitor-client privilege” I’d delve a little deeper, in view of the comments noted above. It’s fair to ask what practical safeguards they plan to put in place in case the privilege claim doesn’t hold water, if it’s ever put to the test.

In terms of practical safeguards, there are probably more sophisticated techniques than my own practice, which hasn’t changed much in 20 years. But this is what I do and it’s a simple approach any board could adopt or insist upon: I hand-write all the interview notes; the paper notebooks are

⁵ Holly J. Gregory, “Rethinking Board Evaluation,” *Practical Law: The Journal* (March, 2015), 30. Accessed September 24, 2020 at https://www.sidley.com/~media/publications/march15_thegovernancecounselor.pdf.

destroyed at the end of the project. Working drafts and the final board evaluation report are stored on a USB, not my hard drive. Rather than sending the first draft of the report to the Board Chair by email, I'll print it and send it by FedEx, if the client wishes – and many do.

With the Chair's permission, I'll print another copy and FedEx it to the General Counsel. Most GC's look at the report, tell me "It looks fine" and immediately post it in the "Board Only" section of their portal. However, if the GC has any discomfort, the final report is also sent to board members via FedEx. All paper copies are destroyed at the end of the meeting – and the USB is also destroyed at that time.

Interview Protocols

Using an interview format for a board evaluation requires an interview protocol to ensure consistency. Otherwise, every interview can cover a different range of issues, making it difficult to reach consensus on the findings. While most interview protocols end up being quite extensive, not every question is typically asked, though all topics are covered.

If senior executives are included in the board evaluation interviews, a slightly different but parallel protocol needs to be developed: It's nearly always useful to ask senior executives where they derive the most benefit from working with the board and to gather their views about corporate culture and the "tone at the top" they perceive the board as setting. On the other hand, questions about the CEO's annual performance evaluation, the director recruitment process, and other areas where senior management typically has little involvement can usually be eliminated.

There are three essentials when it comes to designing and effectively using a board interview protocol:

- I. **It should cover all eight key parameters of board effectiveness.** These include: Board composition, board information/pre-reading materials, board agendas and meetings, board leadership, board committees, board dynamics, the working relationship between the board and management and board processes (which includes how the board engages on strategy, CEO succession planning, risk oversight, CEO evaluation, etc.). These are discussed in greater detail in Appendix A.
- II. **It should be tailored, not "cookie cutter".** The interview protocol should reflect the circumstances, key issues, and even ownership structure (if there is a majority shareholder or dual-class structure) of the board. This is what makes the entire exercise more relevant and resonant for participants. For example, if board composition/director recruitment is one of the most important issues the board is now grappling with, the protocol should drill down into this area and may even include a Board 2.0 exercise, as outlined in Chapter Three. If the board has just gone through a strategy process with the CEO and senior team that directors were disappointed in, the protocol may incorporate a number of questions to identify what the shortcomings were – and whether directors' unhappiness relates to the process that the CEO used to engage the board on strategic issues, or the strategy itself.

Part of that tailoring in 2021 should involve questions that gather board feedback on some of the tremendous challenges the board has had to deal with during COVID-19, board oversight around

diversity and inclusion programs, and even the migration of board and committee meetings to videoconferencing formats:

- ❖ What are directors' most important learnings and insights from the risks and challenges the company faced during COVID-19? What did they feel the board did well in addressing those challenges and/or supporting the CEO and management through the crisis? What significant risks most concerned them in terms of the fallout of this situation (logistical issues, credit/banking/capital structure concerns, impact on major customers, employee issues, etc.)? Do they feel the board needs to strengthen its oversight in any of these areas – and if so, what would be helpful in this regard: For example, should this become a regular board agenda item in the near term? Should Key Performance Indicators (KPIs) be developed around this topic? What, if anything, should the board do differently if it finds itself coping with an unusually tough situation in the future?
- ❖ How well-informed do directors feel about diversity and inclusion policies and programs at the company? Do they have a good handle on whether these programs are having meaningful impact? What changes, if any, do they believe should be implemented in terms of board oversight of these issues: For example, should the board or a board committee be talking about diversity and inclusion issues as a more frequent agenda item? Should the board be getting different or better data relative to these issues than they received in the past? Is there value in creating a board/management task force on diversity and inclusion? Are there steps that should be addressed in this regard relative to the composition of the board, itself and if so, how should the Nominating Committee move forward?
- ❖ What have they seen as the challenges and upsides of migrating board and committee meetings to a videoconference format? What, in their view, has worked particularly well with the board meeting via videoconference? What have been the downsides? What could be done to make these meetings/videoconferences more effective going forward? Are there implications for the Board Chair in terms of how they conduct the meetings? Are there implications for management in their pre-reading materials and presentations when the board or committee meeting is held by videoconference? When the COVID-19 crisis subsides and the board can go back to meeting in person, would they recommend that some or all meetings continue to be conducted by videoconference – why?

III. It should be distributed in advance. Once a draft interview protocol has been developed, it should be finalized with input from the Board Chair, Chair of the Governance Committee and Chief Executive Officer then distributed to all participants in advance of their interviews. Participants are asked to read the protocol over for 15 or 20 minutes sometime before their interview and think about the questions. This enables directors to frame their thoughts in advance and always makes better use of their time in the interview itself.

Directors often make some notes, but you want to avoid having them fill out answers to the questions in advance. Generally, there's a "warning" on the protocol urging people not to waste time doing that. On rare occasions, a director will ignore this. I had this happen about a year ago; an elderly director who I think felt somewhat nervous about the board evaluation process, showed up with printed answers to every question and told me there was now no need for us to spend any time talking. I read over his responses quickly, asked him to sit down and got him talking anyway. Interestingly, the answers he gave in person differed – in some cases quite dramatically – from much of what he'd written down. He offered all kinds of important observations during our discussion that were not even mentioned in his written paper – and he enjoyed the conversation so much that we talked for more than hour.

Note: No sample Interview Protocols are included in the Appendices. If they were, some readers would be tempted to simply adopt them. Protocols **must** be tailored to every board to be truly effective.

Board Observation

When an external facilitator is used to conduct the board evaluation, some boards include a board observation component in the exercise. Attending all or part of a regular board meeting to observe the board at work can provide good context for some of the feedback being collected about board meetings, board dynamics, management presentations, and other issues. However, many boards who've tried this found certain directors "playing to the camera" – trying to influence the "evaluation" by suddenly become far more engaged than their peers had ever seen them as soon as the facilitator entered the boardroom. Others expressed concern that the external facilitator's presence tended to impede discussion on highly confidential and/or sensitive issues during the meeting. For these reasons, I seldom include board observations in my evaluation design. However, there may be instances in which it seems appropriate to do so – and it's something to think about.

With many board meetings now migrating to a videoconferencing format, inclusion of a board observation component has perhaps never been easier. However, this also creates some risk that the observation exercise may end up focusing on technical issues with the videoconferencing platform.

Whether the observation is planned for an in-person board meeting or a videoconference, one important consideration is timing: adding an observation component to the board evaluation inevitably expands the evaluation timeline – as one board meeting is required for the observation exercise and a second for the board discussion of the evaluation results. This may or may not be a significant issue depending on the frequency of board meetings.

Debrief and Action Planning

A great deal of thought typically goes into the feedback collection mechanism for the board evaluation. Less attention is often paid to what may be an even more important consideration: how to use the results of the board evaluation productively.

Interview-based board evaluations typically yield rich and constructive feedback that readily lends itself to good discussion. They also provide a level of specificity that enables the board to readily understand

the crux of any issues surfaced and make some decisions as to whether and how to address them. At least 3–5 potential opportunities for further board enhancement should emerge from the board evaluation process; boards with highly engaged and very thoughtful directors often have 8–10.

Once the feedback is collected and analyzed, a report summarizing the results of the board evaluation is developed, which is generally reviewed at the outset by board leadership: The Board Chair, the Chair of the Governance Committee, and then with the Chief Executive Officer. This review enables a determination to be made of those issues worthy of discussion at a meeting of the full board and/or the Governance Committee – and how much time should be allocated on the board agenda for this working session to discuss the board evaluation results. As mentioned earlier, the General Counsel or Corporate Secretary are frequently included in this preliminary review as well, although generally the report is shared with them after board and corporate leadership have seen it.

The length of time required for the board’s discussion of the evaluation can vary: some boards prefer to have the more in-depth discussion at the Governance Committee, scheduling the committee meeting for 1–2 hours and limiting the discussion by the full board to about half an hour. Most, however, prefer to give the full board an opportunity to discuss the board evaluation in depth, which typically requires 60–90 minutes on the board agenda, depending on the number of issues surfaced from the evaluation that board leadership decides to address during this session.

Distributing the board evaluation report to all directors in the pre-reading material makes the best use of the board’s time in this meeting, as all directors will have read the report and come into the meeting prepared to discuss priority issues. Goals of this working session with the full board to discuss the board evaluation are generally threefold:

1. To have a good, interactive dialogue of the issues surfaced from the board evaluation that may yield worthwhile opportunities for constructive changes.
2. To explore alternative approaches to address the issues, including, as appropriate, tactics that other boards have adopted to address similar issues.
3. To reach decisions as to the best way to approach each issue, if at all.

At the conclusion, an Action Plan is created to capture key decisions from the meeting, which the board can use as a roadmap over the next 12–18 months in moving forward with these initiatives. A sample of Board Evaluation Action Plan is provided in Appendix B.

In Summary

This excerpt describes various elements for the board to consider in designing an effective board evaluation process for a sophisticated board:

- the use of structured, confidential interviews,
- incorporating senior management's perspectives,
- developing tailored protocols that ensure consistency while recognizing the unique circumstances and issues of every board and practical ideas to offset discoverability concerns.

Directors' newfound comfort with Zoom opens the door to using videoconferencing to introduce interview-based board evaluations, changing the entire complexion of the board evaluation process to a platform for worthwhile discussion about genuinely important issues in board-building that leads to meaningful and continuous improvement.

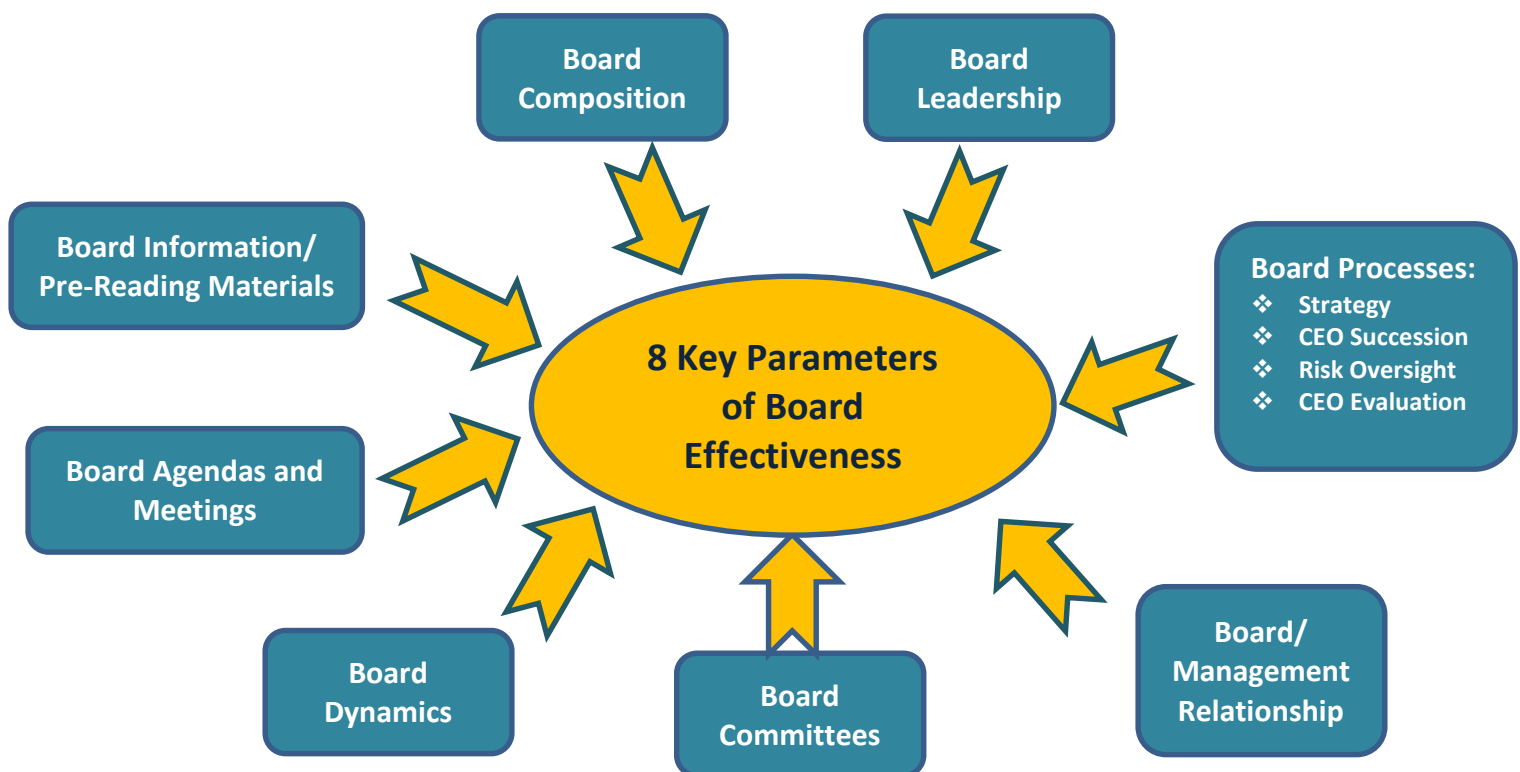
However, the most essential element in the design of an effective board evaluation is a boardroom champion – a leader committed to genuine boardroom excellence who unleashes directors' insights, perspectives, and good ideas in service of this important goal.

Appendix A: Eight Key Parameters of Board-Building

There are eight key factors in board-building – all of which need to be optimized for any board to function at the top of its game. Board composition is the most important of the eight. In fact, pulling all the other seven levers will achieve only marginal results if the board has the wrong make-up to begin with. That said, a board that boasts a team of outstanding and diverse directors whose expertise aligns beautifully with the company’s business model and strategic direction will never maximize the board’s effectiveness unless and until the other seven parameters of board effectiveness are optimized as well. In fact, they will under-utilize and waste the talent at their board table.

An effective board evaluation should explore all eight parameters of board effectiveness. However, any board evaluation interview protocol should be tailored to go into more depth on issues that are particularly timely and important to the board at the time of the evaluation so as to derive the greatest value from the evaluation process, rather than simply using a “cookie cutter” board evaluation template. For example, if the board is considering forming a Risk Committee, questions should be included about board committee structure, the goals and mandates of the new Risk Committee etc. Similarly, if the Chair is 1-2 years away from retirement, exploring issues around criteria for the board’s next Chair, the process to select a new Chair, keeping the Chair independent versus combining the role with that of the CEO may all be useful topics to incorporate into the board evaluation interviews.

Graphic 1: Eight Key Parameters of Board Effectiveness



- **Board Composition:** Do the skills, experience and backgrounds of the people gathered at your board table make sense within the context of the company's business model and strategy? Are there evident gaps in the board's make-up – skills/backgrounds that would make a real difference to include in your board debates? Has there been a hesitancy to add them because you're waiting for upcoming retirements? Is diversity an issue in the board's composition: Few if any female or minority directors, a balance of active vs. retired directors, board members that bring an international perspective, if this is a key element of the company's growth strategy? Is the process for recruiting director candidates effective? What kind of orientation do new directors receive to get them quickly up the learning curve of the company's business?
- **Board Information/Pre-Reading Materials:** Many boards today are overloaded with data – typically a myriad of financial data – that is often poorly organized and fails to highlight the key points directors need to focus their attention on. The quality of board discussion and decision-making is directly proportionate to the quality of information the board receives. Even if the information is all there – somewhere – failing to organize it succinctly undercuts the value of assembling it in the first place. Some board packages have followed the same format for years. While board portals have become almost universal, a change in the delivery vehicle doesn't address fundamental shortcomings of the content of the information itself.
- **Board Agendas and Meetings:** Many boards have used the same agenda format for years – without standing back to consider whether the board meetings would be more effective if they were structured somewhat differently. What is the balance of presentation vs. discussion time in board meetings? If the balance is roughly 75% presentation and 25% discussion, the board is primarily being used as an audience rather than a thought-partner, a waste of directors' talent and expertise. Are critical issues placed near the front of the agenda – so that they can be tackled while directors are fresh and keen to engage? Or is that prime slot filled up with compliance issues and committee updates? Do agenda items regularly run over their allotted time – and if so, is this due to poor agenda design or poor meeting management?
- **Board Leadership:** How effective is the Chair in running the board meetings? Do they draw out different perspectives from around the table on key issues? Or does the Chair insist on driving their point home to the exclusion of other views that may be suppressed by this style? Do they know when to call the question on an issue and move on? Or is the board routinely going off on tangents? Is the Chair able to drive the board to consensus and give clear direction to management when a board decision is reached? Whether the independent board leader is a Non-Executive Chair or Lead/Presiding Director: How effective is this individual in working with the CEO and with the other directors? Do they keep a finger on the pulse of the board through regular contact between meetings? Are director confidences respected? Is the Chair willing to address thorny issues of director performance or simply turn a blind eye?

- **Board Committees:** The question here is seldom whether the committee is complying with the terms of its charter but rather, how effectively the committee is functioning. Does the Committee Chair run effective meetings and bring the committee to consensus? What about the quality and organization of committee pre-reading materials? Does the committee get effective support from company executives and external advisors? How are non-committee members kept abreast of the committee's work and decision-making? Should the board form a new committee and if so, what would be its mandate? Or should it disband an existing committee that is not required by regulations and has outlived its usefulness?
- **Board Dynamics:** What is the climate of this boardroom: Is it relatively uninspiring or a vibrant, energized place to exchange ideas and make decisions? Are board members candid or cautious in expressing their views? Has the board become polarized, either through a merger or different generations of directors, which have created "camps"? Many boards describe their culture as "collegial" – but does that denote an atmosphere of healthy mutual respect or a clubbiness characterized by "group think"? Can board members handle conflict and strong differences of opinion? Are challenges and different points of view encouraged or largely suppressed? Do people say what they think in the meetings – or out in the hall, afterwards?
- **Board/Management Relationship:** Is the relationship between the board and management characterized by candor and mutual respect or do board members take a high-handed manner with company executives? Does an atmosphere exist where management is comfortable sharing bad news and tough issues? Or is the board quick to criticize any missteps or risks that didn't pan out? Does management truly use the board as a thought partner to wrestle with critical issues? Or is everything presented to the board fairly "buttoned up" with the hope that questions will be minimal? Is management open to the board's advice or do they immediately become defensive? Has the board fallen into habits of micro-management, delving into picayune levels of detail that not only wastes board time but leaves company executives constantly feeling "second guessed"?
- **Board Processes:** This refers to the way the board engages in some of its most critical areas of oversight and decision making, including corporate strategy, risk, CEO succession planning, and CEO evaluation. Strategy and succession are both critical areas of board responsibility – and one of these two tends to arise as an area for improvement in nearly every board evaluation. Risk oversight in the aftermath of COVID-19 is a critical governance issue. Most CEOs find their annual evaluation process less than inspiring; some CEO evaluations involve board members rating the CEO on aspects of performance that they have little basis to judge, such as the CEO's communications within the company. Many boards that have the other seven parameters of board effectiveness in very good shape fall short in the area of board processes – perhaps ironic because, of all eight parameters, this is the area where an effective board can often make its most significant contributions to the company it governs.

Appendix B: SAMPLE Board Evaluation Action Plan

This Action Plan summarizes key outcomes from the XYZ board evaluation and the discussion of the findings at the October 10, 2018 board meeting. It is intended primarily as a roadmap for the Chairman of the Board to use over the next 12-18 months in implementing action items developed from the board evaluation discussion so as to keep these initiatives on track.

Topic	Activity	Responsibility	Target Date
Board Pre-Reading	Changes to be implemented in board pre-reading papers: <ul style="list-style-type: none"> Implementation of executive summaries that outline the business case for key agenda items and proposals in 1-3 pages. Appendix of “additional documents” (non-essential but interesting documents that used to be included in the pre-reading) as a link from which board members can select those, if any, they wish to see or receive Ongoing work to further streamline and improve board papers (elimination of industry acronyms, jargon, etc.) 	Corporate Secretary working with the Chairman, CEO and executive team.	Some changes to be implemented by December 15, 2018 meeting; others over the next 6 months.
	Board pre-reading papers to be provided to directors 5 days in advance of board meetings (other than in exceptional circumstances).	CEO and Corporate Secretary	December 15, 2018 meeting and ongoing
	Board agenda item to review changes made to board pre-reading and discuss further improvements, if any.	Chairman and Corporate Secretary; Full Board	July 12, 2019 meeting
CEO Succession Planning	Discussion and development of criteria for XYZ’s next CEO and development of working draft timeline of key steps in succession planning process which reflect: <ul style="list-style-type: none"> Timeline and key steps for successor development (internal successor), including significant apprenticeship period with the current CEO Decision timeline and key steps for successor development (external successor), including a worldwide executive search 	Chairman and HR Committee in collaboration with CEO	Discussion by HR Committee in December/18, Feb 3 and April 6/19 committee meetings Discussion with full board at July 12/19 board meeting.

Executive Succession Planning	Review of executive talent pipeline/bench strength readiness for key executive positions (including Presidents of Subsidiaries) with CEO and CHRO	Chairman, HR Committee, CEO and CHRO	Review by HR Committee at April 6/19 meeting; review with full board at July 12/19 board meeting
Board Meetings	Efforts made to streamline Committee Chair updates by limiting these updates to 2 highlights slides	Committee Chairs; Chairman	To start at December 15/18 board meeting; ongoing

About the Author

Beverly Behan has the greatest job in the world.

She's had the privilege of working with Boards of Directors of the S&P1500 and listed companies around the globe for the past 25 years – some of the smartest, nicest, most fascinating and most accomplished people in the world, who keep her at the top of her game. Her clients are typically boards that want to get to the top of *their* game – and stay there.

To date, she's worked with nearly 200 boards, ranging from recent IPOs to the Fortune 500 – from New York and Toronto to Bogota, Kuala Lumpur, and Tel Aviv.

For more than two decades, Bev has not only watched but led much of the evolution of board and director evaluations, dating back to 1996 when she conducted the first director peer review for a major North American bank. In 2001, she incorporated management input into board evaluations for a Fortune 500 publishing company. In 2015, she conducted the first board and director evaluations for one of the largest conglomerates in Southeast Asia – overcoming the concern that individual director evaluations couldn't be effectively adapted to Asian business culture. Over the past decade, she's worked with a number of boards on the development of Board 2.0, an innovation to help boards optimize their composition and manage that transition effectively. And in 2019, she worked with the board of a Fortune 100 company to create what became the New Director 360, an innovation in director evaluations that has both an evaluative and developmental component.

Beverly is the author of *Great Companies Deserve Great Boards* (Palgrave MacMillan, 2011) named **Governance Book of the Year** by *Directors & Boards* magazine and ranked #1 for four weeks on the *Globe & Mail* business best seller list in Canada. A former partner at Mercer Delta in New York and Global Managing Director of the Hay Group's Board Effectiveness practice, Beverly started her own firm, Board Advisor, LLC, in New York in 2009. She can be reached at Beverly.behan@boardadvisor.net.



Why I Started Working with Boards of Directors

About 30 years ago, I took a job with a major Canadian airline – one that no longer exists. It was a prestigious company and its board was populated by marquee-name directors. But it faced major challenges occasioned by the First Gulf War – oil prices had skyrocketed, and people were afraid to travel. Canadian law did not afford our airline the protections of Chapter 11, which our US counterparts were invoking at the time.

To save the company, a group of employees initiated a “wages for stock” arrangement coupled with a joint venture with American Airlines, which needed better access to Asian airports. I worked as part of this team for about two years. We managed to negotiate a deal with all our unions and management employees that involved wage cuts of 5–20%, with these moneys invested in company stock. Morale at the time was nothing short of electric; people who worked for the airline took tremendous pride in their efforts to save it from bankruptcy. The deal raised something in the range of \$750 million.

But things soured when the proxy circular revealed that the CEO’s salary had been increased, which largely offset his 20% salary cut. In response, the board sent a letter to the homes of company employees, attempting to justify the pay decision. This inflamed the situation and outraged the company’s unions. A retired pilot admonished the board at the Annual Shareholder’s Meeting – making national headlines. The CEO was replaced – by someone who had run a commercial real estate company in the same Calgary office tower as the airline’s headquarters. Within the company, jokes circulated: “Our board members must have run into this guy in the elevator and said, ‘Hey, we need a new CEO. You’re a CEO. What do you say . . .?’” The downward spiral continued until the airline was sold to its major rival; tens of thousands lost their jobs. This was my first exposure to how the decisions made by a Board of Directors impacts the “tone at the top” of a company – and many peoples’ lives.

I had left the airline shortly after the proxy fiasco and returned to private practice at a Vancouver law firm. There, as a securities and corporate finance attorney, I worked with other boards – nearly all of which were lackluster and characterized by a “country club” mentality. To me, the boardroom was supposed to be where the buck stopped – where smart, capable, experienced people called the question and made a difference. But I saw none of that.

About that time, a Canadian report titled “*Where Were the Directors?*” was issued by the Toronto Stock Exchange.⁶ It was a scathing rebuke of the dismal state of corporate governance in Canada. I read it on a Vancouver beach as if it were a racy novel. It confirmed many of the disturbing things I had begun to realize about the way most boards were functioning at that time. As I flipped the pages – almost breathlessly – my friends asked, “What on earth are you reading?” “I’m reading this corporate governance thing!” “Bev,” they told me, “you’ve gotta get a life!” And I realized they were right.

I knew in that moment what I wanted to do: I wanted to work with Boards of Directors – to try to make those boards all that they should be. I’ve had the privilege of doing that for the past 25 years.

⁶ Committee on Corporate Governance, “*Where Were the Directors?*”: *Guidelines for Improved Corporate Governance in Canada*. (Toronto: Toronto Stock Exchange), 1994.

Innovations in Board-Building: The Workshop



The author's on-line workshop features videos on all the key topics and tools covered in this book:

- *The Eight Key Parameters of Board-Building*
- *Tool #1: Redesigned Board Evaluations*
- *Tool #2: Building Board 2.0*
- *Tool #3: Board Composition Benchmarking*
- *Tool #4: Director Evaluations*
- *Tool #5: New Director 360s*

The Workshop also includes our Board-Building Toolkit (eBook) for easy reference.

Available only through our website www.boardadvisor.net – Workshops.

Enter WORKSHOP25 at checkout to receive 25% off.