

# Série Découverte 2022 Discovery Series

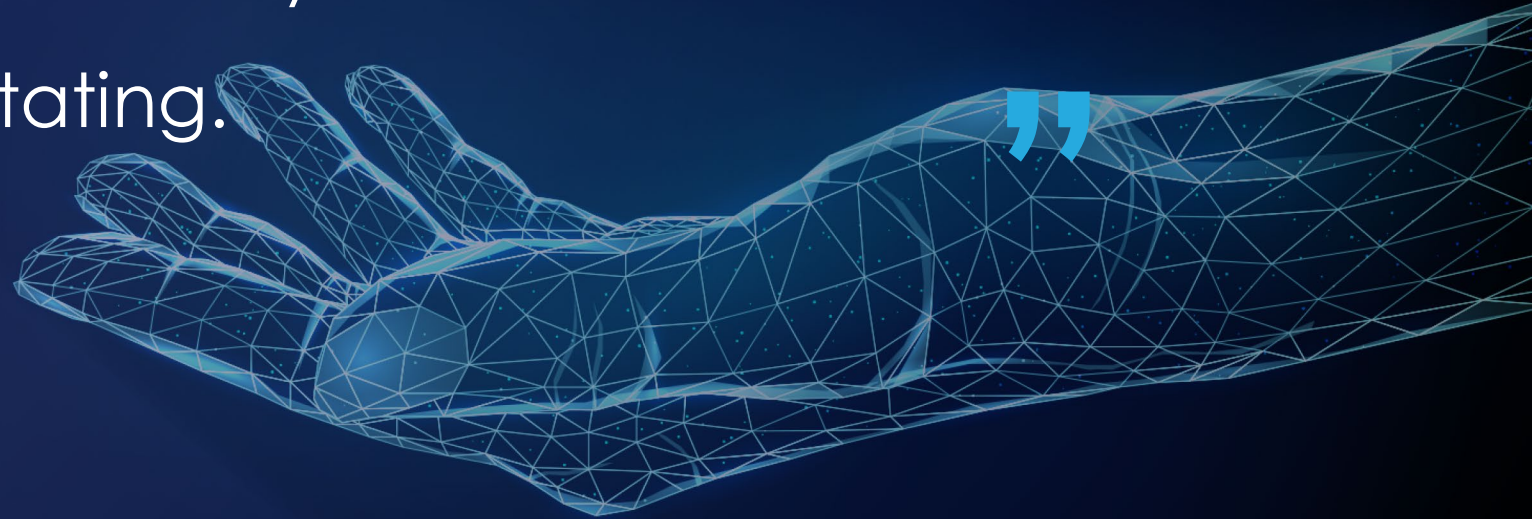


# Board/Management Relations



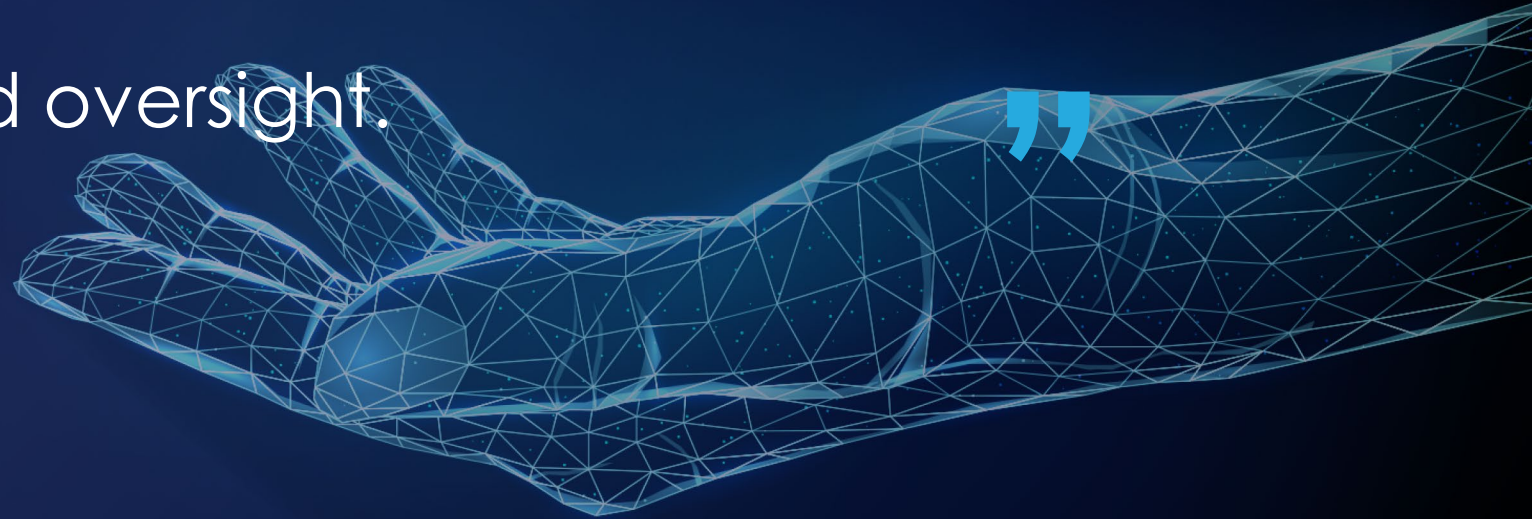
“ The once-comfortable relationship between management and the board ... is being strained by unprecedented change ... often playing out in ways that can feel intrusive and irritating.”

Harvard Law School Forum



“ Boards are demanding more of management  
... not because directors have capriciously  
decided to grab more power ... but due to  
demands from all sides to exercise  
unprecedented oversight.”

Harvard Law School Forum



“ High performance boards ... thrive when there is interpersonal depth among board and senior staff. ”

FORsight, FORVIS



“ Board relationships and communication with senior staff are enhanced by deepening relationships, a better understanding of individuals’ unique roles and heightened self-awareness.

FORsight, FORVIS



# Agenda

-  **3 Decades of Governance Changes**
-  **Duty of Care – Canadian Business Corporations Act**
-  **5 Important Real World Shifts Affecting Governance**
-  **5 Important Trends in Governance**
-  **Board & Management Roles**
-  **The Keystone to Success**
-  **Discussion – Special Guest**
-  **Q&A**

# 3 Decades of Governance Changes

## 1990s

- **“Where were the Directors?”**  
– Dey Report
- **“Best Practices in Governance”**  
– TSX Guidelines
- **“Five Years to the Dey”**  
– Update
- **Shareholder Value Primacy** (LBO '80s)

## 2000s

- **“Building Compliance: Building Governance Culture”**  
– Saucier
- **Bad Corporate Behaviour**  
– Enron, Tyco, Andersen
- **Sarbanes-Oxley (USA)**  
– Penalties, Prosecution
- **“Comply or Explain” Best Practices**  
– ON Sec Act
- **Hollinger/Lord Black Case**  
– Absence of Duty
- **SCC Duty of Care judgements**  
– Peoples, BCE

## 2010s

- **Dodd-Frank (USA)**  
– Financial Stability, Protect Consumer
- **Best Practice Guidelines (CAN)**  
– Diversity Inclusions
- **Investor Leverage, Activists**
- **Proxy Advisory Services & Say on Pay**
- **Business Roundtable (USA)**  
– Stakeholder Capitalism

## 2020s

- **CBCA Amendments**  
– Diversity, Stakeholder
- **Ascension of ESG, including DEI**
- **Stakeholders at the heart of Company Purpose**
- **World Economic Forum**  
– Davos Manifesto



# Duty of Care – Canadian Business Corporations Act

**Every Director and Officer of a corporation in exercising their power and discharging their duties shall:**

- act honestly and in good faith with a view to the best interests of the corporation, and
- exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

**When acting with a view to the **best interests of the corporation**, the directors and officers of the corporation may consider, but are not limited to, the following factors:**

- the interests of shareholders, employees, retirees and pensioners, creditors, consumers, and governments;
- the environment; and
- the long-term interests of the corporation.

Canada<sup>ca</sup>

Canada<sup>ca</sup>



# 5 Important Real World Shifts **Affecting Governance**

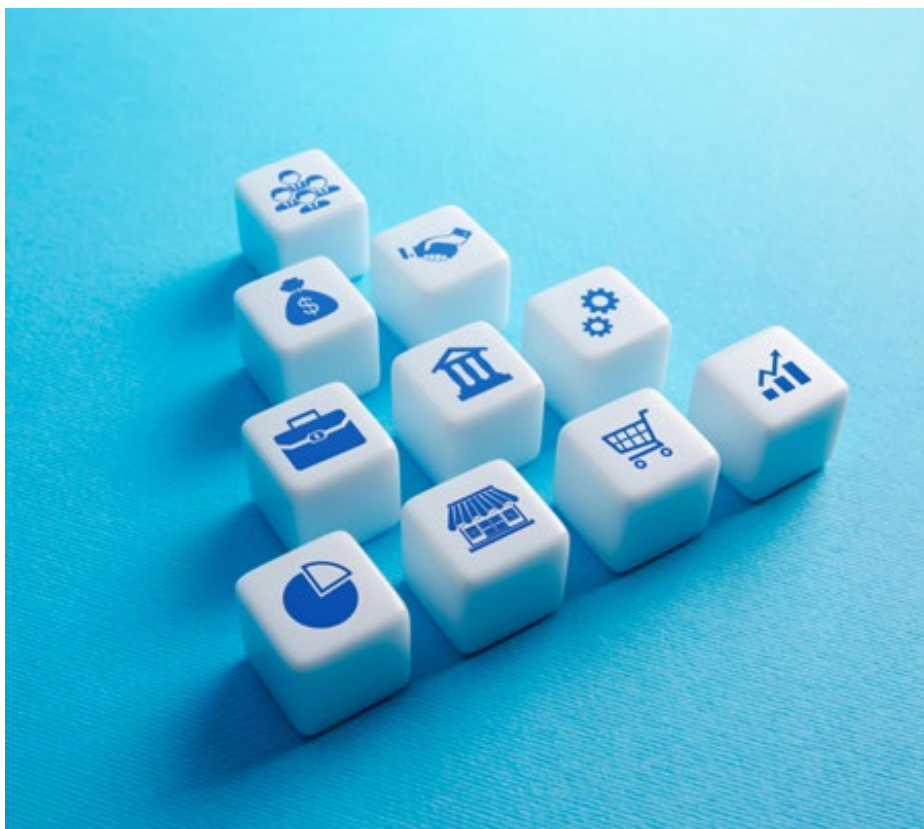


## 1

### **Increased Focus on ESG**

- Global Phenomenon
- Climate Change
- Equity, Inclusion
- Governance Quality
- Investor Interest

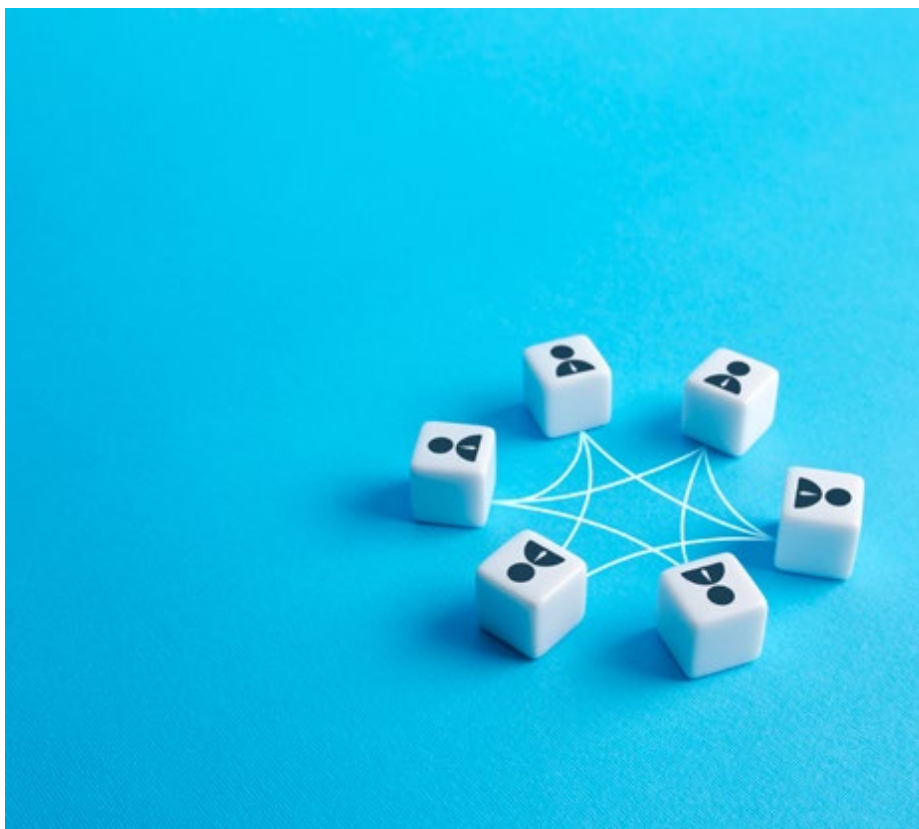
# 5 Important Real World Shifts **Affecting Governance**



## 2 **Increasing Importance of Corporate Purpose**

- Stake/Shareholders
- Canada Supreme Court
- USA Business Council
- WEF Davos Manifesto
- Social Responsibility

## 5 Important Real World Shifts **Affecting Governance**

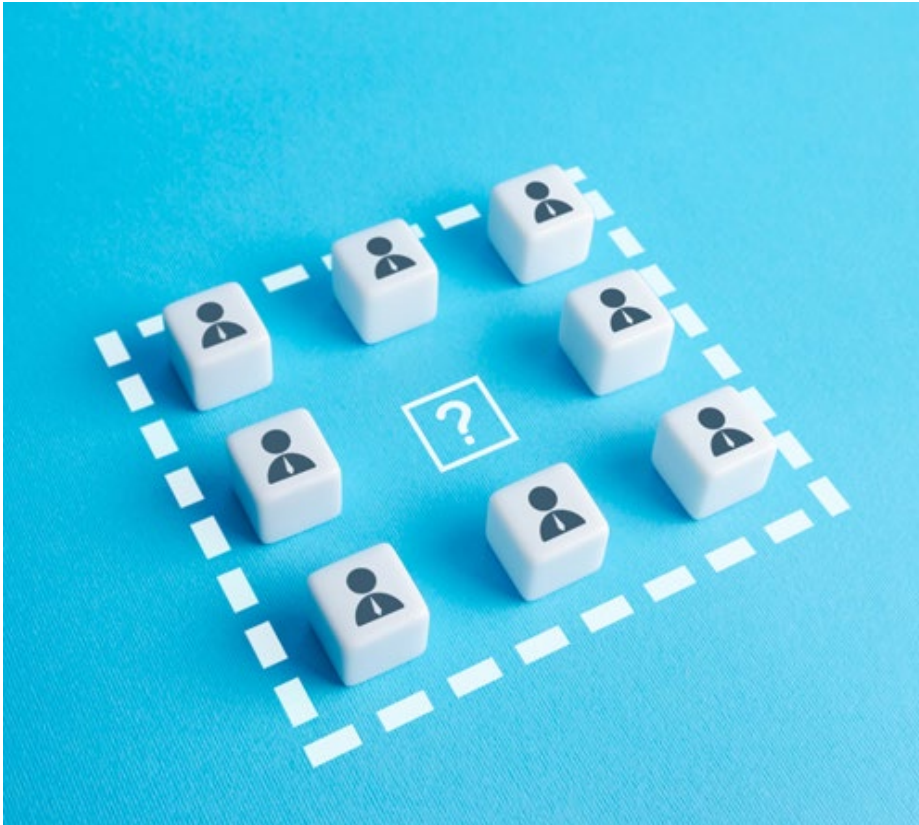


### 3

## Greater Oversight of Corporate Culture & Human Capital Management

- Values, Integrity
- Attraction, Retention
- Productivity
- Compensation
- Succession

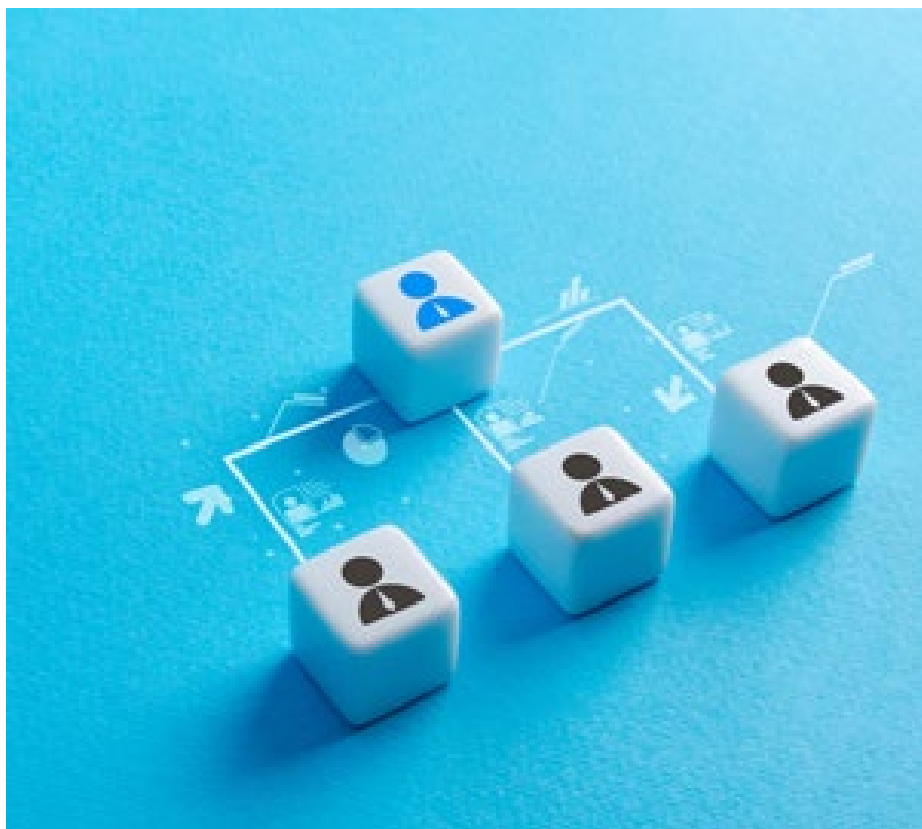
## 5 Important Real World Shifts **Affecting Governance**



### **4** Expanded View of Board Diversity to Include Ethnicity & Race

- Gender Progress
- Untapped Talent Pools
- Experience Breadth
- Political Pressure
- Regulatory Action

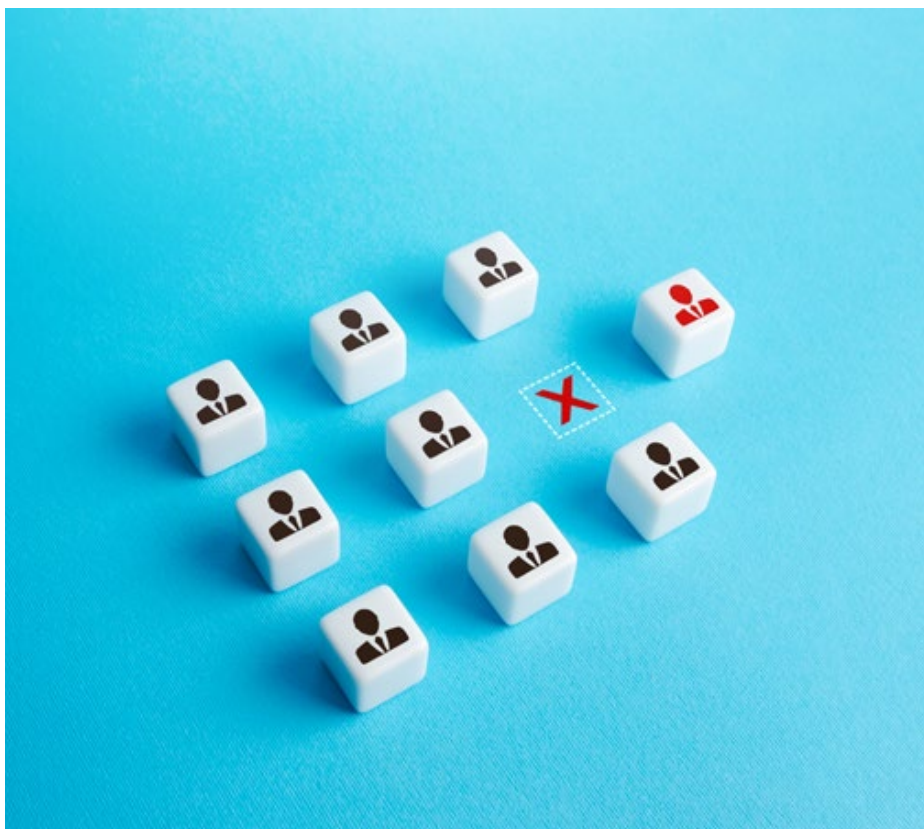
# 5 Important Real World Shifts **Affecting Governance**



## **5** Increasing Investor & Social Activism

- Institutions
- Pension Plans
- Governments, NGOs
- Proxy Services
- Say on Pay

# 5 Important Trends in Governance

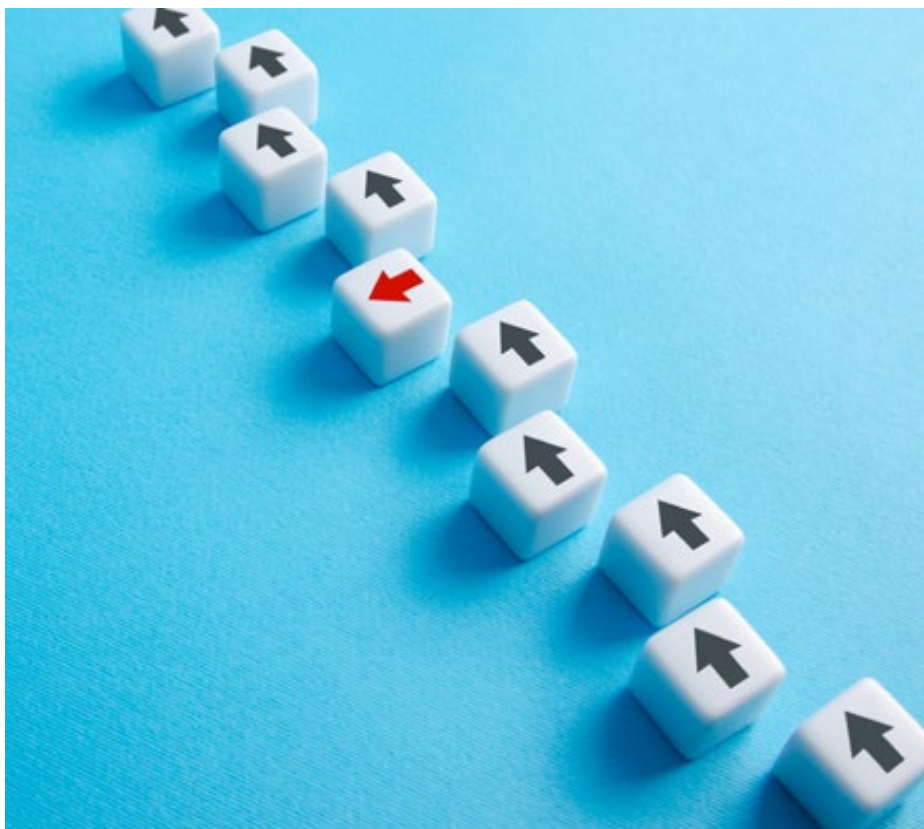


# 1

## Organizational Power Continues to Shift from the CEO/ExDir to the Board

- Corporate Scandals
- SOX & Dodd-Frank
- Big Shareholders
- Independent Members
- Imperial CEO is out

# 5 Important Trends in Governance



## 2 Greater Expectations Means More Work

- More meetings
- More hours (90 to 250)
- Compliance Risks
- Performance Measures
- Member Assessments



## 5 Important Trends in Governance



### 3

#### Deeper Board Involvement in Strategy & Talent

- Risk Dynamics
- Options & Contingencies
- Change & Crisis Agility
- Ltd Industry Knowledge
- Passive Board Members

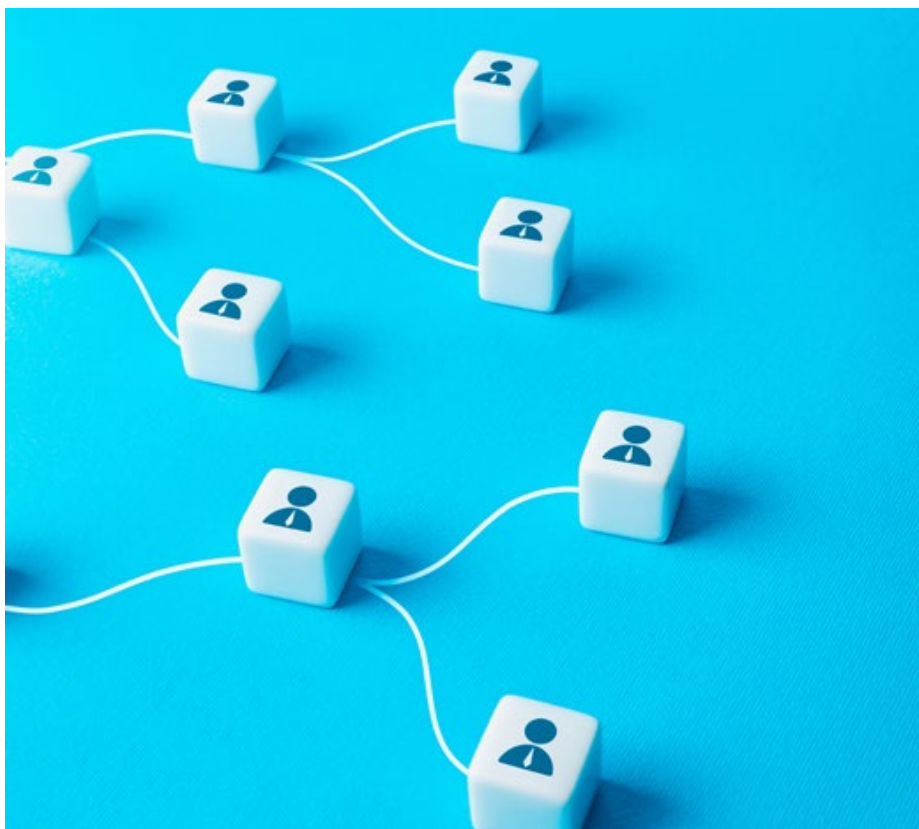
# 5 Important Trends in Governance



## 4 Increasing Board & Exec Quality, Diversity

- Pale, Male, Stale
- Untapped Pools
- Demographic Mix
- Experience Voids
- Non-Current

## 5 Important Trends in Governance



# 5

## More Involvement in Exec Succession

- Failure Rate at the Top
- Market Competition
- Leadership Skills
- Career Point, Longevity
- Exec Talent Knowledge

# Board Role

## Duty of Care

Sets Tone for Ethics/Integrity

Selects & Evaluates CEO/ExDir

Plans CEO/ExDir Succession

Contributes to and Approves Strategic Plans/Goals

Approves Major Decisions, Policies, Risk Assessments

Oversees Organizational Performance, Compliance, Key Communications

Serves as External Advocate

Assures Good Governance

# Management Role

## Duty of Care

- CEO/ExDir Leadership – Implements the “HOW”**
- Exhibits/Enables High Standards of Ethics/Integrity**
- Leads Development of Strategy and Goals**
- Reports Performance to Board**
- Recommends Decisions for Board Approval**
- Alerts the Board to Critical Variations**
- Develops Crisis Management Protocol/Processes**
- Advises Board of Principal Risks/Mitigative Measures**
- Makes Operational Decisions/Policies/Structure**
- Enables Effective Relationships with the Board/Chair**

# Respect & Trust

## The Keystone to Success



# Building Blocks Supporting

## Respect & Trust

Touch base often  
board chair & CEO/ExDir  
committee chair  
& lead exec

Get personal,  
relate outside  
the board room

Learn about individual  
board member interests,  
anticipate questions

Mine board  
expertise,  
mentoring, networks

No surprises,  
be timely

Keep communications  
simple, proactive

Tell the truth,  
be transparent

Exhibit confidence  
and leadership

Respond to requests  
promptly

Invite  
feedback

Show off key execs,  
promising personnel

Strive for a team  
vs. boss/sub

Define what  
board advocacy  
looks like

Establish regular  
reporting and  
incidental processes

Make key data  
readily available to  
board members

Support assumptions,  
decisions with evidence,  
logic, risk assessment

Clearly define roles,  
expectations, perspectives,  
values, authority boundaries

Align board and executive  
team around strategic plans,  
priorities

Concur:  
management is  
about "HOW"

Avoid mixing  
strategic & operating  
decisions

# Risks

A risk for Management is...

Unanswered  
Questions

A risk for the Board is...

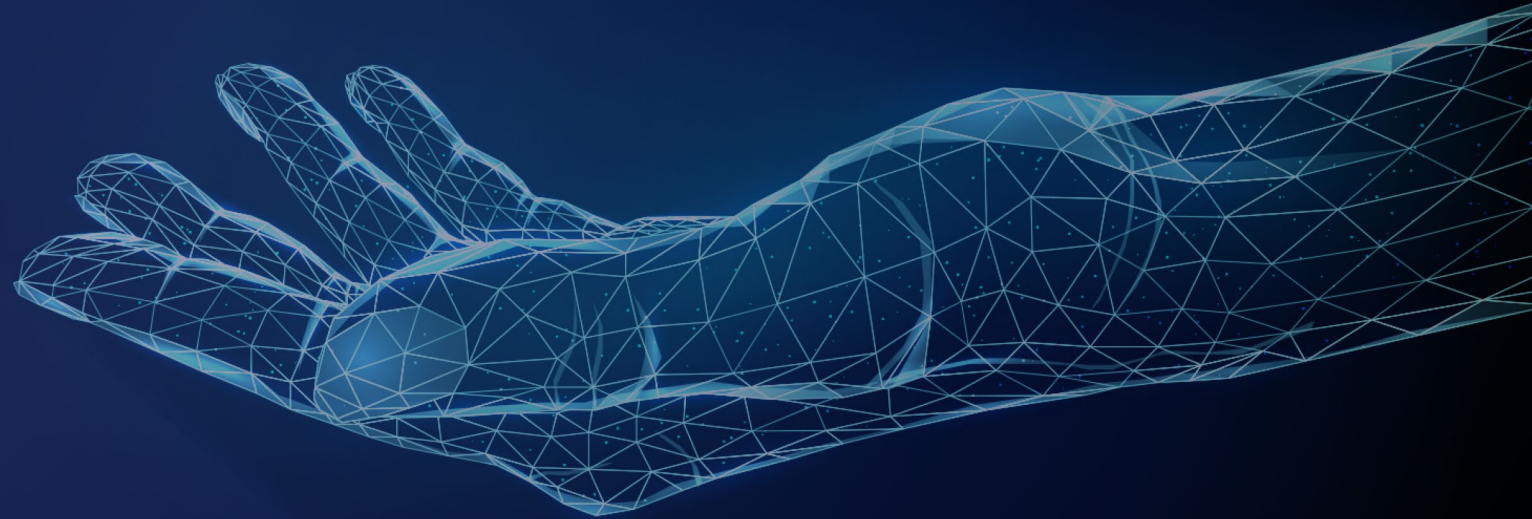
Unquestioned  
Answers





# Our Guest

Gail Stephens



Association of  
Workers' Compensation Boards  
of Canada

