



# GREY AREAS NEWSLETTER

A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

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## Prioritizing Board Time – Part 1

by Erica Richler  
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A precious resource for regulators is the time, energy, and attention of their Board of Directors (sometimes called their Council). As the highest-level decision maker within the organization, a Board needs to prioritize its efforts to ensure that the regulator is effective. Board members typically are volunteers (honoraria tend to be modest) who devote only a part of their professional lives to Board business.

What should the Board focus on? Board focus can probably suitably fit into four categories:

1. Public Protection
2. Governance
3. Education of the Board, and
4. Board-Level Operations.

Some might suggest that the vast majority of Board resources should focus on public protection such as monitoring, evaluating, and enhancing regulatory standards and programs. However, the other categories are important too. While it is often said that Boards should not be involved in operations, that is an oversimplification. It is true that

there are many areas of operations from which the Board should keep out. However, the Board should monitor and evaluate the performance of the Registrar/CEO and the organization as a whole. It also has some high-level operational roles such as monitoring financial viability, approving the annual budget, reviewing the accuracy and implementation of decisions contained in its own minutes, and engaging with some aspects of the organization's risk management program. Also, the Board has a role dealing with crises and major operational decisions such as monitoring significant legal proceedings.

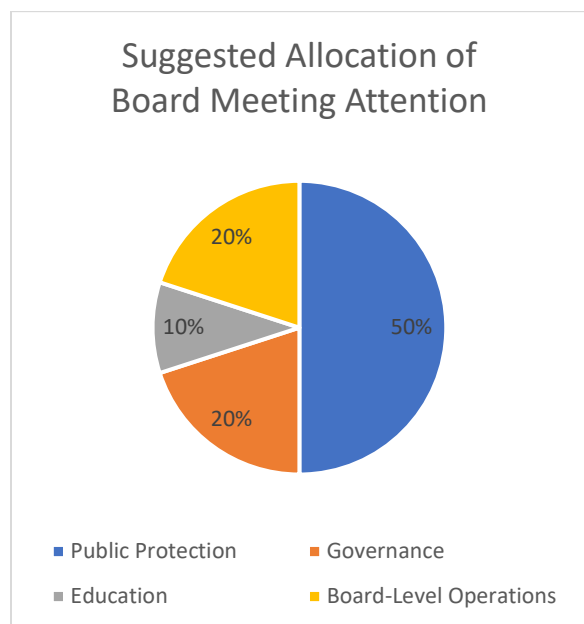
Similarly, designing, monitoring, and evaluating the governance of the organization is also an important Board role. Hopefully, once the governance approach of the regulator is established, less time is necessary on this role, but there are still ongoing tasks. For example, a Board is typically involved in appointing committees and reviewing their terms of reference, monitoring and evaluating its own performance, and resolving governance issues such as conflicts of interest and

misguided Board and committee member conduct.

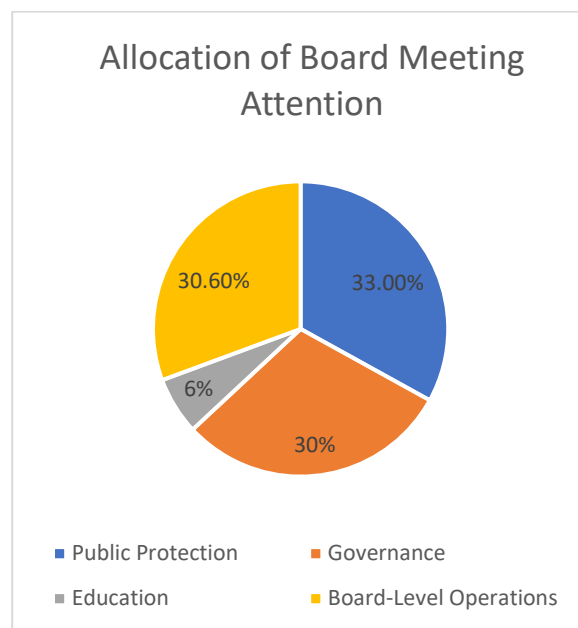
The education of Board members on regulatory issues and developing their skills is an ongoing and crucial activity for the Board. Much education occurs outside of formal Board meetings through initial induction, mentoring, individual communications, and stand-alone educational sessions and retreats. However, it can be useful to use of small portion of formal Board meetings to engage in well-selected educational activities.

We have not listed policy-making as a stand alone activity. Making policy is the means by which the Board engages in its activities, such as protecting the public. Similarly, risk management is a tool by which Boards prioritize its activities, particularly for public protection and in monitoring the effectiveness of operations.

While there can be a wide range of views as to how best to allocate formal Board meeting attention amongst these four categories, we would suggest that the following graph portrays a reasonable distribution:



We wanted to review how much time Boards currently allocate to these four categories. For this review we used the number of pages for each category in the Board meeting package as an imperfect, but accessible, proxy for the time and attention allocated to the topics. We reviewed the Board meeting packages of the regulators who posted them from the 39 professions referenced in Ontario's *Fair Access to Regulated Professions and Compulsory Trades Act* and the *Regulated Health Professions Act*. We found Board meeting materials for 30 of those professions. We picked one meeting to review, which for most was the first Board meeting after the summer of 2023. On average, the public Board meeting package consisted of a hefty 178 pages. The cumulative allocation of pages for the four categories, by percentage, is as follows:



Based on our review of the public Board meeting packages, on average a third of Board attention was devoted to public protection activities. While not insignificant, this proportion might be considered a little low, given that the Board is the principal policy making and public protection oversight entity. It is noteworthy that one regulator devoted 70% of its attention to public protection matters while another was as low

as 5%. This demonstrates that Boards can, with planning, choose to devote a majority of their attention to public protection activities. If a regulatory Board is consistently devoting less than 20% of their attention to public protection activities, it may need to re-evaluate its priorities.

Thirty percent of Board attention, on average, was devoted to governance activities. This seems to be a little high. However, this proportion might be viewed as somewhat of a blip as there has been recent direction from the Ministry of Health to health profession regulators to revisit their governance structure. Twenty-six of the 30 regulators who post their Board meeting materials online were health profession regulators.

Twenty-eight percent of Board attention, on average, was devoted to Board-level operational activities. Overall, that did not seem entirely out of place, especially as many of the pages included minutes of Board meetings which are a necessary, but sometimes voluminous, part of the packages and which typically do not consume much actual Board time. However, again, the variability may be of concern for some regulators. Three regulators devoted more than half of their attention to operational issues, with one reaching 76%. Again, if that is a pattern for a regulator, that amount of attention would be a concerning indicator.

The average attention of 6.3% to Board education seems reasonable. However, the page count may not be representative of actual time taken as some regulators had only one page of material to indicate that there would be an educational session for which an hour or more of meeting time was allocated. Also, the average may not tell the tale either, as one regulator devoted more than 63% of its pages to education, mainly in the form of informational materials, while several regulators had no educational or informational materials in their package.

On balance, our review indicates that Boards spend a significant amount of their attention on public protection activities, but that this proportion should perhaps be increased for some regulators.

There are several limitations to this review. Pages of meeting materials do not necessarily correlate to the time and attention expended by the Board on each topic. Also, one meeting is not necessarily representative of the time allocation across a full year. Further, assigning a page to one of the four categories is not a science. For example, many regulators include their Board conflict of interest policy at the beginning of every meeting package. This could be categorized as simply educational in nature. However, since many Boards call for declarations for any conflicts of interest at the beginning of each meeting, we have categorized these pages as part of the governance activities of the Board.

Similarly, some items might cross over multiple categories. For example, discussions about diversity, equity, and inclusion can relate to operations (i.e., staffing), governance (i.e., Board and committee diversity), and public protection (i.e., ensuring clients receive services without discrimination). If multiple categories are clearly covered, we allocated the materials to public protection first or, if that was not appropriate, to governance.

In terms of methodology, we had a senior member of our team assess all the meeting packages. While this promoted consistency, it also means that another person might have allocated the pages slightly differently.

Another limitation is that public Board meeting materials do not include materials related to the closed, or *in camera*, portions of meetings. Since most closed portions of meetings relate to operational (e.g., staffing) or governance (e.g., Board member Code of Conduct) concerns, these omissions tended

to increase the percentage of pages of materials devoted to public protection.

Despite these limitations, given the cumulative nature of this analysis, we believe that the information remains broadly indicative of how regulators of professions allocate their focus.

Measuring the allocation of Board attention to various activities can help regulators focus on what is important. Regulators may wish to discuss whether they maximize the value of their Board meeting time. A regulator might select a target for its categories of activities that is most appropriate for their context. The regulator could then time actual Board debates according to their selected categories over the course of a year. Exceptional circumstances, such as a directive from the applicable Minister or amendment of the enabling legislation, can be taken into account. The Board could then compare the results against its target to assess whether changes should be made to its meeting structure and whether some activities (e.g., operations) should be delegated to others. This measurement might be a useful performance indicator for regulators.

In the next issue of Grey Areas we will look at more detailed information about the categories we have identified above.

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