

# Governance Task Force

## Trends in Regulatory Governance

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## **Introduction**

As part of the background to support the Task Force on Regulatory Governance and the Council in considering options for future governance at the College, a review of the regulatory literature regarding governance was undertaken.

In this review it became apparent that there are no research studies about regulatory governance but that there is a considerable body of literature about the trends in regulatory governance.

This report summarizes the information collected about the trends in the specific areas that were identified by the Task Force.

In some cases, a quote is directly relevant to more than one topic and is reported in more than one place.

Citation	Source
<b>Public Interest</b>	
A regulator's primary duty is to serve and protect the public interest. This means that the regulator's duty to anyone else (i.e., members, applicants for registration, complainants and other individual members of the public) is subordinate to the primary duty. It is easy to forget this foundational principle when a regulator faces pressure from oversight bodies or the threat of legal challenge by an individual who feels they are not receiving appropriate consideration.	Steinecke, R. (2015, November – December) A Regulator's Primary Duty, Grey Areas, 201, page 1
<b>Indicators of the Public Interest for CNO</b> <ul style="list-style-type: none"> <li>• Does it relate to the CNO's statutory objects?</li> <li>• Does it further one of CNO's four regulatory activities?</li> <li>• Is it being done transparently?</li> <li>• Who is the primary beneficiary of the initiative?</li> <li>• Would this better fit into another's mandate?</li> <li>• Who would be unhappy with the initiative? Why?</li> <li>• How would it look on the front page of ...?</li> <li>• How would our accountability bodies respond?</li> </ul>	Steinecke, R. (2015, September), Embracing your Uniqueness: Governance at CNO Really is Different, Presentation to College Council, slide 15
The public interest can be a slippery concept, and can be used to justify decisions where consciously or not, other motivations and interests are at play. The board should regularly review the way that the public interest is used to justify decision-making in its own work and be clear about what it understands to be its public interest purpose	Professional Standards Authority (2013) Fit and Proper? Governance in the public interest, p. 6
<p>We suggest that the following criteria might be applied to determine whether a new activity is compatible with regulatory purpose:</p> <p>The problem:</p> <ul style="list-style-type: none"> <li>• falls within the regulator's jurisdiction (i.e. it is a matter of public protection and/or public confidence)</li> <li>• Is directly relevant to one or more of its regulatory functions.</li> </ul> <p>The proposed solution:</p> <ul style="list-style-type: none"> <li>• is proportionate to the quantified risk posed to the public</li> <li>• is efficient and delivers value for money</li> <li>• a regulatory solution has been established as the only viable option.</li> </ul>	Professional Standards Authority (2012) Strategic Review of the Nursing and Midwifery Council, Final Report page 11
Our discussions with current and former council members and staff revealed that, although they understood that the NMC's (Nursing and Midwifery Council's) primary function was the protection of the public, amongst them and external stakeholders, there were varied views on what that means and what activity it legitimately includes. As one external stakeholder commented, "almost anything can be argued to be necessary for public protection."	Professional Standards Authority (2012) Strategic Review of the Nursing and Midwifery Council, Interim Report (2012), page 11
Whilst it is important the opinions of all parties are heard by regulatory bodies, decisions must be taken in the public interest on the basis of the evidence before the regulatory body, not by professional bodies whose ultimate legitimate focus is representing professionals' interests rather than those of service users or the public as a whole.	Cayton, H. (2009). Legal Services Board Consultation on Regulatory Independence, page 2

Citation	Source
<b>1. Governance models and policies</b>	
<b>Roles</b>	
Professional regulation is concerned with the conduct and competence of individuals. Good governance similarly depends not only on the competence but also on the conduct of chairs, board members and executive. These office holders need to understand their roles, manage differences of style or approach constructively, communicate effectively, but above all take responsibility for their own behaviour. All board members must challenge others when they see casual and irresponsible attitudes, discourteous language or disingenuous and manipulative behaviour.	Professional Standards Authority (2013) <i>Fit and Proper? Governance in the public interest</i> , p. 5
The smaller-sized council, she ( <i>Task Force Chair</i> ) added, reflects a move away from a representational approach. "It focuses the council to a more society-oriented focus and what is in the best interests of the society and the public."	Moulton, Donalee, Nova Scotia Barristers' Society to Trim governing body: Shrinking size of council is not unique to NS (Nova Scotia), <i>The Lawyer's Weekly</i> , July 3, 2009
<p><b>Expertise of Council and Staff</b></p> <p>Most organizations:</p> <ul style="list-style-type: none"> <li>• Strategic direction vs. implementation and operations</li> </ul> <p>For CNO</p> <ul style="list-style-type: none"> <li>• Professional members – how to practise the profession</li> <li>• Public members – various external perspectives</li> <li>• Staff – regulatory experts</li> </ul>	Steinecke, R. (2015, September), <i>Embracing your Uniqueness: Governance at CNO Really is Different</i> , Presentation to College Council, slide 32
The role of members of the governing body who are appointed for their technical expertise or industry knowledge should clearly be to support robust decision making in the public interest, rather than to represent stakeholder interests.	Organisation for Economic Co-operation and Development (2014). <i>The Governance of Regulators</i> , page 68
It is the role of the Council to set the strategic direction of the organisation. It is the responsibility of the Chair to lead, support and guide them in doing so and their collective responsibility to hold the executive to account for delivery. It is the function of the Chief Executive to determine the means by which the strategy will be delivered and his or her responsibility to ensure that it is.	Professional Standards Authority (2012) <i>Strategic Review of the Nursing and Midwifery Council Interim Report (2012)</i> , page 8

Citation	Source
Individual Board members work together as a team. ...Board members have a duty to diligently review the issues and background materials and to participate in the decision-making process. While Board members may have preliminary views on issues, they should not make up their minds until the debate, giving consideration to the viewpoints of others. However, once a final decision is made, Board members speak with one voice and are not to criticize or express publicly their disagreement with the decision made.	Steinecke, R (2009, June) Governance 101, Grey Areas, 136, page 2
Board Members and staff need to appreciate each other's role. Board members set policy and establish the direction of the organization. Staff provide resources to the Board for the making of decisions and then implement them. Serious problems occur if Board members engage in operations or if staff make major policy decisions.	Ibid.
As serving the people of Ontario is an honour and a privilege, I know you will be committed to the principles and values of public service and I am confident you will perform your duty with integrity.	Hoskins, Eric, Minister of Health and Long-term Care, Public appointee appointment letter, 2015
Individual Board members: While it is understood that our experiences shape our input around the discussion of an issue, at the point a vote is taken, board members must consider issues in terms of the organizational mandate.	Haight, B., & Hirsch, J. (2013). Governance essentials for regulatory boards... and lessons for all boards [PowerPoint slides], slide 5
Features of an effective board: Dedicated board members and senior management faithfully performing their duty of care to the organization. Engaged board members who attend meetings regularly and come prepared to ask questions and consider issues. Board members who forge positive relationship with the Executive Director so that information flow is ongoing.	Ibid. slide 7
Regulatory boards have two main roles, a corporate role shared by all Boards and a role specific to professional regulation and public protection. Decisions by the Regulatory Board affect individual nurses, the profession and the public.	Barry, Jean, International Council of Nurses. (2014a). Regulatory Board Governance Toolkit, page 27
Members ( <i>of a regulatory board - not part of quote</i> ) must exercise the powers of the nurse regulatory authority for the purpose intended by the enabling legislation or the constitution of the authority and not be motivated by any ulterior purpose	Ibid.
As identified by ICN (2012), a Regulatory Board at all times needs to: Act honestly and in good faith; exercise powers for proper purpose, do not misuse information or position, exercise care and diligence, disclose conflict of interest	Ibid.
When considering Regulatory Boards in particular, the Regulatory Boards are accountable to many players: they are accountable to government and sometimes to oversight bodies; they are accountable to registrants; and, most importantly they are accountable to the public. As well, they are often held publicly accountable and frequently commented on by the media.	Ibid. page 28
It is important that Board members have a clear understanding of their roles and responsibilities and personal accountability. They should understand what they are required to achieve, have the capacity to achieve it and be held accountable for their performance. Board members need to be transparent, objective, impartial and fair in their deliberations and actions. They need to speak with one voice and vision and be aligned with the public interest.	Ibid. page 29

Citation	Source
<p>The councils would struggle to perform their oversight responsibilities if they lacked the knowledge and skills that professional members brought with them. In the same way, they would struggle to acquire and demonstrate insight into patient and public experience, and the independence and flexibility of thinking that are central to credibility if they had no suitably skilled public members.</p>	<p>Council for Health Care Regulatory Excellence report (September 2011) Board size and effectiveness: advice to the Department of Health regarding health professional regulators, pages 5 - 6</p>
<p>Self-regulation reflects the complexity of establishing professional standards and of assessing conduct against those standards. However, it carries conflicts and risks:</p> <ul style="list-style-type: none"> <li>• Professionals, bring practitioners' perspective: professional empathy may overtake sensitivity to patient needs <ul style="list-style-type: none"> <li>○ General concern for reputation of the profession can present conflicts</li> </ul> </li> <li>• Lay representation counterbalances this and helps to maintain public confidence in the system.</li> </ul>	<p>Institute on Governance/Ministry of Health and Long-Term Care (November 2015) Governance Training for Public Appointees to Health Regulatory College Councils, slide 45</p>
<p>All members have a fiduciary duty towards the college....</p> <ul style="list-style-type: none"> <li>• Duty is owed to the <i>purposes</i> of the college (and ultimately the legislation), not to the profession.</li> </ul> <p>Members are not delegates: they bring a particular perspective and then act in the best interests of the organization.</p>	<p>Ibid. slide 53</p>
<p>It is vital that all council members and chairs understand and demonstrate high standards of corporate and personal conduct. Usually members are asked to subscribe to a relevant code of conduct and also confirm that they understand the standards of probity required by public appointees outlined in the “Seven Principles of Public Life”.</p> <p>...It is also important to ensure that these values and standards are embedded in the daily life of the council. All council members are responsible for upholding these values and should challenge any actions or behaviour by other council members which do not reflect these principles (of public life).</p>	<p>Professional Standards Authority (2014) Good practice in making council appointments: Guidance for regulators making appointments which are subject to section 25C scrutiny, pages 18 – 19</p>
<p><b>The seven principles of public life</b></p> <p><b>Selflessness</b> Holders of public office should act solely in terms of the public interest</p> <p><b>Integrity</b> Holders of public office should not place themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other materials benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.</p> <p><b>Objectivity</b> Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.</p> <p><b>Accountability</b></p>	<p>Ibid. page 19</p>

Citation	Source
<p>Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.</p> <p><b>Honesty</b> Holders of public office should be truthful.</p> <p><b>Leadership</b> Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles.</p>	
<p>To ensure professional and public confidence, all the stakeholders need stronger assurance of their independence:</p> <ul style="list-style-type: none"> <li>• they must be separate from the Government, constitutionally insulated from day-to-day political pressures.</li> <li>• they must be independent of those who employ health professions...to ensure that employer interests are not perceived to weaken safeguards for the public or undermine the fair conduct of regulation; and</li> <li>• they must be independent of health professionals themselves, so that they are not thought to be beholden to a perceived natural <i>esprit de corps</i> with professional colleagues.</li> </ul>	<p>Hewitt, P. (2007). Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century, page 24</p>
<p>Organisations, board members, chairs and chief executives are said to be “accountable” for the performance of their organisation. ...we are concerned that it has become abstract and that its real meaning – personal responsibility – has been lost.</p> <p>Responsibility is twofold, encompassing both individual and collective responsibility. Individual responsibility requires people to be sure they understand, to have the courage to challenge and be challenged, and to give voice to their issues and concerns. ...collective responsibility requires them to acknowledge the decision of the board and uphold it whether or not they personally agree with it.</p>	<p>Professional Standards Authority (2013) Fit and Proper? Op. cit. page 3</p>
<p>...board members must demonstrate both behaviours and values that are appropriate to the holding of public office. They must approach the tasks of board membership with seriousness of purpose, probity and integrity as appropriate to their responsibilities. They must apply care, diligence and skill to all that they do as members of a board, treating their colleagues with trust, respect and tolerance, listening and giving serious consideration to alternative positions. They must have resilience, in the sense that they must be able to accept challenge to their opinions, attitudes and assumptions with good grace and confidence. They must also have courage, to challenge their opinions of others and to ask questions when they are in doubt.</p>	<p>Ibid.</p>
<p>Fiduciary Duties – Ethics: Most organizations</p> <ul style="list-style-type: none"> <li>• Honesty expected</li> <li>• But Board members should obtain some benefit from position</li> </ul> <p>For CNO</p> <ul style="list-style-type: none"> <li>• No room for small fibs</li> <li>• No personal benefit from position</li> </ul>	<p>Steinecke, R. (2015, September), Embracing your Uniqueness. Op. cit. slide 23</p>



Citation	Source
<p>Fiduciary Duties – Ethics</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>• Not subject to inappropriate influence E.g., lobbying by professional association / union</li> <li>• Not attempting to inappropriately influence decisions E.g., approaching ICRC panel members</li> <li>• Post-decision discussions with others E.g., unfair characterization of reasons for decision</li> <li>• Raising as a public interest issue a personal concern E.g., delegation by physicians of “nursing” tasks to PSW’s</li> </ul>	Ibid. slide 24
<p>We saw evidence of good clear governance policies which provide a framework in which decisions can be made transparently. We consider that the Nursing Council of New Zealand would benefit from two additional policies relating to the management and investigation of complaints about itself and complaints about its Chair and Council members.</p>	Council for Health Care Regulatory Excellence(2012) A Review conducted for the Nursing Council of New Zealand page 3
<p>By achieving a balance between individual and collective responsibility we mean that an effective Council member should exercise individual responsibility before a decision is made considering, probing and challenging, and they should then accept collective responsibility once that decision has been made and support the organisation in delivering it.</p>	Professional Standards Authority (2012)Strategic Review of the Nursing and Midwifery Council Interim Report (2012), page 6
<p>All members have a fiduciary duty towards the college....</p> <ul style="list-style-type: none"> <li>• Duty is owed to the <i>purposes</i> of the college (and ultimately the legislation), not to the profession.</li> </ul> <p>Members are not delegates: they bring a particular perspective and then act in the best interests of the organization.</p>	Steinecke, R. (2015, September), Embracing your Uniqueness: Op. cit. slide 53
<b>Conflict of Interest/ Code of Conduct/Confidentiality</b>	
<p>The regulatory body must be independent of any voluntary association established by any health discipline, e.g., professional association, union, or trade association. Even though such voluntary associations have a concern for the public welfare, nevertheless the legal and functional independence must be complete. Under no circumstances should a voluntary association be associated in a corporate way, directly or indirectly, with a regulatory body.</p> <p><i>Note: These principles were the foundation on which the Health Disciplines Act, the precursor to the Regulated Health Professions Act, was developed.</i></p>	The Honourable Thomas L. Wells, Minister of Health (1971), Guiding Principles for the Regulation and the Education of the Health Disciplines, page 2, principle 5
<p><b>The Authority’s view on conflicts of interest</b></p> <p>Below are examples of what the Authority has previously considered a significant conflict of interest during our scrutiny of regulators’ appointments processes:</p> <ul style="list-style-type: none"> <li>• Holding office on another health and care professional regulatory body</li> </ul>	Professional Standards Authority (2014) Good practice in making council appointments. Op. cit. page 14

Citation	Source
<ul style="list-style-type: none"> <li>• Holding office on a professional organisation whose role is relevant to the regulator’s role</li> <li>• Holding other appointments/positions of any sort which collectively mean the individual is unlikely to be able to commit the required time to the regulator</li> <li>• Having a financial interest in a business providing services to the regulator</li> </ul> <p>These types of conflicts are likely to require candidates to relinquish other roles as a condition of appointment to the regulator’s council.</p>	
<p>Conflict of interest: The current system of board member elections can be confusing for membership and the public. Board members often believe they were elected to represent the interests of the members who elected them.</p>	Haight, B., & Hirsch, J. Op cit. slide 10
<p>Board members must also be aware that their professional lives must not influence their decisions at the board table.</p>	Ibid. slide 11
<p>There has been cynicism expressed to us about the relationship of the teacher unions with Council. This is exacerbated when, as we are told, prior to each Council meeting, the elected members of Council meet with their respective unions to consider and be informed on the upcoming Council agenda.</p>	LeSage, P. (2012). Review of the Ontario College of Teachers Intake, Investigation and Discipline Procedures and Outcomes, and the Dispute Resolution Program, page 68
<p>"Justice must be rooted in confidence." There must be public confidence that decision-makers are impartial. ...Participating in caucus meetings with their respective unions and associations prior to Council meetings, sends a contrary message.</p>	Ibid. page 68
<p>Members of Investigation, Discipline and Fitness to Practise Committees should be prohibited from attending such meetings (<i>see above</i>). They should also be prohibited from holding <u>any</u> elected or appointed union/association positions during their tenure on those Committees. To permit otherwise is to place a cloud over their important role as independent adjudicators.</p>	Ibid. page 67
<p>Self-regulation reflects the complexity of establishing professional standards and of assessing conduct against those standards. However, it carries conflicts and risks:</p> <ul style="list-style-type: none"> <li>• Professionals, bring practitioners' perspective: professional empathy may overtake sensitivity to patient needs <ul style="list-style-type: none"> <li>○ General concern for reputation of the profession can present conflicts</li> </ul> </li> <li>• Lay representation counterbalances this and helps to maintain public confidence in the system.</li> </ul>	Institute on Governance/Ministry of Health and Long-Term Care. Op. cit. slide 45

Citation	Source
<p>To ensure professional and public confidence, all the stakeholders need stronger assurance of their independence:</p> <ul style="list-style-type: none"> <li>• they must be separate from the Government, constitutionally insulated from day-to-day political pressures;</li> <li>• they must be independent of those who employ health professions...to ensure that employer interests are not perceived to weaken safeguards for the public or undermine the fair conduct of regulation; and</li> <li>• they must be independent of health professionals themselves, so that they are not thought to be beholden to a perceived natural <i>esprit de corps</i> with professional colleagues.</li> </ul>	Hewitt, P. Op. cit. page 24
<p>Lessons to be learned: 1. Essential separation of regulatory and advocacy functions (Note: This presentation was about the dissolution of the BC College of Teachers (1988 to 2011) as a result of ongoing domination of the Council by the union and the union blocking all regulatory change)</p>	Kit Krieger (2015) And No One Came to the Funeral, the life and death of the BC College of Teachers, Presentation to the International Congress of the Council on Licensure, Enforcement and Regulation, slide 25
<p>A member of a nurse regulatory authority should be vigilant in ensuring that any decision in which they participate is one in which they do not have either a direct or indirect interest, whether financial or otherwise, or may be perceived to have such a conflict of interest. If any such conflict arises, the member should disclose the nature of the interest, absent themselves during any deliberation and not take part in any decision in relation to the matter.</p>	Barry, Jean, Op. cit. page 27
<p>Conflict of interest: The current system of board member elections can be confusing for membership and the public. Board members often believe they were elected to represent the interests of the members who elected them.</p>	Steinecke, R (2003, July). Will the Real Public Interest Please Stand Up. Op. cit. page 1
<p>Some of the confusion (<i>regulatory vs professional - added clarification</i>) is caused by the election process for members of governing Councils or Boards of regulators. The election process may, incorrectly, suggest the Parliamentary model where representatives are elected to act on behalf of their "constituents" Re-election can become a concern for some Council or Board members if a controversial regulatory issues arises during their term.</p>	Ibid.
<p>...it is good practice to establish and enforce clearly articulated Codes of Conduct and Conflict of Interest policies for Board members for a number of reasons. Board members when performing their roles must act in the public interest at all times versus the professional or personal interest. In addition, Board members engage in challenging and often contentious decision making in Board meetings. Therefore clear guidelines about acceptable and unacceptable behavior and practices are useful to have in place.</p>	Barry, Jean, Op. cit. page 43
<p>We noted that the involvement of the President and the Registrar in certain aspects of the election process and inquiry raises the perception of potential conflict of interest. Prior to the June 18, 2010 Council meeting we noted discussions had taken place involving the President and the elected candidate which could be perceived as a conflict of interest as the President acted as the scrutiniser for the contesting candidate, yet himself was a candidate in district 2. Given the President's involvement in the election, he could be perceived as lacking independent judgment.</p>	PriceWaterhouseCooper (2012). Operational Review and audit of the College of Denturists of Ontario for the Ministry of Health and Long-Term Care. p 71

Citation	Source
<p>Although the Code of Conduct and Governance Policy includes a brief discussion on Conflicts of Interest, we recommend that a more robust Conflict of Interest policy be implemented that includes discussion of the following types of conflict of interest:</p> <ul style="list-style-type: none"> <li>• Situation or circumstance that would improperly influence the person's objective, unbiased and impartial exercise of his or her independent judgment , or could be perceived as doing so; or</li> <li>• Situation or circumstance that could compromise, impair or be incompatible with the person's effective performance of his or her contractual obligations, or be perceived as doing so.</li> </ul>	Ibid. p 72
Any breaches related to conflict of interest can severely impact public confidence in the Board, the regulatory authority and the profession	Ibid., page 45
<p>..the need to anticipate where perceptions of conflict may arise, by asking the question “might a reasonable observer believe conflict to exist in this case, even if it does not?” The principles of public life are clear that perceptions of conflict of interest are as important to public confidence as actual conflicts of interest. It also highlights the need to ensure proper recording of discussions and decisions in order to recognise and eliminate any potential damage.</p>	Professional Standards Authority. (2013a). Fit and Proper? Op. cit. page 8
<p>The more common issues are relationship and regulatory related. Having a leadership role in another professional organization, particularly an organization that advances the interests of the profession is a recurring problem. So is participating in regulatory decisions (e.g., policies, programs, regulations) that affect the Board or Council member disproportionately compared to most others in the profession.</p>	Steinecke, R (2009, July) The Fiduciary Duty of Board and Council Members, Op. cit., page 1
It is, of course, best to avoid conflicts of interest and appearances of bias from the get-go. Resigning from a leadership position in other professional organizations should be a given.	Ibid.
<p>“Other law societies believe, and the task force agrees, that a membership interest group and a regulator should have mechanisms in place to advance their common interests, but should maintain a necessary separation in their governance to recognize that the interests of the two organizations can differ,” the task force concluded. "It is the blurring of those differences where other jurisdictions have caused the privilege of self-regulation to be reduced or eliminated" it added.</p>	Moulton, Donalee. Op. Cit.
<p>...there are two different types of conflict - duty versus interest and duty versus duty.</p> <ul style="list-style-type: none"> <li>• <b>Duty versus interest:</b> The Board member cannot allow personal interests to interfere with exercise of duties.</li> <li>• <b>Duty versus duty:</b> The Board member must not use his/her position to serve the group that elected the person. The Board member must not allow himself/herself to be compromised by looking to the interests of the group which appointed him or her rather than to the interests for which the Board exists.</li> </ul>	Barry, Jean. Op. cit. page 45
It is important the regulatory decisions and functions are conducted with the utmost integrity to ensure that there is confidence in the regulatory regime.	Organisation for Economic Co-operation and Development. Op. cit. page 45.
Regulators can avoid actual or perceived influences by simply being more open and transparent about their decisions. Decisions based on empirical evidence or research, post-implementation evaluation and stakeholder input can help build confidence and trust in those decisions.	Ibid. page 54
Effective management of actual and potential conflicts of interest is particularly important for regulators. The governing body needs to be mindful of the range of risks that might arise and tailor processes and oversight to manage them.	Ibid. page 62

Citation	Source
Where industry or technical experts are required on a governing body for informed and robust decision making, the objective of their appointments should be clearly to contribute independently to decision making in the public interest, rather than as a representative of specific stakeholder interests. Again, a protocol for the management of conflicts of interest is essential.	Ibid. page 74
The White Paper proposes that: the councils that regulate health professions have, as a minimum, parity of membership between lay and professional members, to ensure that purely profession concerns are not thought to dominate their work.	Hewitt, P. (2007). Op. cit. page 5
<p>Codes of Conduct for Regulatory Boards usually address:</p> <ul style="list-style-type: none"> <li>• Expectations regarding upholding the public interest and not professional or personal interest</li> <li>• Explicitly pointing out that even if Board members are elected that they are not representing their region or area of practice but at all times are expected to be acting in the interest of the public</li> <li>• The expected behaviors of Board members both inside and outside Board meetings such as being prepared, respectful, attentive, objective and speaking with one voice which includes accepting and upholding decisions made by the Board</li> <li>• Guidelines around confidentiality or public access to Board materials, discussions, voting and decision making</li> <li>• Expectations around attendance at Board and committee meetings including whether replacements are allowed</li> <li>• Expectations regarding external engagements, engaging with media and with social media</li> <li>• Conflict of interest either in the code of Conduct or by making reference to a separate policy addressing actual, perceived or potential conflict of interest. Repercussions for breaches of the code which could include up to a suspension or removal from the Board.</li> </ul>	Barry, Jean. Op. cit. page 43 -44
The Nursing and Midwifery Council in the United Kingdom has a Code of Conduct...which addresses such points as corporate responsibilities; the duties of individual members; the principles of public life which Council members are expected to uphold; and the repercussions of breaches of the Code. The College of Registered Nurses of Nova Scotia also has a Code of Conduct...addresses such points as conflict of interest, maintaining Council decision integrity, confidentiality and expectations for preparation of and attendance at meetings.	Ibid. page 44
Confidentiality. Board and Council members should treat information obtained through their involvement with the regulator the same way as they would handle the regulator’s money. The information belongs to the regulator and should not be used for any purpose other than advancing the regulator’s mission. Any personal use of the information is unacceptable. This duty applies not only to member-specific information, but to information related to policies, programs, personalities and even future regulatory directions. The fact that no one would be “deprived” by the use of the information is irrelevant. Just the perception of personal benefit of the Board or Council member through the use of such information would damage the organization.	Steinecke, R (2009, July) The Fiduciary Duty of Board and Council Members. Op. cit. page 2
...Board members often have access to confidential and sensitive information. Any expectations around confidentiality related to materials and information received in carrying out Board duties need to be clearly articulated. ... Board members need to have full and detailed information and guidelines on these requirements and expectations regarding conduct, confidentiality and conflict of interest.	Barry, Jean. Op. Cit. page 43

Citation	Source
<b>Committee roles/Oversight</b>	
<p>Boards and the Committees need to operate effectively. Committees are intended to serve the Board and not <i>vice versa</i>. ...It is the job of the Committees to make recommendations to Council, but generally not to make decisions on Council's behalf (except sometimes in cases of emergencies). Committees have the right and duty to make recommendations; failing to do so provides Council with too little assistance.</p> <p>One exception to the above is where the legislation gives a committee the exclusive jurisdiction to deal with a matter....here the Board must maintain a firewall preventing itself from encroaching upon the exclusive jurisdiction of the Committee in making the decision.</p>	Steinecke, R (2009, June) Governance 101. Op. cit. page 2
<p>Most organizations:</p> <ul style="list-style-type: none"> <li>• Committees serve the Board</li> </ul> <p>For CNO</p> <ul style="list-style-type: none"> <li>• Committees have independent mandates</li> <li>• Committees not accountable for individual decisions</li> <li>• Committees may be accountable for overall performance - E.g., timeliness, budget, appeal rates</li> </ul>	Steinecke, R. (2015, September), Embracing your Uniqueness. Op. cit. slide 30
<p>...the Government will charge the new independent body with establishing a central list of people, vetted and approved for all adjudication panels, chosen by the appointments Commission for their expertise and specifically trained to undertake these duties in a fair and impartial manner. Regulatory bodies will be able to draw on this list in order to conduct independent adjudication panels within their own organisations.</p>	Hewitt, P. (2007). Op. cit. page 9
<p>We commend the approach the Council is taking to separate itself from both operational and statutory decision-making. In well run organizations operational decisions are clearly the preserve of the executive staff team, while in separating statutory decisions about conduct, health and competence from the Council an important element of independence has been introduced. Furthermore by making these changes the Council has enabled itself to focus on the three elements of good governance: strategic direction; holding the executive to account; and the proper use of resources.</p>	Council for Health Care Regulatory Excellence(2012) <i>A review conducted for the Nursing Council of New Zealand</i> p. 8
<p>Where a statute gives the exercise of a discretion to a particular person (e.g. Registrar in initiating an investigation) or body (e.g., screening committee determination of whether a complaint should go to Discipline), a firewall should exist protecting it from interference.</p>	Steinecke, R. (2009, August). Steering vs. Rowing. Op. cit. page 1
<p>For some regulators, the law current requires that committees must be populated exclusively by council members, and for most committees are chaired by Council members...it was also argued that chairs and members could be drawn from a wider pool to ensure sufficient skills and knowledge aware available. It is therefore recommended that the requirement for some regulators to use council members exclusively to populate its committees be dropped and the same principle should be applied to investigating committees.</p>	Dickson, Nail. Op. cit. Item 6.2
<p>It was also agreed, in line with the White Paper recommendations, that fitness-to-practice committees should no longer involve members of council and that the practice adjudicators should be drawn from a wider pool. The Nursing and Midwifery Council has set up its own arm's length appointments board to recruit fitness-to-practice panellists and fill other committees and the General Dental Council created an independent appointments board for its fitness-to-practice panel in 2003.</p>	Ibid.

Citation	Source
Remuneration	
An element of public service is implied in any appointment in the Government of Ontario therefore remuneration may not necessarily be competitive with the marketplace	Institute on Governance/Ministry of Health and Long-Term Care. Op. cit. slide 38
Council members should be paid an annual salary or honorarium in return for a specified number of days' work (for example two to three days per month). A per diem rate could be paid for additional work, such as chairing committees. All expenses should be covered by the regulatory bodies.	Dickson, Naill. Op. cit. Item 7.7 and 7.8
<b>2. Regulatory board and committee structure</b>	
The White Paper proposes that: to enable councils to focus more effectively on strategy and the oversight of their executives, they will become smaller and more board like, with greater consistency of size and role across the professional regulatory bodies.	Hewitt, P. Op. cit. page 5
The White Paper proposes that: the councils that regulate health professions have, as a minimum, parity of membership between lay and professional members, to ensure that purely profession concerns are not thought to dominate their work.	Ibid.
The composition of councils is not the less significant, because it influences the perception of their independence from particular interests. The existence of professional majorities undermines council's independence, and their perceived independence, by allowing doubt to be expressed about the weight of opinion they carry in council discussions and decisions, and the perceived reluctance of some registrants to the ending of professional majorities. <b>The Government is convinced that in order to establish and sustain confidence in the independence of the regulators, all councils should be constituted to ensure that professionals do not form a majority.</b>	Ibid. page 25
Government amend the Act to require that 50% of Council members be non-industry (Recommendation).  The IAG appreciates that as a self-regulatory organization, Council needs industry expertise and experience to execute on its mandate. However, we believe the time has come to rebalance that industry voice with other perspectives on regulatory and governance best practices, and more public perspectives on the Council's governing board.	Independent Advisory Committee, British Columbia Real Estate Council (June 2016), page 45

Citation	Source
<p>The intention is to ensure that councils focus on strategic rather than operational issues with the aim of assuring excellence in delivery in the long term. In order to do this, councils will need to be smaller to ensure effective strategic decision making and oversight of their executives, shifting away from the model of large representative bodies that seek to include all possible professional, clinical, trades union, lay, educational employer and geographical interests. The Government believes that all the councils should move to a more consistent and smaller size that enables them to function more effectively as boards for their organizations, with a statutory duty to ensure that the interests of all stakeholders are considered in their deliberations.</p>	Ibid. page 27
<p>The Council (New Zealand) is made up of nine members, six of whom are professionals and three of whom are public members. Three of the professional members are elected by the profession and the rest of the members are chosen by the Minister of Health.</p>	Council for Health Care Regulatory Excellence (2012) A review conducted for the Nursing Council of New Zealand p. 5
<p>There is a general trend in both public and private sectors to reduce Board size with many moving toward between 8 to 12 member Boards....there is also a trend in nursing regulation to move toward small Boards. According to the Secretary of State United Kingdom there is a move away from the model of large representative bodies that seek to include all possible professional, clinical, trades union, lay, educational, employer and geographical interest in Regulatory Boards.</p>	Barry, Jean. Op. cit. page 36
<p>...the Nursing and Midwifery Council of Ghana is moving from a Council of 21 to 11. They are also introducing public representatives and removing the positions of physician representatives from the Council. The fairly recently formed United Arab Emirates Nursing and Midwifery Council has just 12 Council members and the Nursing and Midwifery Board of Australia which was formed in 2010, when national versus state-based registration was introduced in that country, has 13 Council members.</p>	Ibid.
<p>Smaller Board sizes are more easily able to create an environment with active participation in meetings. However too small Boards may cause challenges in being able to meet the Board's mandate due to workload issues and lack of breadth of views. It is important to ensure that there are sufficient competencies and skill mix collectively within the Board while not having a Board so large as to be ineffective.</p>	Ibid.
<p>We believe the size of the Nursing and Midwifery Board of Ireland's Board, at 23 members, is unwieldy. Best practice within corporate governance would suggest that the optimum size of a board should not exceed 10 or 11 members; some academic studies have suggested that the optimum size should be between 6 and 8.</p>	Crowe Horwath (December 2015), Organisation Review Recommendations to Nursing and Midwifery Board of Ireland
<p>Size matters. That is the conclusion of the Nova Scotia Barristers' Society (NSBS) Task Force on Council Composition. As a result of its recommendations, in 2011, the number of individuals on Council will drop from 33 voting members to a total of 21 voting members (President, first and second Vice-Presidents, 3 public members, dean of Dalhousie Law School, a representative from the Attorney General of Nova Scotia and 10 members at large elected regionally. Gone is a representative from the Canadian Bar Association, the Attorney General of Canada and the Lawyers' Insurance Association of Nova Scotia).</p>	Moulton, Donalee. Op. cit.
<p>The smaller-sized council, she (<i>Task Force Chair</i>) added, reflects a move away from a representational approach. "It focuses the council to a more society-oriented focus and what is in the best interests of the society and the public."</p>	Ibid.



Citation	Source
<p>An effective board...should be of sufficient size that the balance of skills and experience is appropriate for the requirement of the business and that changes in the board's composition can be managed without undue disruption.</p>	<p>Council for Health Care Regulatory Excellence report (September 2011) Board size and effectiveness. Op. cit. page 3</p>
<p>The need to recruit board members who collectively bring the knowledge and expertise required to provide successful leadership to an organisation provides one set of parameters that indicate the optimal size of a board. At the minimum end of the scale, there comes a point where a board comprises too few members to possess all the competencies required...However, boards do not require – and members cannot possess – an infinite number of competencies. There comes a point where increasing board membership further does not add to the sum of the board’s competencies but instead reduces the effectiveness of the board.</p>	<p>Ibid. page 4</p>
<p>Representativeness is no longer a valid concept for a board, as we move away from self-regulation and from large elected Councils, but the board must be credible to stakeholders. It achieves this primarily through performance not specified membership but it is legitimate, in forming an effective board, to take account overall of the balance of board members.</p>	<p>Ibid. page 5</p>
<p>The NMC told the Commons Health select Committee that, in 2009, it was the first of the nine health professional regulators to restructure its governing Council, reducing its size from 35 elected to 14 independently appointed members. It said that it also took the opportunity to reduce and streamline the number of committees.... It added that it was actively considering reducing the size of its governing Council further to make it a more board like decision making structure.</p>	<p>Ibid. page 9</p>
<p>We believe that the size of the NMBI (Nursing and Midwifery Board of Ireland) Board, at 23 members, is unwieldy. Best practice within corporate governance would suggest that the optimum size of a board should not exceed 10 or 11 members; some academic studies have suggested that the optimum size should be between 6 and 7. Whilst there is no definitive guidance on this matter, it is clear that present arrangements at NMBI are not effective and need to be reviewed.</p>	<p>Crowe Horwath, Organization Review Recommendations to Nursing and Midwifery Board of Ireland, December 2015, page 6</p>
<p>...it seems reasonable to suggest that smaller boards, in the range of 8 to 12 members, are associated with greater effectiveness. This strongly indicates to us that a move to smaller councils across the health professional regulators would be possible without compromising effectiveness. It appears that smaller sized groups are able to communicate more effectively and reach decisions more quickly than larger ones...</p> <p>There is an important shift in thinking required in the governance of regulatory bodies in moving away from the concept of representativeness in membership. Smaller boards cannot “represent” all relevant constituencies or stakeholders nor should they attempt to do. Rather boards should demonstrate the knowledge, understanding and awareness to properly take into account the relevant interests, such as those of different groups of professionals or the different health systems in the UK, but they should not attempt to “represent” them.</p> <p>..a board or council must have enough members to ensure that it has the necessary mix of skills and experience to carry out the various governance functions effectively, maintain credibility and have the necessary diversity of perspectives.</p>	<p>Ibid. page 10</p>

Citation	Source
For some regulators, the law current requires that committees must be populated exclusively by council members, and for most committees are chaired by Council members...it was also argued that chairs and members could be drawn from a wider pool to ensure sufficient skills and knowledge aware available. It is therefore recommended that the requirement for some regulators to use council members exclusively to populate its committees be dropped and the same principle should be applied to investigating committees.	Dickson, Naill. Op. cit. Item 6.2
It was also agreed, in line with the White Paper recommendations, that fitness-to-practice committees should no longer involve members of council and that the practice adjudicators should be drawn from a wider pool. The Nursing and Midwifery Council has set up its own arm's length appointments board to recruit fitness-to-practice panellists and fill other committees and the General Dental Council created an independent appointments board for its fitness-to-practice panel in 2003.	Ibid.
In terms of wider confidence and clarity of role, there is merit in going further and adopting an entirely independent adjudication process as will apply to the General Medical Council and the General Optical Council under the new arrangements. There are also advantages in terms of transparency and fairness in establishing a system whereby all professionals appearing before fitness-to-practice panels go through the same process.	Ibid. Item 6.3
...the Government will charge the new independent body with establishing a central list of people, vetted and approved for all adjudication panels, chosen by the appointments Commission for their expertise and specifically trained to undertake these duties in a fair and impartial manner. Regulatory bodies will be able to draw on this list in order to conduct independent adjudication panels within their own organisations.	Hewitt, P. Op. cit. page 9
<b>3. Election/Appointment/Recruitment</b>	
<b>Election or Appointment</b>	
Conflict of interest: The current system of board member elections can be confusing for membership and the public. Board members often believe they were elected to represent the interests of the members who elected them.	Haight, B., & Hirsch, J. Op. cit. slide 10
The White Paper proposes that: to dispel the perception that councils are overly sympathetic to the professionals they regulate, council members will be independently appointed.	Hewitt, P. Op. cit. page 5
Conflict of interest: The current system of board member elections can be confusing for membership and the public. Board members often believe they were elected to represent the interests of the members who elected them.	Steinecke, R (2003, July). Will the Real Public Interest Please Stand Up. Op. cit. page 1
Some of the confusion ( <i>regulatory vs professional - added clarification</i> ) is caused by the election process for members of governing Councils or Boards of regulators. The election process may, incorrectly, suggest the Parliamentary model where representatives are elected to act on behalf of their "constituents." Re-election can become a concern for some Council or Board members if a controversial regulatory issues arises during their term.	Ibid

Citation	Source
<p>Attempt to regain control over the election process. ...the election process should be consistent with the public interest mandate of the organization. Expressly set out the regulator's mandate and role in election notices. Regulators should have election rules about campaigning and, if possible, campaign literature so that it is clear that elected Council or board members do not "represent" those who elected them. Rather, the election process is a means of selecting respected members of the profession to regulate that profession in the public interest.</p>	<p>Ibid. page 2</p>
<p>Industry members are elected to Council on a regional basis, and those regions may include one or multiple Real Estate Boards. Many industry members elected to Council by their peers have previously served on a Board, and the mandate of Boards is to represent the interests of their members.....</p> <p>It is our view that some industry members voted to Council may not fully appreciate that their role is to serve the Council's public interest mandate, and not the interests of their peers or local Board.</p>	<p>Independent Advisory Committee, BC Real Estate Council, Op. cit., p 45.</p>
<p>Independent appointment of members against defined competencies, robust appraisals of members are important mechanisms for ensuring boards remain focused on the public, and not on sectional, interest.</p>	<p>Cayton, H. Op. cit. page 2</p>
<p>...the Government will charge the new independent body with establishing a central list of people, vetted and approved for all adjudication panels, chosen by the appointments Commission for their expertise and specifically trained to undertake these duties in a fair and impartial manner. Regulatory bodies will be able to draw on this list in order to conduct independent adjudication panels within their own organisations.</p>	<p>Hewitt, P. (2007). Op. cit. page 9</p>
<p>..the United Kingdom has chosen to have fully appointed Councils or Boards for both public and professional members of the health professions. Reason given are to ensure the independence of Council/Board members and that the Council/Board as a whole has the skill set for effective governance</p>	<p>Barry, Jean, Op. cit. page 35</p>
<p>The constitution of regulators are central to those perceptions (<i>that subject to influence</i>). First, some are seen to be partial to professionals because they form a majority on their councils. Second, some are seen to be partial because their councils are thought to be elected to represent the particular interests of health professionals.</p>	<p>Hewitt, P. (2007). Op. cit. page 24</p>
<p><b>Principles of a good appointments process</b></p> <p><b>Merit</b> All section decisions must be based on evidence of candidates' merit. This meant appointing and reappointing individuals whose skills and experience have been judged to best meet the needs of the regulator and, where appropriate, recommending the removal or suspension of individuals where there is a strong case for so doing.</p> <p><b>Fairness</b> Processes used in appointments must be objective, impartial and applied consistently. Processes promote equality and are free from discrimination, harassment and victimisation.</p>	<p>Professional Standards Authority (2014) Section 25C scrutiny process<sup>1</sup> : The Authority's approach to scrutinising regulators' council appointments processes, page 6</p>

<sup>1</sup> The Professional Standards Authority reviews the appointments process for regulators recommending appointments for Council members (professional and Chair) to the Privy Council. The PSA does not comment on the recommended members, rather on whether the appointments process meets the principles of good appointments.

Citation	Source
<p><b>Transparency and openness</b> Public appointments must be advertised in a way that is designed to attract a strong and diverse field of suitable candidates. Information about posts and appointment processes is publicly available. The reasons for any recommendations made to the Privy Council arising from these processes must be clear.</p> <p><b>Inspiring confidence</b> The regulator’s processes and systems must promote public confidence in regulation and take into account external perspectives where appropriate. All processes must meet the requirements of the regulator’s legislative framework.</p>	
<p>All selection decisions must be based on evidence of candidates' merit. This means appointing and reappointing individuals whose skills and experience have been judged to best meet the needs of the regulator and, where appropriate, recommending the removal or suspension of individuals where there is a strong case for so doing.</p>	Professional Standards Authority. (2014a). Good Practice in Making Council Appointments. Op. cit. Page 2
<p>When developing selection criteria, it is important to bear in mind that council members should not be seen as “representatives” of any particular organisation, or profession, or viewpoint. ...councils need to be credible through their performance and their mix of background, knowledge and skills of members, not because members individually are representative of particular interests or constituencies.</p>	Ibid. page 5
<p><b>Principles Governing the Appointments Process</b> The mission of the Public Appointments Secretariat is to ensure that the most qualified men and women having the highest personal and professional integrity serve the public on the Province's provincial agencies and other entities. Persons selected to serve must reflect the true face of Ontario in terms of diversity and regional representation.</p> <p>Ontario's provincial agencies and other entities are responsible for overseeing, managing and regulating a wide variety of important functions. In order to fulfill their mandates, the government has a responsibility to ensure that these agencies are made up of members who are qualified to do the job. We must also ensure that these persons are representative of all segments of Ontario society.</p> <p>We are looking for people who are committed to the principles and values of public service and who will perform their duties with integrity. These principles provide the government with a framework, or guide, in living up to the responsibility that we are privileged to carry out in governing the Province of Ontario.</p> <p><i>Note: This information comes from the Ontario government Appointment Secretariat's (Premier's office) website and are meant to apply to all appointments – including those for health regulatory colleges. Health College public member appointments are classified as Minister's Prerogative - Appointments by an Order in Council on the recommendation of a Minister.</i></p>	Government of Ontario, Public Appointments Secretariat, General information page <a href="https://www.pas.gov.on.ca/scripts/en/generalInfo.asp?#4">https://www.pas.gov.on.ca/scripts/en/generalInfo.asp?#4</a>
<b>Competencies</b>	
<p>It is recommended that all regulatory bodies draw up a generic skills and competency framework for council members.</p>	Dickson, Naill. Op cit. Item 7.2
<p>Independent appointment of members against defined competencies, robust appraisals of members are important mechanisms for ensuring boards remain focused on the public, and not on sectional, interest.</p>	Cayton, H. (2009). Op. cit. page 2

Citation	Source
Recognising the importance of recruiting board members who collectively display the right mix of skills and competencies, many governing bodies and their nominations committee draw up a skills matrix. This matches existing board members against a list of required competencies and thereby identifies any pages or weaknesses that need to be filled.	Council for Health Care Regulatory Excellence. Board size and effectiveness. Op. cit. p. 3
The need to recruit board members who collectively bring the knowledge and expertise required to provide successful leadership to an organisation provides one set of parameters that indicate the optimal size of a board.	Ibid. page 4
Recruitment procedures in particular should focus on the competencies required for the membership of the particular board in question...They should seek to test whether an applicant has the capacity to contribute fully to the work of the board.	Professional Standards Authority. Fit and Proper? Op. cit. page 4
The technical competence to serve on a board is nothing without personal commitment to the public interest. Accountability is meaningless when it only means describing what has been done, rather than taking responsibility for its consequences.	Ibid. page 5
<p>One way in which better regulatory practice can be achieved is to put in place systems to help ensure that council members have the appropriate knowledge and skills for their roles. Many council members are currently elected by registrants and fulfil their role effectively. Elections are the best means of ensuring that members are responsive to the interests of their electorate and responsive to their particular concerns.</p> <p>For all health professionals, such interests will put patient welfare and the highest standards of professionalism at the top of the list of issues on which they would wish council members to exercise their authority. Nevertheless, for patients and the public, who do not participate in this democratic process, the perception will remain that their own interests are at risk of being given less weight. The perception of independence is undermined as a result and the effectiveness of the regulators is significantly diminished.</p>	Hewitt, P. (2007). Op. cit. page 26
In order to ensure the independence of all the national professional regulators, all members of all councils will be appointed independently by the Appointments Commission against clearly specified criteria and competencies.	Ibid. page 27
Members ( <i>of a regulatory board - not part of quote</i> ) should be appointed because of their knowledge, skills and judgement and commitment to using these in the public, rather than any sectional, interest. Defined criteria should be sent of the knowledge and skills required of councils' membership so that, as a whole, it possesses the necessary attributes to set the strategic goals for the organisation and effectively scrutinize the executive's delivery of these. One way of achieving this is to ensure that councils have expertise in such areas as education, practice, service-user experience and employing professionals.	Cayton, H. (2009). Op. cit. page 2
When considering who should be on a Board the focus should be on the competencies required for the Board while also recognizing that diversity in the Board expands the thinking as well as the options and solutions put forward.	Barry, Jean, Op. cit. 4, page 35
There is an important shift in thinking required in the governance of regulatory bodies in moving away from the concept of representativeness in members. Small boards cannot "represent" all relevant constituencies or stakeholders nor should they attempt to do so. Rather boards should demonstrate the knowledge, understanding and awareness to properly take into account relevant interests, such as those of different groups of professionals or the different health systems in the UK, but they should not attempt to "represent" them.	Council for Health Care Regulatory Excellence. Board size and effectiveness. Op. cit. page 10

Citation	Source
<p>People are selected to serve on the Boards and Councils of regulators for reasons other than business skills or knowledge (e.g., to offer a unique perspective, to provide diversity of backgrounds, reputation and respect in other fields). However, to the extent of their abilities, Board and Council members must provide thoughtful and prudent direction to the organization.</p>	<p>Steinecke, R (2009, July) The Fiduciary Duty of Board and Council Members, Grey Areas, 137, page 2</p>
<p>The selection criteria and competencies used to select chairs and council members should reflect the current and expected future needs of the council. As these needs are likely to change over time, it is good practice to review them regularly, for example by conducting an assessment of the future needs of the council, and taking into account views from stakeholders. ..</p> <p>It is good practice when reviewing criteria and competencies ahead of an appointments process to consider the existing mix of skills and expertise on the council, with a view to trying to fill any gaps. Essential criteria should be common to all council members, particular skills that are not essential for them all may be included as “desirable” criteria. Regulators should also consider the diversity of the current council at this point, and decide whether it may be desirable actively to seek applications from particular under-represented groups.</p>	<p>Professional Standards Authority. Good practice in making council appointments. Op. cit. pages 4-5</p>
<p>When developing selection criteria, it is important to bear in mind that council members should not be seen as “representatives” of any particular organisation, or profession, or viewpoint. As we have stated elsewhere, councils need to be credible through their performance and their mix of background, knowledge and skills of members, not because members individually are representatives of particular interests or constituencies.</p>	<p>Ibid. page 5</p>
<p><b>Terms of office</b></p>	
<p>...councils should aim for a regular turnover of members that is managed in a staggered fashion to ensure a degree of stability and continuity.</p>	<p>Cayton, H. (2009). Op. cit. page 2</p>
<p>Rotating terms for Council or Board members can avoid precipitous changes in composition and ensure the socialization of new persons to the public interest mandate of the organization. Longer terms for Council or Board members can also assist them in seeing the longer term implications of their decisions.</p>	<p>Steinecke, R (2003, July). Will the Real Public Interest Please Stand Up. Op. cit. page 2</p>
<p>When deciding on the tenure of Board members, it is important to balance the benefits of continuity and experience on the Board, particularly in situations where there are no or few staff for the regulatory authority, against the opportunity to enhance performance through the introduction of greater experience, diversity and new thinking. Staggered terms avoiding all Board members leaving the Board at once is often a valuable practice....</p>	<p>Barry, Jean. Op. cit. page 36</p>
<p>Term limits can be useful to guard against perceived capture, but must avoid unnecessary depriving the regulatory system of the useful expertise and experience built up by a regulator. Overlapping terms of board members can be a useful mechanism to both provide continuity of approach and protect independence.</p>	<p>Organisation for Economic Co-operation and Development. Op, cit. page 60</p>
<p>Members of the governing body should be limited to the number of terms of appointment to the Board.</p>	<p>Ibid. page 68</p>

Citation	Source
<b>4. Processes</b>	
Orientation/Education	
Board members should have access to induction and learning development opportunities.	Professional Standards Authority. Fit and Proper? Op. cit. p.4
Orienting new Council, Board or committee members is a crucial function for regulators. The task is complicated by the fact that these "volunteers" turn over regularly and not always at the same time of the year.	Steinecke, R. The Four C's. Op. cit. p. 1
<p>Often the volunteer is then asked to sign an agreement (<i>after orientation</i>) indicating that he or she understands and will fulfill his or her responsibilities. The purpose of such an agreement is to bring home to the volunteer the importance of these core duties. It is rare that the signing of the document creates any legal obligations. The purpose of the document is to confirm the volunteer's appreciation of their importance. The formality of signing such a document is really the point of the exercise.</p> <p><i>Potential content of agreement: Confidentiality, Conflict of interest, Conscientiousness (meet time requirements, preparedness), Copyright (respect intellectual property of regulator)</i></p>	Ibid.
Council, Board and staff members should receive intense and formal orientation as to their mandate. That orientation should include an explicit discussion of the public interest mandate. ..Written materials should provide a permanent resource on the topic	Steinecke, R. Will the Real Public Interest Please Stand Up. Op. cit. page 2
Before commencing an induction program, it is important to determine the essential requirements to enable a new Board member to function effectively and efficiently. ...It is often useful to include all Board members, even experienced Board members, in the induction as it reinforces key points required for their role.	Barry, Jean Op. cit. page 47
The Chair and Chief Executive typically facilitate the induction session and it is an excellent opportunity for the Chair and Chief Executive to display leadership. By chairing the induction session, the Chair brings clarity to his/her role and authority. The Chief Executive knows the organisation best so is usually the most suitable person to introduce the organisation and provide an overview of its purpose, mandate and mission and structure.	Ibid. pages 47-48

Citation	Source
<p>It is advisable and good practice for Board members to be provided with a detailed Board Resource Manual that can be used as an initial and long term reference that clearly articulates in writing the expectations of them as Board members and the rules by which they need to abide. ... A Board resource manual should include at least the following documents:</p> <ul style="list-style-type: none"> <li>• Information on the regulatory role of the Board members, their obligation to act at all times in the public interest and their legal authority and responsibility</li> <li>• Overview of constitution, by-laws and any relevant legislation to carrying out the Board role</li> <li>• Copy of any policies that address governance issues and ground rules such as duties of Board members, Codes of Conduct, Conflict of Interest policies, procedural policies and information on Board performance management.</li> <li>• A thorough description of the organisations mission, goals, values, programs and services</li> <li>• Copy of the strategic plan</li> <li>• Copy of the most recent report from the Board (Annual Report)</li> <li>• Fiduciary responsibilities of Board members</li> <li>• Current budget and last audited statements</li> <li>• Current Board profile (who is on)</li> <li>• Information on committees and expectations and opportunities for Board participation</li> <li>• Copies of recent agendas and minutes</li> <li>• Information on upcoming meetings, administrative procedures, financial information and how to get issues on the Board agenda.</li> </ul>	Ibid. pages 48 - 49
<p>...it may be useful to consider assigning an experienced Board member to act as a "mentor" to help orient and foster development of a new Board member.</p>	Ibid. page 49
<p>...induction is not a one-time event. At each meeting the Chair needs to reinforce the Board's role and responsibilities and to continually support them in providing effective governance. It may also be useful to carry out a regular educational assessment to determine the information needs of both individual Board members and the Board as whole and organize educational sessions to meet these needs.</p>	Ibid.
<p>Induction provides a platform for outlining the organisation's agenda and priorities, accountability arrangements and culture. It is also an opportunity to establish the behaviours required to operate effectively as a council member, and to introduce members to the performance appraisal system to which they will be subject.</p>	Professional Standards Authority. Good practice in making council appointments. Op. cit. page 18
<p>When planning an induction process for new council members or chairs, regulators should take into account:</p> <ul style="list-style-type: none"> <li>• Different roles and responsibilities mean council members and chairs will have different induction requirements from executive staff</li> <li>• Different backgrounds and experience levels of incoming members means that some may need more support and additional background reading than others</li> <li>• The need to provide a prioritised induction pack of key information with which new council members should be familiar as soon as possible</li> </ul>	Ibid.



Citation	Source
<ul style="list-style-type: none"> <li>The need to monitor the induction process to ensure it meets inductees' needs, and to evaluate the process using feedback from inductees.</li> </ul>	
It is recommended that induction training should be consistent for both lay and professional members and consistent across the regulatory bodies.	Dickson, Nail (2007), Op. cit. Item 7.2
...public representatives may need more information to better understand the profession and expectations of professional nursing practice whereas nurse members may not have had previous experience on Boards and may need more information on roles and expectations of Board members, Board functioning, how Board meetings are carried out (e.g. any rules of order)	Barry, Jean, Op. cit. pages 47-48
<b>Briefing Materials</b>	
...papers presented succinctly with sufficient information, option appraisals, costings and benefit realisations carefully and clearly explained to allow Council to make well-informed decisions.	Professional Standards Authority, Strategic Review of the Nursing and Midwifery Council Interim Report (2012), page 6
In particular the quality of papers presented to Council needs focus with a requirement for adequate information (not necessarily more information), to allow Council to reach informed decisions. The Council must ensure it is fully satisfied with the quality of reports received to enable consistent and informed decision making.	Ibid. page 11
<p>It may be useful to provide a framework for Board materials that addresses items of key strategic significance. For example the New Zealand Nursing Council uses the following regulatory impact/risk assessment framework which includes an assessment under each of the below headings:</p> <ul style="list-style-type: none"> <li>Public safety implications</li> <li>Consultation undertaken with stakeholders</li> <li>Political risk</li> <li>Legal risk</li> <li>Administrative impact.</li> </ul> <p>Providing meeting material information in a consistent framework can provide focus, draw attention to key factors to consider and facilitate decision making at Board meetings.</p>	Barry, Jean, Op. cit. page 52
Information provided to Council - whilst the Council receives a wealth of information at each Council meeting, we consider that this information should be refocused. The Council should receive clearer information relating to risk to the organisation, financial matters and the performance of the Nursing Council of New Zealand in each of its regulatory functions.	Council for Health Care Regulatory Excellence(2012) A review conducted for <i>the Nursing Council of New Zealand</i> p. 3
The Council meeting...was supported by 540 pages of documentation. The minutes in contrast were only a few pages long. Overwhelming Council members with information is not a good way to support strategic decision making. We consider that improvements to the agendas, reporting of the Council meetings, papers for consideration and background material would enable Council meetings to be shorter and members to focus better on strategy and good decision-making.	Ibid. page 8

Citation	Source
It (Nursing Council of New Zealand) has introduced a system whereby that the papers submitted to Council for discussion or decision set out the objective, summarise the reasons for the decision being proposed, explain the benefit to patients and refer to background papers where necessary.	Ibid. page. 9
Information received and considered by the council should support one of three goals - to allow informed decision making, to fulfil control and monitoring processes or to enable the council to co-operate with the CHRE ( <i>Council for Health Regulatory Excellence</i> ) and to be accountable to Parliament.	Dickson, Nail. Op. cit. Item 2.3
Boards need to have confidence that the performance reports that they receive tell them enough so that they can make judgements about what is going on in their organisation, without being overwhelmed by non-essential details. ..board members need to ask themselves are the right things being brought to their attention and are the right things being left unscrutinised?	Professional Standards Authority. Fit and Proper? Op. cit. Page 10
<b>Discussion</b>	
...known as seminars ( <i>Council workshops - added clarification</i> ), where issues are debated before reaching the formal Council meetings. We believe these seminars should be focused solely on training and development, with issues requiring discussion reserved to formal meetings. This would allow for a greater audit trail supporting decision made as the seminar sessions are not currently minuted.	Professional Standards Authority, Strategic Review of the Nursing and Midwifery Council Interim Report (2012), page 7
The Chair needs to create a culture where it is safe to be curious, to question and to disagree recognising that when dealing with important and challenging issues dissent is inevitable. It is the Chair's role to steer the Board through disagreements: ensuring different sides to an argument are explored and examined and that business disagreements do not become personal conflicts.	Barry, Jean, Op. cit. page 53
The right to represent dissenting views during board discussions needs to be valued and encouraged but differences of style or approach need to be managed constructively.	Ibid. page 52
Regulators can avoid actual or perceived influences by simply being more open and transparent about their decisions. Decisions based on empirical evidence or research, post-implementation evaluation and stakeholder input can help build confidence and trust in those decisions.	Organisation for Economic Co-operation and Development. Op. cit. page 54
<b>Evaluation</b>	
Independent appointment of members against defined competencies, <b>robust appraisals of members</b> ( <i>emphasis added</i> ) are important mechanisms for ensuring boards remain focused on the public, and not on sectional, interest.	Cayton, H. (2009). Op. cit. page 2
A valuable way to ensure the quality of future Board meetings is to conduct a written evaluation at the end of each Board meeting which could include feedback on:	Barry, Jean. Op. cit. 2014, page 54

Citation	Source
<ul style="list-style-type: none"> <li>• the timing of meeting materials</li> <li>• whether the right amount of information was provided and whether it was in a useful format</li> <li>• the logistics for the meeting</li> <li>• the meeting agenda and timing</li> <li>• staff support</li> </ul>	
<p>...allow time at the end of each meeting for open, frank and respectful dialogue about what went right and what went wrong at each Board meeting</p>	Ibid.
<p>Some ways by which Boards can monitor performance include individual meeting evaluations, peer evaluations, self-evaluations by Board members, annual evaluations and contracting external evaluations.</p>	Ibid. page 55
<p>A governance audit should be carried out by an outside experienced reputable organisation at least once every two years, with a full report being provided to the Nursing and Midwifery Board of Ireland's Board and to the Department of Health. This should also be included within the relevant annual report.</p>	Crowe Horwath , Op. cit., page 6
<p>Board members should take an active part in appraisal...as a group the board should make use of effectiveness appraisals, where appropriate using the many facilitated diagnostics that are available.</p>	Professional Standards Authority. Fit and Proper? Op. cit. page 4
<p>Appraisal of council members is required by the Appointments Commission before reappointment, and formal annual appraisal systems have been developed by some regulators. It is recommended that there should be a consistent approach to appraisal across the regulators, and training on the appraisal process should form part of every induction.</p>	Dickson, Naill. Op. cit. Item 7.3
<p><b>Miscellaneous</b></p>	
<p>Also it is useful to make publicly available in advance of the meetings specific guidelines for observers to make sure that it is clear what observers can and cannot do during the meetings.</p>	Barry, Jean. Op. cit. page 52
<p>Council should reinstate the opportunity for observers and members of the public to make comments and ask questions at the end of the formal meeting.</p>	Professional Standards Authority, Strategic Review of the Nursing and Midwifery Council Interim Report (2012), page 7
<p>The NMC should introduce a process by which Council members can raise concerns and be sure they are being heard and discussed.</p>	Ibid.

Citation	Source
<b>5. Leadership</b>	
Chair/President	
...the Chair of a regulatory authority also has an important part to play in ensuring that the Board is clear about what it means to be working in the public interest.	Barry, Jean. Op. cit. page 31
The Chair....leads the debate in Board meetings so as to ensure that decisions are made effectively and on the basis of through and well-reasoned information and dialogue.	Ibid., page 31
The Chair needs to create a culture where it is safe to be curious, to question and to disagree recognising that when dealing with important and challenging issues dissent is inevitable. It is the Chair's role to steer the Board through disagreements: ensuring different sides to an argument are explored and examined and that business disagreements do not become personal conflicts.	Ibid. page 53
...the chair has a specific role through appraising and managing the performance of the board both individually and as a group.	Professional Standards Authority (2013) Fit and Proper? Op. cit. page 4
The Chair has a vital role to play in steering the board through disagreements, ensuring different sides to an argument are explored and examined and the business disagreements do not become personal conflicts.	Ibid. page 5
<p>The Chair of the NMC (Nursing and Midwifery Council) needs:</p> <ul style="list-style-type: none"> <li>• Strategic vision and understanding</li> <li>• Intellect and analytic thinking</li> <li>• Highly effective interpersonal skills</li> <li>• Good skills in communicating, listening and responding</li> <li>• Good standing and personal authority</li> <li>• Diplomacy and political awareness</li> <li>• The ability to be an effective Chair of meetings</li> <li>• The ability to hold the Chief Executive Officer (CEO) to account</li> <li>• The ability to support and guide the Council.</li> </ul>	Professional Standards Authority, Strategic Review of the Nursing and Midwifery Council Interim Report (2012), page 10
The Chair (the President) is the leader of the Board. Leadership flows from example and moral suasion arising from both the person and the office, not from issuing decrees. The Chair often presides at Board and some Committee meetings. ...The Chair usually acts as the spokesperson for the Board and often the regulator as a whole. However, such communications need to be consistent with the direction given by the Board. Where there is a substantive issue between a Board or Committee member and the regulator, the Chair is the point person for the former.	Steinecke, R (2009, June) Governance 101. Op. cit. page 2
The chair has an important part to play in ensuring that the board is clear about what it means to be working in the public interest in that board's specific circumstance.	Professional Standards Authority (2013) Fit and Proper? Op. cit. page 6

Citation	Source
<p>There was a significant divergence of opinion within the working group as to whether the chair should be a lay or professional member - some of the group felt that it would be difficult for a lay chairperson to exercise a professional leadership role, but others questioned whether "professional leadership" was actually a function of a regulatory body. Some also felt that in the current regulatory climate there could be an issue with public confidence if the chair was a registrant....the key factor is that they must have the skills and attributes to undertake the role and that should be determined externally by the Appointments Commission.</p>	<p>Dickson, Naill. Op. cit. Items 7.7 and 7.8</p>
<p><b>Chair and CEO</b></p>	
<p>The effectiveness of the Chair and Chief Executive are interdependent. ...Whether the Chief Executive is a Board or government employee, the Board needs to have a role in his/her performance review and monitoring.</p>	<p>Barry, Jean. Op. cit. page 33</p>
<p>The relationship between the Chair, Board and Chief Executive is fundamental to success. All need good interpersonal skills, to appreciate each other's roles and work in partnership. The Chair needs to lead and develop the Board in forging the organisation's strategic direction, prioritizing the organization's resources and enabling a culture in which the Chief Executive and staff can succeed. The Chief Executive needs to lead and develop the staff team. They have a shared responsibility for the performance of the organisation.</p>	<p>Ibid.</p>
<p>The Chief Executive plays a key role as chief advisor to the Chair and Board and manages the affairs of the regulatory authority on its behalf. The chief Executive, along with the Chair, is normally an official spokesperson for the Regulatory Authority</p>	<p>Ibid.</p>
<p>The Chair and Chief Executive typically facilitate the induction session and it is an excellent opportunity for the Chair and Chief Executive to display leadership. By chairing the induction session, the Chair brings clarity to his/her role and authority. The Chief Executive knows the organisation best so is usually the most suitable person to introduce the organisation and provide an overview of its purpose, mandate and mission and structure.</p>	<p>Ibid. pages 47-48</p>
<p>It is the role of the Council to set the strategic direction of the organisation. It is the responsibility of the Chair to lead, support and guide them in doing so and their collective responsibility to hold the executive to account for delivery. It is the function of the Chief Executive to determine the means by which the strategy will be delivered and his or her responsibility to ensure that it is.</p>	<p>Professional Standards Authority (2012) Strategic Review of the Nursing and Midwifery Council Interim Report, page 8</p>

Citation	Source
<b>Role of Chief Executive</b>	
<p>Executive Director</p> <p>Most organizations: servant of the Board</p> <ul style="list-style-type: none"> <li>• Delegated responsibilities</li> <li>• Assessed on results</li> </ul> <p>For CNO</p> <ul style="list-style-type: none"> <li>• Sometimes true (e.g., massive confidentiality leak)</li> <li>• Assessed on process &gt; results</li> <li>• Has independent statutory decisions to make <ul style="list-style-type: none"> <li>○ E.g., appointment of investigators</li> <li>○ E.g., whether to refer an applicant to the RC on suitability grounds</li> </ul> </li> <li>• Rationale: best view of the big picture / priorities / coordinate</li> </ul>	<p>Steinecke, R. (2015, September), Embracing your Uniqueness. Op. cit. slide 31</p>
<p>The Chief Executive Officer needs:</p> <ul style="list-style-type: none"> <li>• Clarity of purpose</li> <li>• Strong management and operational skills</li> <li>• Determination and resilience</li> <li>• Ability to build relationships and motivate others</li> <li>• Good financial understanding and management</li> <li>• Capability in implementation and tactics</li> <li>• Influencing and negotiating skills</li> <li>• Ability to work in partnership with the Chair</li> <li>• Ability to gain and keep the confidence of Council, staff and stakeholders.</li> </ul>	<p>Professional Standards Authority (2012) Strategic Review of the Nursing and Midwifery Council Interim Report, page 10</p>

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<sup>2</sup> In 2014, the United Kingdom Council for Health Care and Regulatory Excellence became the Professional Standards Authority for Health and Social Care.

<sup>3</sup> In follow-up to the White Paper Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century, the Office of Health Professions Adjudication was originally set up to take over Fitness to Practice hearings from the General Medical Council from 1 April 2011 and those from the General Optical Council at a later date. However it was closed before it became operational. It was abolished in 2012. No reason is provided on the government website.

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