Improving the Effectiveness of Consumer & Public Representatives On Delegated Administrative Authorities

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Executive Summary

The Consumers Council of Canada, with support from Industry Canada’s Office of Consumer Affairs’ Contributions Program for Non-profit Consumer and Voluntary Organizations, investigated Improving the Effectiveness of Consumer & Public Representatives on Delegated Administrative Authorities. The study was conducted between June 2005 and March 2006.

Delegated Administrative Authorities (DAAs) are new corporate structures that derive their authority from government. DAAs regulate, impose standards and dictate the conduct of a vast array of industries. They are accountable to the public and to the government that provides their authority. In many cases, DAAs replace a function previously provided by the government. The DAA model is generally considered to be successful. This report examines ways to enhance the effectiveness of DAAs, and their board members who represent the consumer and public interest. This report provides a profile of characteristics, knowledge and competencies necessary for effective consumer/public representation on DAA boards. The hope is that this report will aide DAAs and the Ministry in the selection, orientation and training, evaluation and on-going support of their consumer/public representatives. It should also help consumer/public representatives to understand what knowledge, skills and abilities they are expected to possess.

Qualitative research was conducted using two separate instruments – a survey and key informant interviews. Of the 29 surveys completed, 15 respondents were consumer/public representatives and 14 were industry representatives or other board members. In total, 22 interviews consisting of 6 Chairpersons and 16 consumer/public representatives were completed. An international scan of both theoretical and applied literature revealed a great deal of information regarding governance in general but little about consumers’ participation on high-level decision-making bodies. Consumer representative research was identified from various sources including those in Scotland, Australia, New Zealand and the United Kingdom.

In British Columbia, the British Columbia Safety Authority was delegated its authority through the Safety Standards Act, 2004 and the Railway Safety Act, 2004. In Alberta, the Alberta Boilers Safety Association received its authority through the Government Organizations Act, 1995. Eight Ontario
Delegated Administrative Authorities (DAAs) were granted their authority through administrative agreements or statutes with the Ministry of Government Services.

A review of the literature revealed that an effective consumer/public representative:

- thoroughly understands the mission and vision of the DAA
- knows or is committed to learning the essential aspects of the industry being regulated
- has the ability to manage and adapt to change
- drives for continuous improvement and self-development
- possesses exceptional leadership, team and communication skills
- has or seeks out governance training including how boards function, their purpose and range of operating modalities
- has good negotiation and communication skills
- has the ability to analyze an issue and judge its effects on consumers and the public
- presents arguments rationally and convincingly
- assesses the short and long term consequences of pending decisions

In each of these cases, the DAA has a responsibility to facilitate the acquisition of needed knowledge, skills, and abilities.

Barriers exist to effective consumer/public representation. These include a lack of industry-specific knowledge, lack of technical or procedural expertise, and the lack of training for Board membership. A diverse and vast constituency, confidentiality rules that can impede data gathering, and inadequate resourcing can also impede effective representation. Finally, pre-established perceptions by industry members and competing priorities and agendas between stakeholders and the DAA can also negatively impact consumer/public representatives’ effectiveness.

An important theme that arises in this report is the need to increase the industry knowledge of consumer/public representatives. Both consumer/public representative and other board members have stated that a lack of industry knowledge impedes the consumer/public representative’s ability to be more effective. Consumer/public representatives need better access to consumer and public opinion to better reflect their perspectives on particular issues.
A comprehensive orientation session is vital for all new board members as it allows new members to become effective more quickly. A director’s guide or board manual is an important aid that should be provided to all board members. DAAs would benefit from helping to build a consumer network among all consumer/public representatives that could meet on a regular basis and that could connect all DAAs.

DAAs should utilize a range of assessment techniques to measure the effectiveness of board members including consumer/public representatives. Board, individual, peer and self assessments are available as well as one-on-one interviews with the Chair and in-camera board meetings. Addressing the gaps identified in board member evaluations is as essential as conducting the assessment. Tracking progress is vital for overall board improvement.

The Scottish Consumers Council’s 14 points of good practice, a sample self-evaluation form, tips for improving meetings, requirements for effective negotiations, and an annotated list of resources are provided in the appendix.
Recommendations

Some DAAs address board member effectiveness better than others. The intention of this report is not to compare DAA practices or identify their specific shortcomings but rather to present the full range of recommendations that might serve as a checklist against which DAAs can measure themselves.

Consumer/public representatives should be able to:
1. discern the difference between the public interest and the narrower consumer interest;
2. list the consumer rights and responsibilities and apply them as a screen to decision items;
3. access or initiate consumer/public research;
4. represent a minority view without fear;
5. make tough decisions when called upon;
6. assess facts in formulating positions as part of their critical thinking skills;
7. communicate well;
8. be flexible and encourage new approaches and innovation when change is needed;
9. seek to establish a dialogue with other consumer/public representatives;
10. understand and discharge their fiduciary duty, commit to governance excellence by learning and acting on accepted governance best practices particularly for not-for-profit boards and go to meetings prepared with a plan of action, including how to introduce points and what facts or research are needed as support;
11. recognize and avoid “groupthink”; and
12. seek out and utilize information available from consumer advisory committees.

DAAs should:
13. provide information and training on technical issues;
14. provide fulsome knowledge of the regulated industry, their issues and regulatory environment aimed particularly at non-industry board members;
15. provide orientation programs for new board members and refresher programs for continuing members – including information on the legislative process;
16. encourage CEOs or consumer/public representatives to sit on the DAA’s Consumer Advisory Committee so that he/she can bring forward pertinent information to keep the board informed;
17. provide training or resources to access training to improve negotiation, conflict management; strategic planning skills and corporate governance knowledge;
18. better understand and act to address the inability of most consumer/public representatives to access the views of consumers and the public on important strategic decisions. Consumer/public representatives should be encouraged to play a more central role in DAA efforts to gather opinion data from consumers and the public;
19. assess the performance of board members regularly, using various assessment instruments, including board, individual, peer and self assessments, Chair interviews and in-camera discussions. Performance assessments should become more performance objective-based with explicit references to desirable, demonstrable behaviour;
20. address the gaps identified in board member assessments; and
21. provide new consumer/public representatives with a mentor either from within the board or outside of the board.

Two additional recommendations:

22. Each board’s Chairperson should promote a culture of mutual respect, reinforcing the contribution consumer/public representatives and the important role they play.
23. The government should build a consumer/public representative database support network and facilitate regular (quarterly) meetings.
Background

Delegated Administrative Authorities

Delegated Administrative Authorities (DAAs) are new not-for-profit organizations that assume responsibility for specific aspects of former government functions. DAAs share the government's accountability to the public with the government retaining overall accountability and continuing to control legislation and authority-granting policy. DAAs have assumed financial and legal liability for day-to-day delivery and regulatory administration. With representatives from each regulated industry, DAAs carry out daily functions that promote public safety and consumer protection while regulating and monitoring business practices within their respective industry.

This report seeks to identify means to improve the effectiveness of consumer and public representatives on the boards and advisory councils of DAAs. As the number of consumer and public representatives grows beyond the initial group of seasoned consumer representatives, a fuller understanding of what is required of them will be useful to maintain and enhance their effectiveness on the boards and committees upon which they serve. This report is intended to help government and the DAAs address gaps and improve the overall performance of individuals and their organization. This research will ultimately assist in the recruitment, orientation and training of new representatives and their ongoing assessment.


In Ontario, the DAAs were granted their authority through administrative agreements with the Ministry of Government Services. Currently, the following DAAs exist (a fulsome description of each DAA can be found in Appendix A):

- the Electrical Safety Authority (ESA) – Electrical Act 1998;
- the Ontario Motor Vehicle Industry Council (OMVIC) – Ontario Motor Vehicle Dealers Act;
- the Real Estate Council of Ontario (RECO) – Real Estate Business and Brokers Act, 2002;
• the Technical Standards and Safety Authority (TSSA) – *Technical Standards and Safety Act*;
• the Travel Industry Council of Ontario (TICO) – *Travel Industry Act, 2002*; and
• the Vintner's Quality Alliance of Ontario (VQA Ontario) – *Vintner's Quality Alliance Act, 1999*.

Two alternate service providers regulating consumer protection relating to new homes and funeral services report to the Ministry of Government Services. Statutes, prior to the Ministry of Government Services’ modern DAA governance and accountability model, created these entities:

• the Board of Funeral Services (BoFS) – *Funeral Directors and Establishments Act*;
• Tarion (formerly the Ontario New Home Warranty Program) – *Ontario New Home Warranties Plan Act*;

According to the Ontario Ministry of Government Services:

> DAAs are responsible for all day-to-day administrative activities, including registration and licensing, complaints processing, inspections, investigations, and other enforcement functions. The provincial government is responsible for legislating the regulated industries, and the Ministry remains accountable for the outcomes of improving public safety and consumer protection by:

• setting policy direction, rules, and standards for regulated industries through legislation, administrative agreements with DAAs and other oversight mechanisms;
• ensuring adequate accountability frameworks and governance structures are in place - including those that allow for monitoring and taking corrective action, when necessary - to protect the public interest and promote public safety and consumer protection; and
• providing the public with relevant, accurate, and timely information on the outcomes of the DAA’s regulatory activities.²

Ontario DAAs demonstrate accountability to the public and to the customers of the various regulated industries by including consumer and public representatives on their boards. Board members are made up of members nominated by the related industry and others appointed by the government to represent the government, the public and consumers. The Ontario Minister of Government Services retains the right to appoint up to 50% of the members on the DAA’s board of
directors. While the right has never been exercised, it underscores the role government assumes. The Minister normally appoints approximately 25% of the board members on any board.

Ministerial Appointees are expected to bring a perspective to each board that varies from members nominated by the regulated industry. Most DAAs often maintain consumer advisory committees that report to the board or to the president as a means of including consumers in policy and decision-making.

<table>
<thead>
<tr>
<th>DAA</th>
<th>No. of Board Members</th>
<th>No. of Ministerial Appointees</th>
<th>Consumer Advisory Committee (Y/N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Columbia Safety Authority</td>
<td>12</td>
<td>3</td>
<td>Y</td>
</tr>
<tr>
<td>Alberta Boilers Safety Association</td>
<td>5</td>
<td>1</td>
<td>N¹</td>
</tr>
<tr>
<td>Board of Funeral Services</td>
<td>13</td>
<td>5</td>
<td>N²</td>
</tr>
<tr>
<td>Electrical Safety Authority</td>
<td>12</td>
<td>3</td>
<td>Y</td>
</tr>
<tr>
<td>Ontario Motor Vehicle Industry Council</td>
<td>12</td>
<td>3</td>
<td>Y</td>
</tr>
<tr>
<td>Real Estate Council of Ontario</td>
<td>12</td>
<td>3</td>
<td>Y</td>
</tr>
<tr>
<td>Tarion</td>
<td>17</td>
<td>4</td>
<td>Y</td>
</tr>
<tr>
<td>Travel Industry Council of Ontario</td>
<td>15</td>
<td>4</td>
<td>Y³</td>
</tr>
<tr>
<td>Technical Standards and Safety Authority</td>
<td>18</td>
<td>4</td>
<td>Y</td>
</tr>
<tr>
<td>Vintner’s Quality Alliance Ontario</td>
<td>9</td>
<td>1</td>
<td>N⁴</td>
</tr>
</tbody>
</table>

¹ ABSA has a technical committee that addresses complaints from their consumers (industry).
² Used on an ad-hoc basis.
³ Newly implemented.
⁴ VQAO is more of a manufacturing standards organization rather than a consumer risk organization.
Methodology

One purpose of this study is to establish a profile of characteristics, knowledge and competencies necessary for effective consumer/public representation on DAA boards and build a tool to gauge effectiveness. A search of both theoretical and applied literature failed to reveal an abundance of research in this area. There was a great deal of information regarding governance in general but little about consumers’ participation on high-level decision-making bodies. Consumer representative research was identified from various sources including those in Scotland, Australia, New Zealand and the United Kingdom.

Qualitative research was conducted using two separate instruments – a survey and key informant interviews. The survey, developed by The LOMBERG Network, consisted of 18 questions (10 multi-choice and 8 open-ended). This survey was to be provided to all board members from Ontario’s eight DAAs, the British Columbia Safety Authority and to the Alberta Boilers Safety Association.

Several attempts were made to contact the British Columbia Safety Authority (BCSA) and the Alberta Boilers Safety Association (ABSA) via telephone and email. These organizations did not respond to the repeated requests to participate in the study.

The Ontario Ministry of Government Services Seventh Annual Administrative Authorities Board Retreat provided the Council with the opportunity to make direct contact with every DAA board member in Ontario. In their retreat packages, each board member received a one page invitation to participate in the survey.

The retreat also allowed the Council to make a presentation on the study with another request to complete the questionnaire. Of the 29 surveys that were completed, 15 of the respondents were consumer/public representatives and 14 were industry representatives or other board members. The survey was tabulated by the LOMBERG Network. The results are found in Appendix B.

Two series of predetermined questions were used in the key informant interviews. The interview guide for each group of participants consisted of six main questions and several probes.
Clarification or elaboration of responses was sought as needed. Consumer/public representatives who sat on more than one DAA were interviewed once but the representatives were encouraged to describe their experiences from each DAA. In total, 22 interviews consisting of 6 Chairpersons and 16 consumer/public representatives were completed. Interviewees were assured that there would be no attribution of responses. Appendix C and D present the questionnaire and summary of the responses received during the interview.
The Consumer versus the Public Interest

A consumer representative is a member of a government, professional body, industry or non-governmental organization who provides a consumer perspective and takes part in the decision-making process on behalf of consumers. Consumer representatives' primary responsibility is to bring consumers' views and concerns to the attention of decision-makers and policy influencers. As listed in the United Nations Guidelines for Consumer Protection, consumer interests may be described as:

- the protection of consumers from hazards to their health and safety
- the promotion and protection of the economic interests of consumers
- access of consumers to adequate information to enable them to make informed choices according to individual needs and wishes
- consumer education
- availability of effective redress
- freedom to form consumer and other relevant groups or organizations and the opportunity for such organizations to present their views in decision-making processes affecting them.

According to the Scottish Consumer Council, consumer input assists government and service providers in designing and delivering goods and services that meet people's needs, improve standards, identify problem areas and provide value for money. Consumer representation ensures that policies and practices are informed by a real understanding of consumers' needs and experiences. Refer to Appendix E the Scottish Consumer Council’s 14 Points of Good Practice.

Public representatives reflect the broader public interest, including that of consumer, government and business. Public representatives in some cases, one survey respondent noted, are tightly focused on the specific concerns of the government of the day. Another respondent stated that they appreciated having Ministerial Appointees on the board as they help the DAA “stay ahead of or current with public policy”. According to the results of the Council’s survey, Ministerial Appointees and other board members appear to hold Ministerial Appointees in high regard. During their interviews, several DAA Chairpersons had positive comments and attitudes towards their consumer/public representatives.
DAAs include representatives on their boards that are consumer, public and government focused. Of the 16 Ministerial Appointees interviewed, seven described themselves as public representatives, five considered themselves to be consumer representatives, while four respondents believed to represent both.
Understanding Consumer Rights

In 1984, the International Organization of Consumer Unions formally adopted the eight international consumer rights\(^\text{10}\). Consumer/public representatives use these eight consumer rights to remind them of their commitment to consumer issues. They are often used to frame the consumer perspective.

The Consumers’ Health Forum of Australia lists the following eight international consumer rights:

1. The right to satisfaction of basic needs – food, clothing, shelter, health care and education.
2. The right to safety – protection against products, production processes and services which are hazardous to health or life.
3. The right to be informed – given the facts needed to make an informed choice, and protected against dishonest or misleading advertising and labelling.
4. The right to choose – to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality.
5. The right to be heard – to have consumer interests represented in the making and execution of government policy, and in the development of products and services.
6. The right to redress – to receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services.
7. The right to consumer education – to acquire knowledge and skills needed to make informed, confident, choices about goods and services, while having an awareness of basic consumer rights and responsibilities.
8. The right to a healthy environment – to live and work in an environment which is non-threatening to the well-being of present and future generations.\(^\text{11}\)

More recently, a ninth consumer right has been recognized – the right to privacy as it applies to personal information\(^\text{12}\).
Consumer/Public Representatives as Effective Board Members

Industry Canada asserts that consumer representation is effective if consumer/public representatives possess the following characteristics and attributes:

- self-confidence and a willingness to present minority views
- good critical-thinking, verbal communication and listening skills
- curiosity and a willingness to learn new things
- time to devote to preparation, travel and participation
- self-motivation and discipline
- an understanding of how committees and organizations work
- the ability to absorb a great deal of information
- the ability to ask questions
- willingness to travel
- willingness to follow through with lengthy projects that may take several months or years

A measure of effectiveness is the success in achieving a given goal. The goal of the consumer/public representative is to reflect and influence decision-making.

According to the United Kingdom’s National Consumer Council:

> By magnifying the voice of the individual, representation contributes to good governance and the achievement of social justice. It affords better and more durable decisions. True representation is more than simply involving consumer experts on panels or public consultations. It requires permanent channels for input; the expectation that consumer views will be taken into account and the recognition that it is essential to good decision-making.

The Ontario Ministry of Government Services currently requires approximately 25% of each DAA board’s composition to be consumer or public representatives as a “permanent channel of input”. However, despite the significant number of consumer/public representatives on these boards, there is no guarantee that they assess or have the capacity to access their constituencies. DAAs generally
do not provide a means for consumer/public representatives to independently research the consumer or public perspectives on specific issues confronting the DAA. DAAs need to better understand and act to address the inability of most consumer/public representatives to access the views of consumers and the public on important strategic decisions. Consumer/public representatives should be encouraged to play a more central role in DAA efforts to gather opinion data from consumers and the public.

According to the Consumers’ Health Forum of Australia, there are ways that consumer/public representatives can increase their effectiveness and persuade board members of the importance of the consumer perspective. Consumer/public representatives must show the board that they have the ability to:

- analyse an issue and judge its effects on consumers;
- move away from a personal opinion to a viewpoint that takes account of the diversity of experiences and needs of consumers;
- present an argument rationally and convincingly;
- imagine the consequences of decisions, in the short and long term;
- negotiate; and
- distinguish who they are representing.16

In addition, consumer/public representatives should:

- arrive early for the first meeting;
- be prepared having completed the required reading;
- go to meetings prepared with questions and what facts or research is needed;
- consult the constituency. This is crucial for ensuring effective representation as it will allow the representative to provide more than just a personal opinion. This will also increase their credibility as consumer/public representatives.
- network with other consumer/public representatives and members of the board or committee as it assists in the generation of ideas, opinions, and possible outcomes.17
Recognize and avoid “groupthink”. Groupthink occurs when a group is extremely cohesive. This can become a problem if the consumer/public representative is “agreeing to decisions that will adversely affect consumers” or the public. In order to avoid this, it is best to keep in mind that groupthink does exist and to “consciously assess each decision made” and assess its ability to adversely affect consumers or the public.

The following is a list of characteristics that contribute to optimal effectiveness. Each will be explained separately. Effectiveness often relates to:

- Commitment to the mission and vision;
- Governance knowledge and experience;
- Ability to reflect the consumer/public perspective;
- Leadership skills;
- Team playing and building skills;
- Decision-making skills;
- Communication skills;
- Ability to manage change;
- Specific knowledge and experience; and
- Commitment to self-development & continuous improvement.

*Commitment to the mission and vision:* This refers to the representative’s commitment to the DAA’s purpose in maintaining the organization’s mission while protecting the public/consumer interest. This requires a substantial long-term commitment of the representatives’ time to the board as one DAA Chairperson reported that a consumer/public representative resigned after one year as he/she could not make the time commitment.

In their commitment to the DAA’s mandate, board members should treat each other with respect regardless of their position. As a board member, consumer/public representatives must often do what they think is right even if it is unpopular while attempting to avoid organizational politics and conflict. Consumer/public representatives should be a strong supporter of the DAA’s values and vision.
Governance knowledge and experience: Governance is a combination of “oversight, process, independence and accountability”\textsuperscript{26}. An effective consumer/public representative understands and practices their fiduciary duty as well as good governance, including financial and stakeholder stewardship\textsuperscript{27}. They should have knowledge of best practices of governance particularly for not-for-profit boards. Consumer/public representatives should focus on strategic aspects and not tactical aspects, practice leadership and not management, and make good use of Board information. They must “understand the board’s governance model, bylaws, policies, current condition, and suspending issues”\textsuperscript{28}. Representatives can “start making meaningful contributions almost immediately”\textsuperscript{29} if well prepared prior to their first meeting. As Carver states:

\begin{quote}
Excellence can be lost simply through the influx of new members who have not agonized through the process of improvement. As they bring in their expectations about governance from other settings, they may cause a regression to the norm. Institutionalizing the hard-won process calls for helping new members understand the governance already reached by their colleagues.\textsuperscript{30}
\end{quote}

This can be achieved as a result of effective orientation or supplementary governance training. During their interview, governance training was quoted by a DAA Chairperson as being a type of training that would increase the effectiveness of consumer/public representatives as both consumer/public representatives and board members.\textsuperscript{31}

Ability to reflect the consumer/public perspective: The consumer/public representative should effectively express and promote the consumer and public perspective. Effective representatives spend time understanding what consumers/stakeholders want or need and help guide the board to fulfill them. They should understand and represent the “consumer/public interest” and do what is best for consumers/stakeholders even if it conflicts with the way things have always been done\textsuperscript{32}.

It is imperative that consumer/public representatives have the ability and “willingness to present a view even if it is a minority view”\textsuperscript{33}. Consumer/public representatives must represent the perspective of the consumer/public regardless if their personal objectives differ. In other words, representatives must “say what they mean and mean what they say”\textsuperscript{34} and do as they say. It is also imperative that representatives follow through on their commitments in order to generate and sustain trust and reliability.
Leadership skills: According to *Making Boards Work*, leadership “requires vision, foresight, sensitivity, energy, objectivity and steadfast commitment to the success of the organization”\(^35\). The consumer/public representative should be credible, trusted and well-respected by others. An effective representative speaks out about what is right even if it’s unpopular\(^36\) and is not threatened by others’ views or talents. The representative must have the willingness to delegate. “Board members that are loath to delegate will impair the board’s leadership by constantly bringing small issues up for consideration”\(^37\). Consumer/public representatives should anticipate issues and act to have them addressed by the board and if needed, they should champion new ideas and approaches.

Team playing and building skills: Consumer/public representatives should work well alone as well as a member of a group especially when that group is composed of different stakeholders. They should be prepared and willing to learn, be articulate, persuasive, and open-minded. Representatives should accept the collective wisdom and “must be committed to working to build consensus among board members”\(^38\). This person should also have good facilitation skills, such as encouraging participation, listening, helping to resolve conflicts and “must be able to share power in group processes”\(^39\).

Decision-making skills: An effective consumer/public representative contributes to the development of informed, well-considered policy and decisions on behalf of consumers/the public\(^40\). They show flexibility and willingness to listen, reason and change positions\(^41\). They are well prepared, demonstrate good analysis and solid judgement, and “strive for accountability in the board’s job”\(^42\). Accountability consists of “consulting with the wider consumer movement and loyalty to the convictions and views of their constituencies”\(^43\). Consumer/public representatives should not withdraw from making tough decisions, and should make decisions based on facts versus emotional or intuitive objectives while asking others for input before making decisions that affect them.

Communication skills: Effective consumer/public representatives successfully research, and express the consumer perspective while contributing to consensus building. They should encourage open and frank discussion of issues and welcome suggestions and opinions while at the same time keeping relevant people informed\(^44\). They should have good critical thinking skills and the ability to listen well and to clearly express themselves - be it in writing or in conversation - in order to “participate in the discipline and productivity of the group”\(^45\).
**Ability to manage change:** Consumer/public representative should be flexible and encourage new approaches when change is needed. Effective representatives are willing to rock the boat when necessary, involve others in developing solutions, and consider the impact of change on others. They must also have the ability to adapt well to change, encourage innovation and serve as a champion for new ideas. As declared by Carver, “all members must be willing to challenge and urge each other on to big dreams, lucid values and fidelity to their trusteeship. All members must cherish diversity as well as an unambiguous, single board derived from diversity.”

**Specific knowledge and experience:** Effective consumer/public representatives are familiar with the industry, its issues and the regulatory environment. It is beneficial if such representatives have transferable board or organizational experience as “directors are typically recruited to the board for their experience and expertise that they have acquired over the course of their careers.” This concept was reiterated several times throughout the Council’s interviews. The demand for increasing expertise from directors continues to grow. As described in *Making Boards Work:*

> Today’s director has to have at least a basic understanding of a wide range of subjects. He or she must be literate not only in the relevant technology, finance, ... production techniques, internal control, ... regulation, legislative developments and global trends. The director must also keep up with current developments and understand how these all interact with each other in business.

However, one does not expect new directors to have in-depth knowledge in all of these areas. “Bringing the director up to speed on these matters is a job for the Chair through a program of initial orientation and regular updating.” Governance training and training about how boards work was suggested by a few of the Council’s interviewees.

**Commitment to self-development & continuous improvement:** Effective consumer/public representatives take steps to improve their knowledge of what consumers/the public want or need. Effectiveness is best learned through experience and practice. Consumer/public representatives should “seek out relevant books and workshops, and take every opportunity to talk to other consumer representatives” to improve their skills. “The importance of obtaining feedback from a range of stakeholders on the performance and achievements of consumer/public representatives” is also significant to their self-development.
Effective consumer/public representatives use best practices from other sources to improve the board’s/organization’s performance. They also encourage a culture of continuous improvement, and give recognition where deserved.
Barriers to Effective Consumer Representation

Barriers to effective consumer representation include the lack of industry-specific knowledge, lack of technical or procedural expertise and the lack of training. A diverse and vast constituency, confidentiality rules that impede data gathering, and inadequate resourcing can also impede effectiveness. Inter-group conflict, perceptions by industry members as well as competing priorities and agendas between stakeholders and the DAA also negatively impact effectiveness.

It has been suggested that consumer/public representatives be provided with “guidance and training on procedures, with briefings on technical issues, in order to make their contribution both effective and based on a knowledge of real possibilities”\(^{54}\). Many respondents (both industry representatives and consumer/public representatives) suggested consumer/public representatives lacked sufficient industry knowledge.\(^{55}\) Access to information prior to meetings such as scientific or academic studies, surveys, accident or injury data, or comparative testing of products could provide the necessary assistance. Encouraging consumer/public representatives to sit on industry committees or standards committees could further deepen consumer/public knowledge. It must be clear that consumer/public representatives are not expected to become industry experts, rather, specific industry knowledge could help ground the consumer/public representative in the realities of the market being regulated.

Knowledge of organization specific procedural information regarding how meetings are conducted and what procedures are followed will enhance the effectiveness of consumer/public representatives’ participation\(^{56}\). Knowledge regarding the legislative process should be provided for all board members. Providing “orientation programs for new board members and refresher programs for continuing members”\(^{57}\) would allow representatives to “strive to make a difference for the organization and to advance its mandate”\(^{58}\). Several interview respondents stated that due to previous experience with boards, they knew what to expect and how to “play the game”, however, new consumer/public representatives to the board arena would likely find the process a bit overwhelming\(^{59}\). Not only must they be able, they must also have the time to devote to the board as several survey respondents claimed that a lack of time was hindering their ability to be effective as a consumer/public representative\(^{60}\). Please see Appendix F for tips on improving performance at meetings.
Board confidentiality rules can contribute to the feeling of isolation and impede efforts to reflect consumer or public opinion. One consumer/public representative interviewed made the point that their fiduciary duty did not allow them to consult or keep in touch with their constituency base.\(^{61}\)

Consumer representatives must be in touch with their relevant consumer constituency in order to be able to properly represent them. “The consumer constituency is the group of consumers who are the purchasers of, or are affected by, the goods or services covered by the board, advisory body, departmental working party, or committee”\(^{62}\). “Each representative adds value to the decision-making process because they contribute the knowledge, experience, interests, and perspectives of their constituency, and the judgement they have developed working with their constituency”\(^{63}\).

Having a vast and diverse constituency can pose some difficulty, particularly in reaching them, when no resources are available for the effort. Research about consumer/public issues and funding to access this information would be useful and informative according to a respondent in the survey conducted by the Council.\(^{64}\) DAAs should facilitate the connection consumer/public representatives need to their constituencies either by supporting new or gathering existing research for the consumer/public representative to use.

Generally, representatives who considered themselves to be public representatives believed that they were representing society as a whole. Some gathered information about society from the people around them, from the media or through consumer advocacy organizations. However, some chose not to access any outside information or research. They believed that their opinion was of an average person in society which implied that there was no need to access a constituency.\(^{65}\) Notably taking steps to improve their knowledge of what consumers or the public want or need ranked the lowest in importance on the list of criteria for an effective consumer/public representative.\(^{66}\) However, at the same time, results from the survey showed that greater consumer input would “strengthen their conviction and the quality of their participation”\(^{67}\).

Several interviewees described situations where consumer/public representatives were easily outnumbered by industry representatives.\(^{68}\) Feelings of isolation were reported because of this imbalance. Consumer representatives must be encouraged to participate in discussions more frequently to avoid feeling marginalized or second class.\(^{69}\) Consumer/public representatives are careful to consider their input and approach to board discussions so as not to alienate themselves.
from fellow members\textsuperscript{70}. Consumer/public representatives can sometimes end up being co-opted by industry representatives and start leaning toward industry priorities, losing sight of what is best for the consumer/public interest.

An interview respondent stated that negotiation skills training, conflict management and strategic planning training sessions would be courses on their “DAA wish list” along with the DAAs or the Ministry providing funding for consumer/public representatives to receive their director certification through an accredited program\textsuperscript{71}. By training Ministerial Appointees, the Ministry would demonstrate additional value provided to DAAs for the Ministry fees that are levied. Training in negotiation skills and how to deal with conflict would contribute to effectiveness as “people differ in comfort with confrontation”\textsuperscript{72}.

Low board pay was cited by one respondent as discouraging the necessary investment of time to discharge their duties\textsuperscript{73}. According to a Chair, the low director pay was impacting their ability to retain their consumer/public representatives\textsuperscript{74}. This does not apply to industry members where the DAA board supplements the salary they draw from their industry employer. None of the other DAAs cited low pay as an issue.

There appears to be a perception among board members that consumer/public representatives promote a government agenda or point of view. This was voiced by a number of respondents, particularly, one respondent suggested that consumer/public representatives stop “bringing biases to the table” or stop “complicating things – putting “protecting the Minister” ahead of protecting the consumer”\textsuperscript{75}. This is related to the concept of the “independent” director. An independent director is “independent of management and/or the controlling shareholders”\textsuperscript{76}. Clarity with regards to independence is required:

\begin{quote}
while the term ‘independent’ may have legal meaning, practically speaking it is an oxymoron when applied to directors ... the fact of the matter is that all directors represent and are related to someone and something. Independence is a state of mind, not a relationship. The truly independent director is one who may from time to time have conflicts of interest, but who recognizes them, declares them, can put them aside, and can address the issue at hand with rationality and a high level of objectivity\textsuperscript{77}.
\end{quote}
The most important predictor of director effectiveness is not independence, but strategic experience that matches the company’s needs.\(^7\)

*Making Boards Work* provides a list of signs and symptoms of problems in board effectiveness (figure 1).
Figure 1 - Signs and Symptoms of Problems in Board Effectiveness

1. Board Leadership
   - Lack of leadership in focusing on central issues
   - Chairman lacking the knowledge, attitudes, and skills required for effective leadership
   - Board functions are overlooked, downgraded, or blocked by Chairman
   - Important topics and problems avoided because of sensitivity and resistance of Chairman
   - Board pre-empted by CEO who is Chairman

2. Legitimacy of Power
   - Ordinary shareholders without power and voice
   - Unaccountable minority control blocks
   - Management takeover and pre-emption of boards
   - The Jobs of CEO and Chairman are combined

3. Job Definition
   - Job definition is unclear and disconnected from company’s strategic agenda
   - Lack of evaluation of board performance and director effectiveness

4. Competence
   - Lack of meaningful qualifications for directors and Chairman
   - Too many inside or related directors
   - Lack of needed expertise and knowledge
   - Lack of ordinary shareholder point of view

5. Board Culture
   - Board held in grip of a negative, dysfunctional culture
   - Board passive and reactive
   - Failure of directors to dissent
   - Inability to change approach or unwillingness to upgrade board operations

6. Board Management
   - Board not coming to grips with critical problems
   - Poor administration of board tasks
   - Disappointing and frustrating meetings
   - Poor organization of board committees
   - Lack of needed, well-organized information
   - Board too large to function effectively
   - Unsatisfactory compensation system
   - Lack of board succession plan
   - Ineffectiveness in emergencies or special situations

The above draws from the publication entitled Making Boards Work. Leighton, D. & Thain, D. 1997. pg 143.
The Chairperson's Role

The role of the Chairperson is to manage the group and preside over meetings. Responsibilities include a duty that meetings are properly convened, in quorum and in accordance with the organization's by-laws. The Chairperson must control meetings and ensure that they do not exude influence on the content of the meeting or the opinion of members. Ideally, the Chairperson is to remain impartial unless required to break a deadlock, although arguably, an effective Chairperson would seek to reframe a divisive question to arrive at consensus.

The role of the Chairperson is crucial to the effectiveness of consumer representatives. The effective Chairperson builds an inclusive board structure that does not isolate consumer/public representatives. Isolation can derive from being in the minority, from representing a diverse constituency and from a lack of detailed technical knowledge.

New Zealand's Ministry of Consumer Affairs, in their *Guidelines for Chairpersons* suggests chairpersons establish an environment that encourages communication by expecting members to:

- treat each other courteously at all times
- treat every member and their ideas seriously
- acknowledge that where a member is the only representative of a large constituency, they may need to speak more often in the interests of natural justice
- make decisions as a whole group working together and reaching agreement
- not bring personal and professional differences into the group unless it is entirely appropriate
- maintain their expertise as an advisor and representative by networking with their constituency within the bounds of confidentiality agreements

In addition, it was also suggested that the Chairperson:

- greet everyone by name and talk with members informally during the break
- grant every member the opportunity to address each issue
- apply the rules of natural justice
• make it clear to all members precisely what is confidential and what can be talked about and suggests how they might do that
• involve themselves in decisions about payments of expenses
• make sure everyone has access to the same information. This may include additional information provided for those who are not part of the industry
• deliberately build cohesion and trust within the group
• be open-minded and foster respect within the group
• deal immediately and effectively with conflict, difficult situations and difficult people \(^8^0\)

A question posed in the survey asked board members if they thought it was likely that a Ministerial Appointee (consumer/public representative) would be elected in the next three to five years as the Chair of their Board. According to the results, 72% of respondents did not believe that a consumer/public representative could become chair of their board in the next three to five years, with slightly more negative responses from consumer/public representatives \(^8^1\).

Consumer/public representatives cited the following reasons:

• the chair tends to be an industry representative with sufficient industry knowledge;
• industry leadership is critical to maintaining credibility with industry as it is key to getting voluntary compliance, cooperation with discipline and enforcement and addressing fee or revenue issues;
• an industry prejudice exists in favour of an industry chairperson;
• the chair’s appointment alternates between industry representative groups;
• there are statutory provisions that prohibit non-industry chairs;
• the board is controlled by a professional association;
• the board’s culture is to give higher respect to non-ministerial appointees; and
• possible conflicts of interest \(^8^2\).

Other board members claimed the following reasons:
• practitioners would react negatively;
• not a practitioner in this industry therefore, not as acceptable to stakeholders;
• stakeholders may want to see stakeholder visibility;
• it would trigger stakeholder dissent; and
• there is a large time commitment and complete knowledge of the industry.
Orientation Requirements

Proper preparation of new board members requires that “they become thoroughly familiar with the process and the current values and perspectives of the board they are joining”\(^8\)\(^4\). Areas orientation should cover include “knowledge of the specific company, its history, its problems, and its competitors”\(^8\)\(^5\). A robust understanding of the legislative process is vital knowledge for all board members. A fulsome orientation will allow new board members to be brought quickly up to speed.

According to Pealow & Humphrey of the Canadian Society of Association Executives, an orientation session should include:

- Purpose of orientation and rules
- Strategic statements
- Tools of governance
- Board responsibilities
- Board and staff relationship
- How to be a good director
- Officers and committees
- Meetings: planning and measuring results
- Insurance, legal and administrative aspects \(^8\)\(^6\)

A director’s guide or board manual is an “indispensable source, one that will be referenced often during a board member’s term of office”\(^8\)\(^7\). It should include the organization’s by-laws, minutes of previous meetings, financial statements and policies\(^8\)\(^8\). In combination with orientation, both will “go a long way toward capitalizing on the contributions of board members”\(^8\)\(^9\). Pealow & Humphrey also suggest the following list of director guide essentials:
Most of the DAA consumer/public representatives interviewed by the Council stated that they received an extensive director binder with an abundance of information. One interviewee stated that their binder included the DAA’s terms of reference, legislation, board structure, mission, values, mandate, policies and a description of the representative’s role and responsibilities. Consumer/public representatives that received the orientation binder were grateful to have received such a fulsome product. Particularly, one respondent commented that their kit was an essential reference used often during his/her term. Consumer/public representatives must receive sufficient (but not overwhelming) information to understand the structure of the industry and dynamics he/she will meet at the board table. As such, Chairpersons should allow consumer/public representatives time to account for their learning curve.
Many interviewees also had the opportunity to participate in a session with the Executive Director, Corporate Secretary or Chairperson of their DAA and were given an opportunity to meet the rest of the board. The only exception found among interviewees was by respondents who joined the DAA many years ago and couldn’t remember if they received any type of orientation. A few interview respondents stated that they were given the opportunity to participate in visits with management, and to the head office, call centres, and on field calls\(^4\).

The Ministry of Government Services organizes a yearly retreat for all of the board members of the Ontario DAAs. The purpose of this retreat is to strengthen the networks built amongst DAAs and to maintain the alignment between the DAAs and the government. Many consumer/public representatives interviewed claimed the retreats were useful and informative.

It was suggested by a DAA consumer/public representative that it would have been helpful if new representatives are given a mentor on the board upon joining\(^5\). It was found that this person felt that their only ally on the board was the president. However, upon approaching the president as a fellow board member, the conversation was dominated by the role of the president instead of as an equal. The key to this mentorship would be to join new consumer/public representatives to a board member that is not a part of the executive, but also not to another consumer/public representative as this may cause others to see them as a coalition to be reckoned with\(^6\).

A case study of the Canadian Standards Association’s consumer program describes an effective orientation and maintenance model.
CASE STUDY - Canadian Standards Association (CSA)

Consumer members of the Canadian Standards Association (CSA) are provided with a comprehensive orientation package. Further, orientation sessions with training materials that highlight the role of the consumer/public representative are also provided. CSA’s consumer representative orientation package contains:

- Definitions of: consumer, consumer representative, consensus, consensus process and consensus standard.
- A list of key documents that the committee is governed by
- The principles for consumer representation including financial support, access to research and expertise, and standards development training and information.
- The role and responsibilities of consumer representatives.
- Categories of membership.
- The selection process and appointment of consumer representatives.
- Maintaining membership as consumer representatives.
- A list of support in place for consumer representatives including reimbursed expenses, and technical and research support.
- An annex is also provided which includes a chart outlining where the consumer representative role fits into CSA’s organizational structure, and a list consisting of the eight internationally accepted consumer rights\textsuperscript{97}.

According to CSA, their Consumer Program:

- Recruits and supports consumer volunteers who participate on standards development committees.
- Operates a Consumer Network of individuals who participate in surveys and focus groups.
- Conducts research on consumer issues and trends.
- Works with consumer organizations and user groups on key consumer issues.
- Coordinates public consultations such as forums and advisory panels\textsuperscript{98}. 
CSA Consumer Program assists consumer representatives in their duties. CSA provides support for their consumer representatives, including:

- Training and orientation on CSA’s processes, standards developments policies, procedures and activities.
- Financial support to cover travel expenses to attend committee meetings.
- Opportunities to network with other volunteers.
- Access to research materials and reports.
- Assistance with research to help establish consumer positions.
- Information about CSA, standardization and activities of CSA’s Consumer Program.  

Of particular interest is a long-standing request CSA has of its consumer representatives to inform them of any issues that arise that may be of consumer interest, any problems the consumer representative is experiencing, any assistance the consumer representative requires, and any processes the consumer representative may request CSA be involved in.

CSA also provides their consumer/public representatives with online workspace. This is used as a communication vehicle to post reports, tools, reference materials and forms. It can also be used as an electronic network to raise issues, have discussions or conduct mini research on issues.

CSA also encourages their consumer/public representatives who work in similar areas to get together and share best practices, develop positions and network. There are dedicated online forums for each group in the areas of health, electricity and business management to name a few. When CSA conducts training sessions or conferences, it encourages and supports the cultivation of these coordination groups.

The Ministry of Government Services would benefit immensely by building a network of support (and facilitating regular meetings) similar to CSA’s Consumer Program and Consumer Network. The development and utilization of this network would allow consumer/public representatives to become more effective by building a sense of community among all consumer/public representatives throughout all of the DAAs. It would encourage research into the public’s interest and increase the communication among consumer/public representatives as a whole.
The Consumer Advisory Committee (CAC) within each DAA is a great source of information for consumer/public representatives. It will assist them in the bringing forth relevant issues and the consumer/public perspective to the board. Despite having a CAC, some interview respondents noted that they did not utilize them\textsuperscript{102}. A mechanism must be established that allows a connection between the CAC and the board. CEOs or board members who are consumer/public representatives should be encouraged to sit on the CAC and bring forward pertinent information to keep the board informed. Else, the CAC should provide a short report or presentation for the board describing current activities and issues.
Measuring Effectiveness

An effective board “must be made-up of members with the competencies required by the organization to fulfill its strategies and to meet its obligations, and the members must be able to work together to come to effective decisions”\(^{103}\). *Making Boards Work* lists the following six key success factors for an effective board:

1. Outstanding leadership;
2. Unquestioned legitimacy and effective power;
3. Enlightened definition of function, role and responsibilities;
4. Outstanding competence;
5. A supportive, functional culture; and
6. Efficient management of function, structure and process\(^{104}\).

Board Assessments

Determining effectiveness may be accomplished through board, individual, self and peer assessments. Carol Hansell suggests that “although governance reports have advocated board assessment for some time, relatively few boards have implemented an evaluation process in any meaningful way”\(^{105}\). DAAs too vary as some assess routinely while others do not.

According to the New York Stock Exchange’s corporate governance listing requirements, “boards should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively”\(^{106}\). In particular, an evaluation should be conducted to determine the effectiveness of the board’s approach to managing sustainable consumer participation and representation\(^{107}\).

Despite the belief that “a lack of feedback is self-destructive,”\(^{108}\) a few DAA interviewees stated that they did not find any value in the assessments\(^{109}\). This was especially true when the gaps identified in the assessments were not addressed or acted upon. According to one respondent, the assessments are useful “to the extent that the board is predisposed to honestly examining its shortcomings. This is sometimes precluded by the board’s culture, especially if there is a prideful resistance to
According to Nadler, “conducting and acting on such assessments are among the top activities most likely to improve board performance overall.” The Canadian Society of Association Executives provides the following sample checklist for the board:

- Knows the corporate mandate; its mission, vision and objectives; its operations; and its by-laws;
- Always acts objectively, and in the best interest of the corporation;
- Every director prepares for all board meetings, and all committee meetings of which the director is a member, by reviewing all agenda material including reports;
- Every director attends, and participates in, all board meetings, and all committee meetings of which the director is a member;
- Keeps careful notes at meetings, and review the minutes of all meetings;
- Insists upon the establishment and regular review of operating policies, and monitor staff adherence to them;
- Obtains outside expert advice whenever necessary;
- Board members disclose all personal dealings as early as practical;
- Board members refrain from voting only where necessary;
- Records, and ensures that minutes record directors’ disclosures, dissent or refrain from voting;
- Ensures that there are effective internal systems in all areas of corporate activity, particularly accounting;
- Avoids possible conflicts situations; and
- Maintains proper record-keeping systems.

According to Hansell, board assessments are often conducted via a questionnaire or a one-on-one discussion “in which directors are asked if they believe they receive appropriate information in a useable form, whether there is enough time at meetings for discussion, whether management presentations are useful, etc.” Other areas that may be evaluated include such dimensions as “its understanding and development of strategy, its composition, its access to information, and its levels of candor and energy.” Board effectiveness depends on a combination of board structure, board membership and board process. According to the Ivey Business Journal, “board process is defined as how directors make decisions and the behaviour of the individual directors...
themselves"116. Board membership is defined as “how directors come to be recruited onto a board, the balanced competencies of existing methods and the methods that are taken to remove a director from the board”117.

The results of the board assessment are provided to the Chairperson of the board or the Chairperson of the governance committee in order to improve future board functions118.

Individual assessments are conducted by the governance committee or by an outside consultant. An important way of assessing the success of a consumer representative is “whether they have been able to make a positive difference to the outcomes of a committee or program”119. A consumer/public representative may be considered effective if their requests and/or suggestions have been sufficiently taken into account in final decisions made by the board120. It is important that the consumer/public representative have access to their constituency and represents them by bringing forward their wants and needs while building the necessary relationships with other board members121.

The Chairperson of the board or the Chairperson of the governance committee discusses the results with the director while “determining whether the organization should provide any assistance to the director in operating more effectively”122. Director effectiveness depends on a combination of director independence, director competencies and director behaviour123.

According to Hansell, self-assessments are “generally the least threatening approach to director assessment”124. In this assessment, directors must rate their own performance according to criteria identified by the governance committee or outside consultant125. Board members can review “the use of their time, the appropriate use of their skills, their knowledge of the company and its industry, their awareness of key personnel, and their general level of preparation”126. See Appendix G for a sample self-evaluation form.

Peer assessments involve each director assessing the performance of each of the other directors127. Peer assessments often rate an individual director’s “demonstrated knowledge of key areas, their understanding of and preparation for their roles as directors, the quality of their input or advice and their contributions to board interaction”128. It could also consider “the constructive and less constructive roles individual directors play in discussions, the value and use of various board
members’ skill sets, interpersonal styles, individuals’ preparedness and availability, and directors’ initiative and links to critical stakeholders”. A trusted advisor or outside consultant should collect the evaluations and summarize the results. Each board member will then receive a summary of their peers’ ratings and comments, ensuring “anonymity of all respondents and follows the best practices of 360-degree feedback”. Peer assessments tend to “influence decisions about recruitment, retirement, committee leadership and selection, and education initiatives”. However, a note of caution, peer assessments may sometimes result in building tension among board members. An interview respondent stated that their DAA used to conduct peer assessments; however, this practice was discontinued due to the results becoming too personal and targeted towards particular board members.

Objective-based evaluation of director performance appears not to have been implemented even among the DAAs with the most evolved evaluation processes. As a result, evaluations become beauty contests rather than evidence-based measures of performance. Performance assessments should be more objective-based with explicit references to desirable, demonstrable behaviour.
Conclusion & Recommendations

Delegated Administrative Authorities (DAAs) are new corporate structures that derive their authority from government. DAAs regulate, impose standards and dictate the conduct of a vast array of industries. They are accountable to the public and to the government that provides their authority. In many cases, DAAs replace a function previously provided by the government. The DAA model is generally considered to be successful. This report examines ways to enhance the effectiveness of DAAs, and their board members who represent the consumer and public interest. This report provides a profile of characteristics, knowledge and competencies necessary for effective consumer/public representation on DAA boards. The hope is that this report will aide DAAs and the Ministry in the selection, orientation and training, evaluation and on-going support of their consumer/public representatives. It should also help consumer/public representatives to understand what knowledge, skills and abilities they are expected to possess.

In British Columbia, the British Columbia Safety Authority was delegated its authority through the Safety Standards Act, 2004 and the Railway Safety Act, 2004. In Alberta, the Alberta Boilers Safety Association received its authority through the Government Organizations Act, 1995. Eight Ontario Delegated Administrative Authorities (DAAs) were granted their authority through administrative agreements with the Ministry of Government Services.

A review of the literature revealed that an effective consumer/public representative:

- thoroughly understands the mission and vision of the DAA
- knows or is committed to learning the essential aspects of the industry being regulated
- has the ability to manage and adapt to change
- drives for continuous improvement and self-development
- possesses exceptional leadership, team and communication skills
- has or seeks out governance training including how boards function, their purpose and range of operating modalities
- has good negotiation and communication skills
- has the ability to analyze an issue and judge its effects on consumers and the public
- presents arguments rationally and convincingly
- assesses the short and long term consequences of pending decisions
In each of these cases, the DAA has a responsibility to facilitate the acquisition of needed knowledge, skills, and abilities.

Barriers exist to effective consumer/public representation. These include a lack of industry-specific knowledge, lack of technical or procedural expertise, and the lack of training for Board membership. A diverse and vast constituency, confidentiality rules that can impede data gathering, and inadequate resourcing can also impede effective representation. Finally, pre-established perceptions by industry members and competing priorities and agendas between stakeholders and the DAA can also negatively impact consumer/public representatives’ effectiveness.

An important theme that arises in this report is the need to increase the industry knowledge of consumer/public representatives. Both consumer/public representative and other board members have stated that a lack of industry knowledge impedes the consumer/public representative’s ability to be more effective. Consumer/public representatives need better access to consumer and public opinion to better reflect their perspectives on particular issues.

A comprehensive orientation session is vital for all new board members as it allows new members to become effective more quickly. A director’s guide or board manual is an important aid that should be provided to all board members. DAAs would benefit from helping to build a consumer network among all consumer/public representatives that could meet on a regular basis and that could connect all DAAs.

DAAs should utilize a range of assessment techniques to measure the effectiveness of board members including consumer/public representatives. Board, individual, peer and self assessments are available as well as one-on-one interviews with the Chair and in-camera board meetings. Addressing the gaps identified in board member evaluations is as essential as conducting the assessment. Tracking progress is vital for overall board improvement.

The Scottish Consumers Council’s 14 points of good practice, a sample self-evaluation form, tips for improving meetings, requirements for effective negotiations, and an annotated list of resources are provided in the appendix.
Recommendations

Some DAAs address board member effectiveness better than others. The intention of this report is not to compare DAA practices or identify their specific shortcomings but rather to present the full range of recommendations that might serve as a checklist against which DAAs can measure themselves.

Consumer/public representatives should be able to:

1. discern the difference between the public interest and the narrower consumer interest;
2. list the consumer rights and responsibilities and apply them as a screen to decision items;
3. access or initiate consumer/public research;
4. represent a minority view without fear;
5. make tough decisions when called upon;
6. assess facts in formulating positions as part of their critical thinking skills;
7. communicate well;
8. be flexible and encourage new approaches and innovation when change is needed;
9. seek to establish a dialogue with other consumer/public representatives;
10. understand and discharge their fiduciary duty, commit to governance excellence by learning and acting on accepted governance best practices particularly for not-for-profit boards and go to meetings prepared with a plan of action, including how to introduce points and what facts or research are needed as support;
11. recognize and avoid “groupthink”; and
12. seek out and utilize information available from consumer advisory committees.

DAAs should:

13. provide information and training on technical issues;
14. provide fulsome knowledge of the regulated industry, their issues and regulatory environment aimed particularly at non-industry board members;
15. provide orientation programs for new board members and refresher programs for continuing members – including information on the legislative process;
16. encourage CEOs or consumer/public representatives to sit on their Consumer Advisory Committee so that he/she can bring forward pertinent information to keep the board informed.
17. provide training or resources to access training to improve negotiation, conflict management; strategic planning skills and corporate governance knowledge;
18. better understand and act to address the inability of most consumer/public representatives to access the views of consumers and the public on important strategic decisions. Consumer/public representatives should be encouraged to play a more central role in DAA efforts to gather opinion data from consumers and the public;
19. assess the performance of board members regularly, using various assessment instruments, including board, individual, peer and self assessments, Chair interviews and in-camera discussions. Performance assessments should become more performance objective-based with explicit references to desirable, demonstrable behaviour;
20. address the gaps identified in board member assessments; and
21. provide new consumer/public representatives with a mentor either from within the board or outside of the board.

Two additional recommendations:

22. Each board’s Chairperson should promote a culture of mutual respect, reinforcing the contribution consumer/public representatives and the important role they play.
23. The government should build a consumer/public representative database support network and facilitate regular (quarterly) meetings.
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