Grey Areas
A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION
SML Steinecke Maciura LeBlanc Barristers & Solicitors

Measuring Regulatory Performance
Part 2 – Less Common Features

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How should regulators measure their regulatory performance? As noted last month, we were surprised at a newspaper reporter's observation that securities regulators were less effective regulators because they obtained lower fines and less prison time than in previous years.

We have conducted a review of the most recent annual reports (all for 2021) of ten Ontario regulators. Five were for regulators of health professions and five were for regulators of other professions. We selected a mix of larger, medium and smaller sized regulators. Our goal was to identify what objective measures of performance the regulators highlighted in their annual reports.

In Part 1 we examined the more common or recurring performance measures contained in regulatory annual reports. In this Part we will look at less frequently used measures of performance that some regulators chose to publish.

Demographic Data

Demographic data about a profession is not a performance measure in itself. However, the data can be relevant to assisting policy makers in workforce planning (e.g., age range, full or part-time practice, areas of practice). Five of the reports provided at least some of this sort of information.

In addition, some EDI data (e.g., race, gender, age, country of education) can be relevant to equity, diversity, and inclusion initiatives. Three of the reports provided this information, again to varying degrees.

Inquiry Response Times

One of the reports contained data on response times for inquiries from registrants or the public. For example, what percentage of inquiries were responded to within 24 or 48 hours.

Another report contained data on the average time callers to their call centre were placed on hold. The regulator reported a significant increase in wait times that was well over its target prompting a discussion of its origin and measures taken to address the concern.

Another report did not contain this information but provided the total number of inquiries received and responded to by the practice advisor to registrants (i.e., a throughput number). Another report indicated an enhanced commitment from two-days to one-day response times but did not report on its success.

Communications

Four of the reports set out statistical information about the effectiveness of their communications such as the frequency with which messages from the CEO were opened, or the number of social media followers, impressions, and engagements. One regulator provided detailed statistics of coverage of its activities by print, broadcast and online media and the number of media inquiries. Most regulators probably have at least some of this data but did not consider it worthy of inclusion in their annual report.

Board Performance

One of the reports contained interesting measures of the performance of the governing Board. Examples included dashboards on percentage of Board members who attended meetings, percentage of Board members who attended orientation sessions, whether the Board assessed the CEO's performance, the hours of continuing education provided to Board members, and an evaluation of whether the Board

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members accurately responded to questionnaires about their understanding of their public interest role. Most of the dashboards for this portion of the report contained targets that the regulator was attempting to achieve.

Regulatory Performance

As noted in Part 1, all of the health regulators are required to report on a government-required College Performance Measurement Framework (CPMF). In addition, one of the regulators has developed its own voluntary performance measurement framework that uses criteria analogous to that used by the Professional Standards Authority of the United Kingdom. The regulator assessed whether it has met the twenty standards (e.g., Regulation is proportionate to the risk of harm being managed).

Other Unique Features

Some of the reports contained additional measures of performance that were not found in the other reports.

One regulator had a link to separate report on its EDI initiative. That report contained information about the number of visits to the EDI page on its website compared to total visits to its website (0.03% of total site traffic). The report also gave the number of pageviews of its five EDI cover stories in its newsletter, which figure was more than six times the number who had visited its EDI page. One could describe this kind of reporting both courageous and informative.

One of the reports limited the information reported to a single theme (i.e., how the regulator is strengthening the health care system, especially during the pandemic).

As noted in Part 1, one of the reports was in a webpage format with multiple links to specific documents. The cumulative report was hundreds of pages long. It was quite difficult for someone not familiar with the organizational structure to navigate or to locate specific information. However, there were scores, if not hundreds, of performance measures to be found on many aspects of its operations.

Another regulator contained statistics of the use of online communities it had set up, including the number of active users, the number of users who had posted discussions, and the number of volunteers that were involved.

One of the reports contained information about its privacy improvements including a 52% reduction in boxes of paper stored off-site.

Another regulator reported on its commitment to providing services in French. Interestingly, despite its receiving over a hundred thousand calls, only 15 were in French. In addition, despite receiving over 2000 complaints, only one was in French.

Conclusion

Regulators continue to work towards trying to identify and publish meaningful measures of their performance. The regulators' annual reports are an intuitive place in which to publish these statistics. However, there is little consensus in identifying which performance measures are relevant, useful, and quantifiable. Much more work needs to be done before consistent and meaningful reporting can be provided by regulators.

In the meantime, regulators will continue to provide qualitative reporting and, occasionally, rely on third party reviews.

To see the reports themselves, go to:

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