

## LET'S TAKE A MINUTE TO TALK ABOUT MINUTES

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By Adrienne Bellehumeur, CPA, CA

Can we take a minute to talk about your minutes?

Most of us understand that minutes need to demonstrate that an organization is acting in the best interests of its owners or funders. They can be used in case of a lawsuit or to support a merger or key transaction. Minutes can also be requested by a wider group, for example your shareholders.

But is our hyper-focus on the rules, protocols, and their legal and regulatory implications a compelling enough reason for great minutes? Actually, no it's not.

Minutes, like all documentation best practices, should be purpose-driven. We document to drive action and change outcomes. If you write "call Mom" on your to-do list, are you more likely to do it? Probably.

Your minutes should be designed to help drive better clarity, analysis, thinking, action, and overall value for your organization.

I am not a lawyer or a Corporate Secretary. But over the last ten years, I have reviewed thousands of minutes for my clients. In my experience, minutes can be key evidence of a company's control environments, due diligence, and oversight.

Let's take a look at some key actions that you and your Board can take today for better minutes.

### UNDERSTAND THE BUSINESS JUDGMENT RULE

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***Business Judgment Rule: How you prove that you did your due diligence in making a decision or overseeing the organization.***

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The Business Judgment Rule is about demonstrating what's on the collective Board brain.

The readers of your minutes aren't mind-readers. Minutes need to show your thinking through things like discussion, deliberations, consideration of alternatives. This means being clear and transparent.

Take, for example, the unfortunate situation where a company has a workplace incident that resulted in a serious injury of an employee.

- Company ABC has a Health and Safety Committee, with quarterly meetings, documented presentations of safety statistics, safety audits, and discussion by the Board of the remediation of safety risks based on a priority schedule recommended by the Committee.

- Company XYZ has no Health and Safety Committee and has documented once a year in the minutes, “The COO provided a Safety Update.”

Which company is more at risk of punitive damages from the regulator or potential lawsuits? Despite the terrible situation, Company ABC can demonstrate that it was making diligent efforts to ensure safety at their workplace. For company XYZ, their directors may be at risk.

This example makes the Business Judgment Rule look straightforward. But, in practice, it takes a lot of professional judgment – and a lot of professional gut-check.

It is not uncommon that I see nebulous notation like “discussion ensued” after Management has presented a budget, insurance review, financial update, or other. This may be ok for certain routine or low-risk discussions. But the trick in meeting the Business Judgment Rule is that you show your thinking for areas that matter most.

## APPLY THE GOLDILOCKS PRINCIPLE

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**Goldilocks Principle: Practices or documentation that is not too minimal or too detailed – that is, “just right”.**

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While I have seen minutes at both ends of the spectrum, minutes shouldn’t be minimalist, nor should they be a verbatim transcript.

The key is to strive for the Goldilocks rule of “just right”. (This is, of course, also easier said than done.)

Minutes should stand on their own. When your minutes are being drafted, consider them as being read by someone who did not attend the meeting.

Would someone who didn’t attend the meeting be able to understand the depth of thought, discussion, and deliberation that took place to reach key decisions? Would they understand the minutes without someone explaining it? Would they understand the messages easily?

The right level of detail, not too little – and actually not too much – will make your minutes immediately understandable to your audience.

## CROSS-CHECK WITH YOUR CHARTER AND MANDATES

Your Board and Committee mandates set the stage for your corporate governance. But how do you make sure that your Board and Committees are following them consistently?

(Answer: Through your minutes.)

While I don’t encourage a “tick the box” approach to your minutes overall, here is where a checklist does come in handy. As a best practice, I encourage my clients to perform an annual cross-check of their charters and mandates to their minutes.

Did the Board or Committees discuss all items in the mandates? Were there other topics discussed that aren’t in the mandates? For example, if your Board’s mandates says that CEO succession planning is a key responsibility, this should be on the agenda and in the minutes at least annually.

This review is typically performed by the Corporate Secretary to ensure that the Board and Committees are discharging their responsibilities appropriately. Use this exercise as an opportunity to improve your level of discussion, your charter and mandates, and your governance approach.

## AVOID COMMON MINUTES PITFALLS

And, finally, after my extensive experience in looking at minutes, I urge you to avoid some of the most common pitfalls.

- *Rinse and repeat* – The most common issue that I see at my clients is overly template-based minutes with the same materials presented and rehashed with similar wording, on a repeat loop. Don't just go through the motions. Make sure that your minutes reflect different thinking, lively discussion, and fresh perspective.
- *Letting discussions fall into an abyss* – If one of your directors asks a question in the Q2 meeting and Management says they will respond in Q3, make sure that that happens. And, if the discussion didn't happen for one reason or another, make sure to document that too. Minutes are supposed to reflect the Board's ongoing dialogue throughout the year. There should be a clear trail of this discussion.
- *Not attaching key materials* – Your Board is probably good at including their recurring documents, such as quarterly financials, but my experience is that "other" items are often forgotten. Materials that are referred to in the minutes, especially if they are related to a resolution – such as revised budgets, policies, contracts, loan agreements – should be attached. Without the right attachments, it is easy to get confused about which draft (of many) the Board or Committee is actually approving or referring to.
- *Waiting too long to draft or review* – When directors meet quarterly, this is often the first time that they have seen the minutes from the last meeting. Since the last meeting, they may have been to Europe, Mexico, their nephew's wedding, and built a garage and had numerous other meetings. Is it reasonable they

will remember what was said and deliberated three months ago? Not a chance. To get more feedback, leverage, and action from your minutes, circulate them faster than quarterly (even if the formal approval may be at that time).

While this is by no means a comprehensive list of everything that you need to know about minutes, these tips should give you a great way to step back – and take a minute to think about minutes.

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Adrienne is an in-demand consultant, speaker, trainer, and writer on documentation best practices and has written two books on the subject.

## THE BOARD MINDSET

We can help you formulate a strategy that works:

- Defines the choices a company is making about who is and who is not a customer
- Doesn't serve as a rationalization for budgets
- Challenges assumptions
- Seeks to reduce risk, not avoid it
- Serves as a framework in which adjustments are expected and can be accommodated

We advise on any unaddressed issues to help the board and the company move forward. If you have any questions about The Board Mindset, visit [www.theboardmindset.com](http://www.theboardmindset.com) or [contact us](#).