What is public company governance? V2

What is the purpose of this article?
Provide a framework which enables public company shareholders, boards of directors, C-Suite, and other to begin discussing what is governance.
This article is written from a Canadian perspective. Governance varies significantly around the world.
This article does not provide legal advice.
What are the critical learnings in this article?
You have to determine what exactly is meant by governance in your public company's specific situation. No outside expert can tell you because there is no one single answer

What is a public company?
The definition and characteristics of what is a public company depends upon the where the company is legally based.
1) In Canada a public company is "a company whose shares trade on a stock exchange"[1]
2) "German Public Limited Company (Aktiengesellschaft-AG) is a company having a legal personality of its own. It ownership is organized via shares of stock. As a general rule, the shares of stock can be transferred by the stockholders. A public company can be listed on a stock exchange (listed company) or not (unlisted public company)"[2]

What is corporate governance?
"Corporate governance involves a set of relationships between a company's management, its board, its shareholders and members of the company's ecosystem. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. "[1]

This definition has 4 components:
1) Relationships among the company's ecosystem members.
2) Decision making i.e. setting objectives and approving action plans.
3) Action plans i.e. means of attaining those objectives.
4) Performance monitoring of the objectives, action plans, relationships.

Discussion around governance is often very silo based and depends upon the specific background of the governance advisor e.g.
1) Lawyers often start with the Business Corporations Act. Sometimes the legal framework is a social purpose corporation, such as a B Corp., or a partnership or a joint venture.
2) Regulators often start with financial risk management guidelines.
3) Accountants often start with quality of financial statements.
4) Consultants have a variety of different points of view.
5) IT (Information Technology) governance advisors have an IT-centric perspective.
6) Values, morals, and ethics may not be seen as a critical part of corporate governance.
Etc.

Often there this is a legal perspective of acting in the best interests of the corporation or the shareholders or other members of the company's ecosystem. What does this actually mean? Two example questions, for which I don't have the answer:
1) If climate change is real, should the company reduce or eliminate it's impact on global warming, even if that reduces company profits, shareholder dividends, and compensation for the board of directors and C-Suite?
2) Should the company lobby governments to reduce or eliminate environmental laws and standards in order to increase company profits?

After company management, its board, and its shareholders have heard from several different advisors, there is a confusing and disjointed picture of governance with limited shared understanding.

In Canada, there is a broad range of decision making authority in a public company. Some of the possibilities are listed below.
1) Public company with no controlling shareholder. Shareholders elect directors and approve major change. Thus, the board directors have the bulk of decision making authority, but may delegate much of this authority to the CEO.
2) In certain cases, shareholders with a large equity or voting interest in the company have the legal right to appoint a director or directors.

3) A public company may have a voting trust. One person had the authority to vote all of the shares in the voting trust. There are situations where the voting trust controls more than 50% of the votes. This often enables the person who votes the trust's share to have major influence on company decision.
4) A public company may have dual class shares. Some shares may have no voting rights. Some shares may have multiple votes. Thus, a person, or group, with a small amount of equity may have voting control of the company. This may occur with company founders or the founding family.
5) Financing agreements may have terms and conditions which constrain the company's decision making and may even provide the financers with decision making authority in certain situations.
6) OSFI (Office of the Superintendent of Financial Institutions) requires pre-notification of the appointment of officers or nomination of directors for the financial Institutions OSFI regulates. OSFI then has the opportunity to share any concerns or comments.

An interesting example of public company governance and the role of the board of directors occurred in Canada in fall 2021. The board of directors of Rogers Communications (a multi-billion dollar company) removed Edward Rogers, the board chair. Mr. Rogers, who controlled 97.5% the voting shares, then removed a number of directors and put in place directors who re-appointed him as board chair. What I observed was, if directors did not do as they were told by a shareholder, the shareholder would then replace them with directors who would do as they were told.

What are your next steps?
1) Identify the decisions within your company's ecosystem which have the greatest impact on value.
2) Define who has the authority to make those decisions. As noted above, many decisions impact your company are made by people outside of your company.
3) Remember that some people, who don't have legal authority, may still have moral persuasion powers (e.g. If OSFI in Canada expresses major concerns about a potential board director, what will the financial institution do?).
4) Look at the regulatory regimes and governance practices of the different jurisdictions your company operates in, provides services or products, or has suppliers in.
5) Consider different scenarios. Who makes decisions can be very different in crisis than in the situation where everything is wonderful.

Footnotes:
[1] https://www.bdc.ca/en/articles-tools/entrepreneur-toolkit/templates-business-guides/glossary/public-company
[2] https://www.german-probate-lawyer.com/en/glossary/def/public-limited-company-aktiengesellschaft-ag.html

What further reading should you do?
What is the purpose of your company?
http://koorandassociates.org/corporate-governance/what-is-the-purpose-of-your-company/
What is corporate governance?
http://koorandassociates.org/corporate-governance/what-is-corporate-governance/
How does the board of directors create value?
http://koorandassociates.org/corporate-governance/how-can-the-board-of-directors-create-value/
"What CEOs really think of their boards", Jeffrey Sonnenfeld, Melanie Kusin, and Elise Walton. *Harvard Business Review* 2013 April
https://hbr.org/2013/04/what-ceos-really-think-of-their-boards
"Does your board really add value to strategy?", Professor Dieder Cossin and Estrelle Metayer, IMD Global Board Center
https://www.imd.org/research-knowledge/articles/board-strategy/