

REPORT OF THE SPECIAL ADVISOR ON AGENCIES

December 20, 2010

Rita Burak

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Dear Minister Takhar:

Attached is my report on the review of Ontario agencies. It has been a privilege to work on this project.

I would like to extend my personal thanks to the Agency Review Project Team and to the staff of the Ministry of Government Services and the Public Appointments Secretariat. I also thank the Ministers' chiefs of staff, deputy ministers and agency chairs and CEOs who took the time to speak with me and share their insights and knowledge.

I believe the recommendations in this report, if implemented, will strengthen the governance and accountability frameworks which apply to the agencies as well as improve the monitoring and evaluation practices of ministries and central agencies.

Yours truly

A handwritten signature in cursive script, appearing to read "R. Burak".

Rita Burak

AGENCY REVIEW

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INTRODUCTION

There are many reasons for creating agencies outside of the conventional government structures. The most common are to ensure independence in quasi-judicial matters, to obtain independent expert advice and to deliver a service or operate an enterprise using specialized expertise or capabilities.

The topic of agencies and their role in public administration has been studied periodically over many years. For example, Report Number Nine of the Committee on Government Productivity, dated March 1973, reviewed their purpose and made recommendations for improvement.

Today, ensuring that all its agencies operate within an appropriate governance and accountability framework is a priority for the Ontario government and the reason it called for this review.

Purpose and Mandate

To this end, Ms. Rita Burak was appointed through an Order in Council as a special advisor reporting to the Minister of Government Services and given the following mandate:

- Review the governance framework and accountability mechanisms of agencies with a particular emphasis on operational agencies
- Review ministry and central agency monitoring and evaluation practices with regard to agencies
- Make recommendations for further improvements.

Scope and Approach

A small project team comprised of public servants was assembled to assist Ms. Burak. In addition, staff from the Ministry of Government Services, including the Public Appointments Secretariat provided support to the review.

The review took place over approximately five months (July – December 2010).

Over the course of the review, it became clear that the emphasis on operational agencies needed to be broadened to include all those agencies that are governed by boards of directors. The need for robust governance and accountability frameworks takes on special importance in board-governed agencies.

Specifically, the team reviewed the following:

- Governance policies and accountability frameworks that apply to more than 250 classified agencies and a number of board-governed non-classified agencies

- Monitoring and evaluation practices of ministries and central agencies with regard to agencies.

Note: Issues of compensation, procurement or agency appointee expenses were not covered in the Terms of Reference.

A range of documents and source materials were used to inform the review including relevant academic papers, expert reports, and reports from the Auditor General of Ontario.

A jurisdictional review of policy and accountability frameworks and an examination of the latest trends and best practices in governance in the public, private, and not-for-profit sectors provided valuable insights into good governance and accountability practices.

A number of agency chairs and chief executive officers were consulted, as listed in Appendix A , as well as political chiefs of staff to ministers, and deputy ministers.

How to Read this Report

The report is divided into an introduction, four chapters and appendices:

Introduction provides the purpose and the scope and approach of the review.

1. Ontario's Agencies Today provides an overview of Ontario's agencies as well as information on the role of the various key players and on the appointments process.

2. Research Findings and Observations is divided into two sections. One is a jurisdictional review, and the other is a discussion on the latest trends in governance.

3. Recommendations is divided into two sections. The first section provides an overview of all recommendations. The second section gives the rationale behind the recommendations. It is divided into two parts: Strengthening Agency Board Governance and Accountability, and Improving Ministry and Central Agency Monitoring and Evaluation Practices.

4. Conclusion ties together the various themes that run through the report and leaves the government with one or two final thoughts to consider.

Note: Different jurisdictions use different terminology to describe an agency, with a more general term being 'public entities'. However, for the purposes of this report, the term 'agency' is used to include all public bodies and entities.

CHAPTER 1

ONTARIO'S AGENCIES TODAY

An Overview

'Agencies' is a broadly used term.

In total, there are 630 agencies listed on the Public Appointments Secretariat website. These include all bodies to which the government makes at least one appointment. They can be divided into two groups: non-classified and classified agencies.

This review focuses for the most part on classified agencies, but will make reference to the electricity companies which, while not classified, are governed by boards of directors to which the government makes all appointments.

For clarity, a brief background on non-classified agencies follows.

Non-classified Agencies

More than 300 of the 630 agencies are referred to as non-classified agencies. They are generally excluded from the financial and administrative requirements of the Ontario government but the government makes at least one representative appointment.

Unlike the classified agencies, non-classified agencies are not subject to the Agency Establishment and Accountability Directive, the most significant accountability instrument of government.

The non-classified agencies have a wide variety of purposes:

- Self-regulating, e.g., Law Society of Upper Canada, College of Physicians and Surgeons
- Self-funding, e.g., Municipal Property Assessment Corporation
- Self-governing, e.g., Boards of Colleges and Universities, Police Services Boards
- Ontario Business Corporations Act structured companies such as Hydro One and Ontario Power Generation, which operate utilities.

Classified Agencies

There are approximately 258 classified agencies. Not all are called an agency, there are boards, commissions, councils, authorities, foundations, and trusts included in the agency mix. Often they are referred to as the ABCs (agencies, boards and commissions).

For the purposes of this review, the term agency will be used to refer to all classified agencies, unless otherwise noted.

A classified agency is generally constituted by a statute, a regulation under an existing statute, or an Order in Council. The government makes the majority of the appointments.

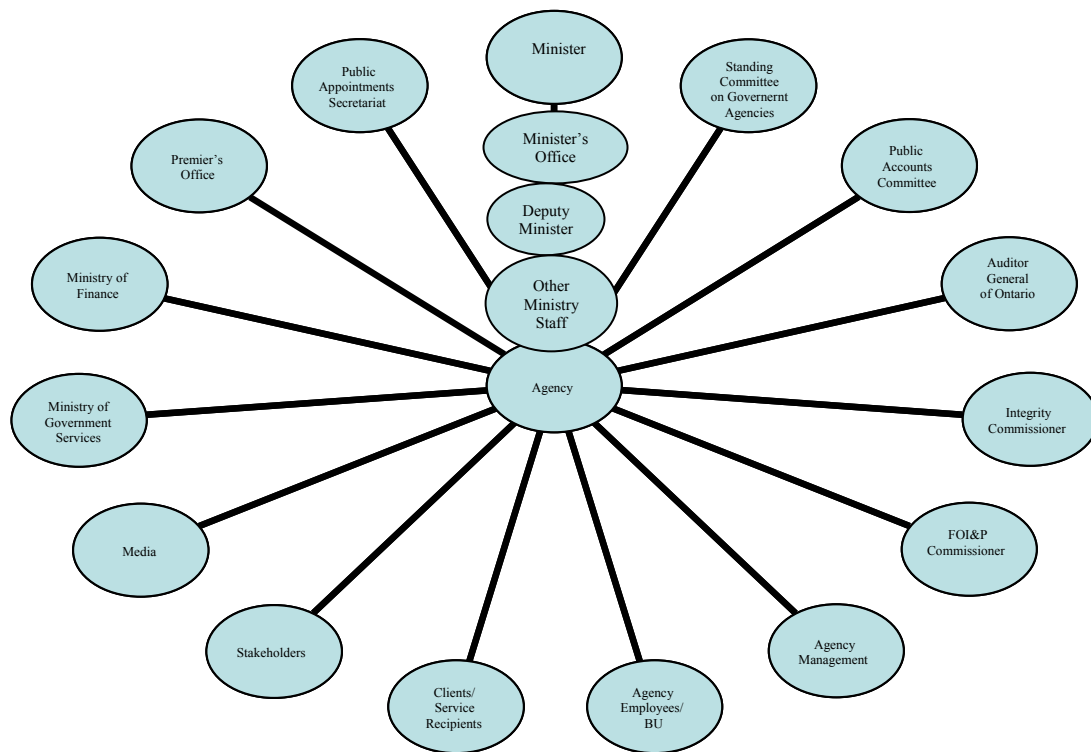
Ontario's agencies are diverse and complex. They are usually established for one of the following three purposes:

- To provide technical advice and expertise
- To allow for quasi-judicial decision making that must be independent of direct political involvement
- To deliver a service or operate an enterprise using specialized expertise or capabilities not found in conventional government structures, e.g., responsiveness to commercial markets, or flexibility in administration to realize priority projects.

That said, there are many variations of form and function, as well as an array of policies and separate laws that apply to different categories of agencies.

Agencies vary in size from large operating agencies such as the Liquor Control Board of Ontario to small advisory committees such as the Ontario Geographic Names Board.

Agencies work within a remarkably complex environment, with a multitude of stakeholders and partners. The figure on the next page illustrates the variety of relationships and interactions. This complexity is often not well-understood. It speaks to the need for clarity in the expectations placed on agencies and for rigour and consistency in the governance and accountability required of them, as well as for the appropriate tools and supports needed to ensure that agencies deliver on their mandate in a responsible and effective manner.



Agency Classification System

All classified agencies are subject to the Agency Establishment and Accountability Directive (AEAD) (see Appendix B). This directive, the primary accountability instrument of government in relation to its agencies, was updated to significantly strengthen the policy framework by Management Board of Cabinet, and became effective January 26, 2010.

The AEAD classifies agencies according to primary function. There are seven classifications.

Adjudicative Agency

An adjudicative agency makes independent quasi-judicial decisions and resolves disputes on the obligations, rights and responsibilities of an individual, business, or corporate body against existing policies regulations and statutes. The agency may also hear appeals against previous decisions.

There are 42 adjudicative agencies in Ontario. They do not operate under governing boards.

Advisory Agency

An advisory agency provides ongoing information and advice to assist in the development of policy and in the delivery of programs.

There are 111 advisory agencies in Ontario. They do not have governing boards.

Crown Foundation

A crown foundation solicits, manages and distributes donations of money or other assets donated for a named organization in whose interests the foundation has been established under the Crown Foundations Act or under the University Foundations Act.

There are three crown foundations in Ontario, all in the university sector. Crown foundations are governed by boards.

Operational Enterprise

An operational enterprise sells goods or services to the public in a commercial manner including, but not necessarily, in competition with the private sector.

There are 37 operational enterprise agencies in Ontario. These agencies have governing boards.

Operational Service

An operational service delivers goods or services to the public usually with no or minimal fees.

There are 39 operational service agencies in Ontario. These agencies have a governing board.

Regulatory Agency

A regulatory agency makes independent decisions and undertakes inspections, investigations, prosecutions, certifications, licensing, and rate-setting that may limit or promote the conduct, practice, obligations, rights, and responsibilities of an individual, business, or corporate body.

There are 21 regulatory agencies in Ontario, only five have governing boards.

Trust Agency

A trust agency administers funds or other assets for beneficiaries named under the statute.

There are five trusts in Ontario. All have governing boards.

See Appendix C for a list of classified agencies by type.

Current Accountability Framework

The Agency Establishment and Accountability Directive sets out how agencies are to be established and classified. It also details the accountability framework in which ministries and agencies operate, setting out reporting requirements, roles and responsibilities, and aligning oversight with risk.

More specifically, the directive requires that ministries develop, for approval by Treasury Board/Management Board of Cabinet, a sound business case, including a financial assessment, for the establishment of a new classified agency. A case must be made that the proposed new agency, among other things, is in the public interest, provides the operational flexibility that the government requires, and provides value for money. As well, the agency's capacity for effective stewardship of public resources must be demonstrated.

The Agency Establishment and Accountability Directive also requires that various "Tools of Accountability" be in place:

- A memorandum of understanding reflecting the key roles, relationships and mutual expectations must be entered into and signed by the responsible minister and the agency chair
- Annual business plans, which report on the agency's strategic directions, current and future programs and activities to fulfill the mandate, and a financial budget covering a minimum of three years are to be provided to and approved by the minister
- Annual reports including audited financial statements must be submitted to the responsible minister within 120 days of the fiscal year end and tabled within the Legislative Assembly within 60 days of receipt
- An annual risk assessment evaluation of agencies to ensure effective management of agency risk must be developed by the ministries. Ministries are also responsible for reporting agencies' high risks to Treasury Board/Management Board of Cabinet.

Note: Requirements for advisory agencies are less detailed.

Specific to the adjudicative agencies, the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009 (see Appendix D) further strengthened and made transparent the accountability framework for this group of agencies, in recognition of the importance of their independent role in decision-making. This Act codifies many of the requirements of the Agency Establishment and Accountability Directive and addresses key matters relating to appointments through provisions with respect to the following elements:

- Requirements for public accountability documents, including mandate and mission statements, consultation policies, service standard policies, ethics plans and member accountability frameworks (such as job descriptions, necessary skills and qualifications and codes of conduct)
- Requirements for governance accountability documents, including memoranda of understanding, business plans, and annual reports
- Requirements for appointments and the need for the selection process to be competitive and merit-based
- The designation of clusters of two or more adjudicative tribunals to improve the efficiency and efficacy of tribunals.

In addition to the AEAD, there are four other accountability directives that apply in their entirety to all classified agencies. These are the following:

- Government Appointees Directive, 2006, which sets out conditions of appointment, remuneration, conflict of interest, and indemnification, and holds chairs responsible for informing all board members of the directive's Conflict of Interest requirements
- Accountability Directive, 1997, which sets out a broad accountability framework for holding public servant and external service providers to account for their actions, and lays the foundation for defining standards in such key areas as financial management, human resources and administrative policies
- Advertising Content Directive, 2006, which ensures that advertising is fair, objective, and complies with other content requirements established by legislation or policy
- Travel, Meal and Hospitality Expenses Directive, 2010, which sets out rules and principles for the reimbursement of expenses, accountability for the oversight of reimbursement and the parameters for public disclosure of information about expenses.

In addition, all classified agencies must have a public complaints process, performance measures and risk assessment and mitigation strategies as part of their business plans.

Regarding expenses, per the Public Sector Expenses Review Act, 2009, the expense claims of agency senior executives at 22 agencies (four of which are non-classified) are subject to review by the Integrity Commissioner.

All classified agencies, except for Crown Foundations and Trusts, are also subject to the Internal Audit Directive. It sets out a framework to govern the operation of internal audits.

The Procurement Directive may also apply in whole or in part, depending on specified criteria.

Those agencies that manage transfer payments, such as Cancer Care Ontario, Ontario Trillium Foundation, and eHealth Ontario, are subject to the Transfer Payment Directive.

Most classified agencies are subject to the ethical framework set out in the Public Service of Ontario Act (PSOA). Those classified agencies that are required to hire their employees under Part III of PSOA are also subject to a variety of administrative and human resource management directives. These same directives apply to ministry staff

All agencies are subject to the Public Sector Compensation Restraint to Protect Public Services Act, 2010. It freezes the compensation structures of non-bargaining staff for two years from March 24, 2010.

All agencies are covered by the provision of Bill 122, Broader Public Sector Accountability Act, 2010, which bars the use of public funds to hire consultant lobbyists to influence the government.

Agencies may also be subject to some or all of statutes such as,

- Financial Administration Act
- French Language Services Act
- Pay Equity Act.

In addition, agencies may be designated under one or more of the following acts, by regulation or Order in Council:

- Accessibility for Ontarians with Disabilities Act, 2005
- Archives and Recordkeeping Act, 2006
- Emergency Management and Civil Protection Act
- Freedom of Information and Protection of Privacy Act.

The Role of Ministries and Central Agencies

The Agency Establishment and Accountability Directive sets out specific roles for Cabinet, Treasury Board/Management Board of Cabinet (TB/MBC) and its secretaries; for responsible ministers and deputy ministers; and the Minister and Deputy Minister of Finance in relation to agencies.

With respect to governance and accountability:

- TB/MBC are responsible for establishing the framework, policies and procedures for the sound management and administration of agencies, and for directing the review and evaluation of agencies through periodic reviews including risk assessments and audits. Central agencies, specifically the Ministry of Government Services and the Ministry of Finance, also play a role in supporting the Chair of the Treasury Board/Management Board of Cabinet's accountability for the corporate oversight of classified agencies.
- Ministers are responsible for reporting to the legislature on the agencies for which the minister is responsible; for attesting to TB/MBC on the agency's performance and compliance with directives and operational policies; for directing the chair of an agency to undertake a risk-based review or audit; for evaluating the chair's performance; and for approving memorandums of understanding (MOUs) and business plans.
- Deputy ministers are responsible for supporting ministers in discharging their responsibilities as well as for ensuring that the ministry and its agencies have the capacity for risk management and oversight; for preparing risk management plans for specified risk categories; and for identifying performance issues.

The Role of Committees of the Legislature

The Standing Committee on Government Agencies reviews all intended appointees to agencies, boards and commissions and appointments of directors to corporations in which the Crown is a majority shareholder.

The committee is also empowered to review the operations of all agencies, boards, and commissions to which the Lieutenant Governor in Council makes some or all appointments. For example, in February 2009, the committee reviewed the Ontario Securities Commission, the Ontario Racing Commission, and the Human Rights Tribunal. In September 2009, it reviewed the Royal Ontario Museum, Ontario Power Generation and the Ontario Municipal Board.

The Public Accounts Committee reviews reports of the Auditor General of Ontario and as a result, may call the chief executive officer (CEO) of an agency that has been audited by the Auditor General to come before the committee to answer questions on selected topics raised by the audit.

The Role of Officers of the Legislature

Auditor General

The Auditor General is an independent officer of the Ontario Legislative Assembly whose primary role is to ensure the government is held accountable for use of public funds in delivering public services.

The Auditor General has the legislated authority to perform a range of audits related to agencies such as attesting audits and conducting value-for-money audits.

The Auditor General is also required to audit the financial statements of those agencies and Crown-controlled corporations that are not audited by an external auditor.

Each year the Auditor General releases an annual report that may include findings on the value-for-money audits of agencies.

Integrity Commissioner

The Office of the Integrity Commissioner plays the following roles in the oversight of Ontario's classified agencies and agencies in the electricity sector:

- Registering lobbyists
- Reviewing expenses for designated agencies under the Public Sector Expenses Review Act
- Investigating and publicly reporting on allegations of wrongdoing for agencies with staff designated under the Public Service of Ontario Act.

The Role of the Conflict of Interest Commissioner

The Conflict of Interest Commissioner (COIC) has key responsibilities for certain conflict of interest and political activity matters under the Public Service of Ontario Act (PSOA). In this regard, the PSOA and regulations do not refer specifically to agencies, but rather establish a list of "public bodies" (a term not defined) to which the Act and regulations apply. The list includes most classified agencies.

As part of the ethical framework in the PSOA, the COIC's responsibilities include:

- Acting as the ethics executive for chairs and other individuals identified as ethics executives for an agency's employees
- Responding to requests for advice, or handling referrals for rulings from chairs/other identified individuals on matters of conflict of interests and/or political activity

- Approving the conflict of interest rules of agencies that have developed their own conflict of interest rules, to ensure consistency with ethical standards established by the rules for ministry employees
- Considering requests from part-time appointees to tribunals listed in the regulation to be involved in political activities beyond those expressly permitted in the Act.

In addition, the commissioner may offer advice on an agency's organizational practice or policy to minimize the risk that situations of concern may arise. As well, the commissioner writes to and meets with the newly appointed or re-appointed chairs of agencies to ensure their understanding of the role as the ethics executive as well as their understanding of the conflict of interest and political activity rules.

Appointments Process

All persons wishing to serve on any agency, board or commission must apply through the Public Appointments Secretariat.

The secretariat processes all appointment applications, administers the public appointment process, and ensures appointments are in compliance with legislative requirements. It also serves as the focal point for queries from agencies, ministries, and the public regarding the government's appointment process and it monitors appointee terms and expiration dates.

There are three types of appointments:

- Premier's prerogative – appointments by an Order in Council on the recommendation of the Premier
- Minister's prerogative – appointments by an Order in Council on the recommendation of a minister
- Ministerial letter – the minister appoints members to some agencies by a minister's letter where legislation permits.

All appointments are made following a recruitment and review process managed by the Public Appointments Secretariat.

The Public Appointments Process Guide allows for the identification of candidates by agencies. In most cases, chairs of agencies are very involved in the development of short lists of potential candidates.

Appointments to government agencies respect the needs of the agency but also provide for a fair and equitable representation of the people of Ontario. Positions may include chairs, vice-chairs, members, presidents, and chief executive officers. While there are some full-time positions, the majority of the positions are part time.

An element of public service is implied in any appointment by the government. Therefore, any remuneration is not expected to be competitive with the marketplace.

Ministers are responsible for acting, in cooperation with the Public Appointments Secretariat, as the prime contact with any appointments within their jurisdiction.

Ministers must obtain Management Board and Cabinet approval before establishing a rate of remuneration that is in excess of those set out in the Government Appointees Directive.

CHAPTER 2

RESEARCH FINDINGS AND OBSERVATIONS

Section 1: Jurisdictional Review of Policy and Accountability Frameworks

Introduction

A key element in this review was to determine how Ontario's agencies policy and accountability frameworks compared to those in other jurisdictions. This inter-jurisdictional review focused particularly on the following:

- Accountability frameworks
- Establishment and classification of agencies
- Use of legislation to ensure accountability
- Review and oversight of agency performance.

Jurisdictions surveyed included British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Canada, United Kingdom, Australia, and New Zealand.

How Ontario Compares

Ontario compares very well and, in some respects, surpasses other jurisdictions in terms of the substance and rigour of the policy and accountability frameworks in place to manage agencies. There is a great deal of commonality in the key measures and approaches used.

A noteworthy difference is in the use of overarching legislation as a key accountability instrument. A number of jurisdictions, notably Alberta and New Zealand, have chosen to enshrine accountability requirements in legislation. This contrasts with Ontario, which has primarily relied on policy instruments such as directives and guidelines, except as it pertains to adjudicative agencies.

A more detailed analysis follows.

Accountability Frameworks

Other jurisdictions have accountability requirements for their agencies that are comparable to those used in Ontario. Each jurisdiction may rely on different forms of documentation; the specific required content may vary somewhat, but the accountability intent is essentially the same.

A memorandum of understanding or a document of comparable content, between an agency and its responsible minister is a common requirement.

- In British Columbia, a Shareholder's Letter of Expectation is signed between the chair of an agency and the responsible minister. The document sets out the mandate of the agency and the principles to govern the agency's activities, including the principles of integrity, efficiency, and effectiveness in the conduct of the agency's business, the roles and responsibilities of the parties, the reporting requirements, and the performance expectations.
- Alberta requires a mandate and roles document. The minimum content requirements for such documents are set out in the Province's Public Agencies Governance Framework manual.

Two other documents are standard requirements across jurisdictions, (with the exception of advisory agencies).

- An annual audit supported by periodic financial reports
- An annual report for tabling before the elected assembly.

Almost as standard is a requirement that agencies, (again with the exception of advisory bodies) prepare a rolling, multi-year business plan annually for submission to the responsible minister. This plan may be referred to as a corporate plan, statement of intent, strategic plan, or service plan.

In some jurisdictions, there is a requirement for the tabling of the business plans for some classes of agencies in the legislature. In British Columbia, for example, the Minister of Finance is required to table the three-year rolling service plan of the province's commercial Crown corporations each year with the government's budget. The plans are subject to review by the Select Standing Committee on Crown Corporations and by the Auditor General.

Similarly, New Zealand requires the tabling of an agency's Statement of Intent in the House of Representatives no later than five working days of the final document being received by the minister.

Nova Scotia requires selected agencies to prepare and publish accountability reports. These reports are to replace annual reports and are to focus on actual performance and accomplishments, linked directly to performance measures set out in the agencies' business plans. Agencies are also required to provide information for incorporation into the government's annual accountability report, which must be submitted to the House of Assembly.

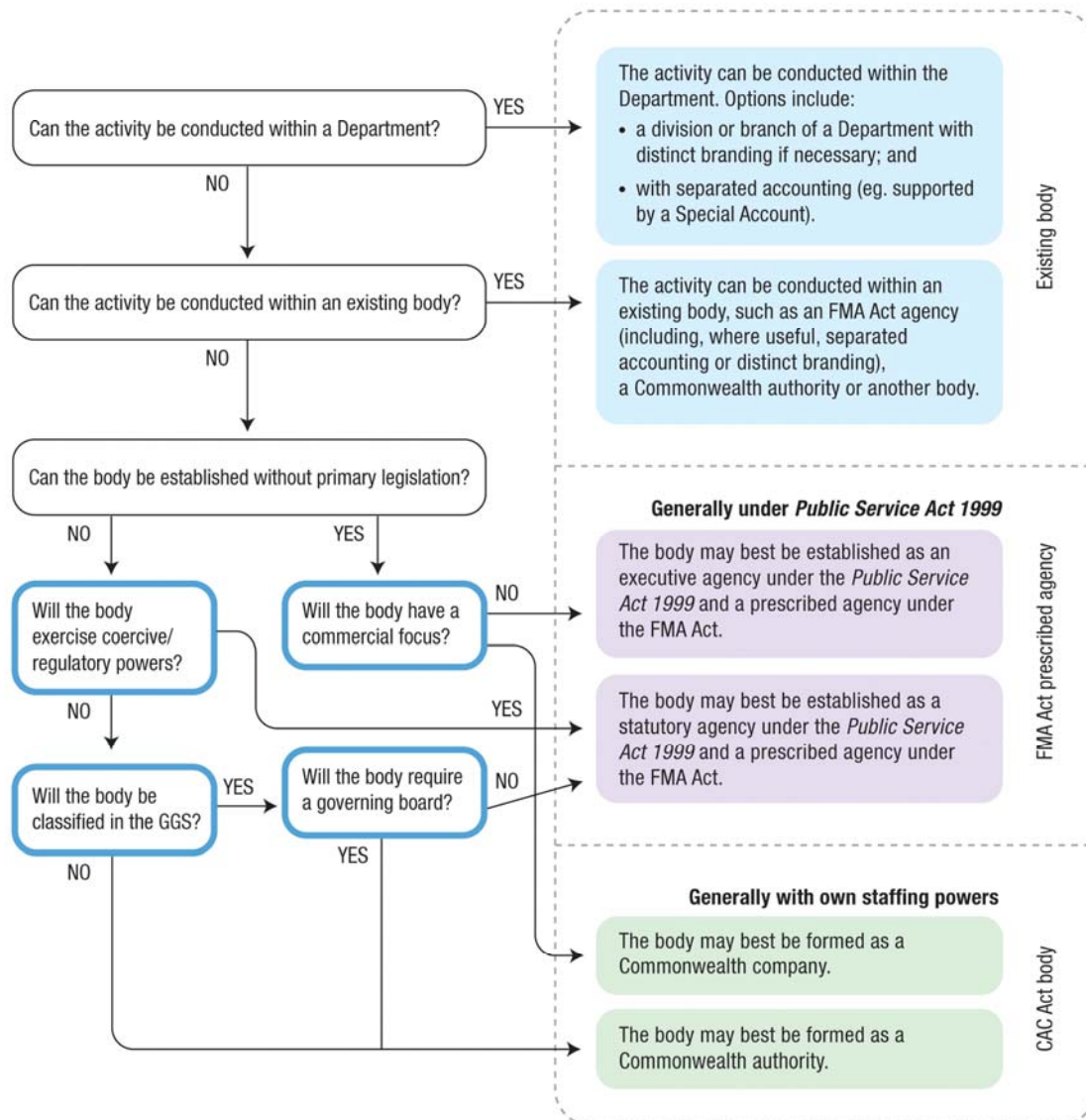
The Transparency and Accountability Act of Newfoundland and Labrador sets out requirements for agencies to prepare a three-year business plan for approval by the responsible minister. The Act also requires the minister to make the business plan public by presenting it to the House of Assembly, no later than three months after the beginning of the first fiscal year of the period covered by the plan.

Establishment and Classification of Agencies

The jurisdictions surveyed appear to use similar approaches to establishing agencies, and similar constituting instruments - usually a statute, a regulation under a statute, or an Order in Council. Generally speaking, a business case is required, one that includes a persuasive policy reason as to why an agency is needed, and the associated financial impact, for approval by Cabinet.

The flowchart below is taken from Australia's document, Governance Arrangements for Australian Government Bodies. It provides a coherent and straightforward illustration of the rationale for and approach to considering the creation of a new agency.

Flowchart for Placing Australian Government Activities



As described in the overview section of this report, Ontario now uses a classification system based on the function of the agency. This approach replaced the previous model that grouped agencies according to their independence from government in matters such as the public service status of their employees.

Like Ontario, the jurisdictions surveyed create agencies to deliver a particular service as set out in their respective mandates. The classification system is generally meant to determine the way in which policy directives and an overall accountability framework may be applied to agencies.

Several jurisdictions have taken a functional approach to classifying agencies, including Alberta and British Columbia.

Use of Legislation to Ensure Accountability

In many instances in Ontario and other jurisdictions, the constituting legislation of a particular agency sets out requirements for the annual auditing of the agency, and for the preparation of an annual report for submission to the responsible minister and subsequent tabling in the legislature. In some cases, the legislation may also set out requirements for a business plan, for general financial record keeping and reporting, and for a conflict of interest regime for its board members.

The requirements of these constituting instruments may also be accompanied by a range of administrative policies, directives, and guidelines, as is the case in Ontario.

Some jurisdictions have gone a step further in enshrining accountability frameworks in overarching legislation. Doing so places a heavier onus on the government and its agencies to ensure compliance with the accountability framework. As well, it makes much more publicly transparent the government's expectations for and the obligations of the parties to ensure proper management and oversight of agencies.

For example, Ontario's Adjudicative Tribunals Accountability, Governance, and Appointments Act (ATAGAA) codifies accountability requirements that would otherwise have been captured in administrative policy and directives.

In Alberta, the Alberta Public Agencies Governance Act (APAGA) sets out requirements for the following:

- The mandate and roles document, to include the roles and responsibilities of the agency, its members and the responsible minister; the accountability relationship of the agency, including its duty to account to the responsible minister; the process for administering the agency's code of conduct; the committee structure of the agency; the requirement to make the document available to the public
- Codes of conduct to govern its members and employees that are to be made available to the public

- Recruitment and appointments process for directors, including the requirement that any skills, knowledge, experience or attributes required by a member be identified before recruitment begins
- The review of the mandate and operations of every agency.

The APAGA legislation received Royal Assent in 2009 and is awaiting proclamation. As noted later in the report, Alberta has already moved forward in developing a governance framework to complement the legislative governance and accountability provisions and in establishing an Agency Governance Secretariat to support the framework's implementation.

New Zealand's Crown Entities Act, 2004 (CEA) embodies a similar intent as Alberta's APAGA although it is far more detailed and prescriptive. Its stated purpose is to provide a consistent framework for the establishment, governance, and operation of New Zealand's Crown entities, and to clarify accountability relationships between Crown entities, their board members, and their responsible minister on behalf of the government and the House of Representatives. The Act includes provisions relating to the following elements:

- The collective responsibilities of the boards and individual duties of members and their accountability to the responsible minister for performance of their duties
- The roles and responsibilities of the responsible minister to oversee and manage the Crown's interests in an agency
- The recruitment and appointment of directors
- The removal of directors
- Conflict of interest
- The contents of a three-year, rolling statement of intent
- The specific processes for the interactions between the minister and agency in reviewing drafts, providing feedback and finalizing the agency's statement of intent
- The timeframe for submission of the final statement of intent to the House of Representatives as noted above
- The preparation of an annual report, including required contents of the annual report, for submission to the responsible minister, and for the minister to present the annual report to the House of Representatives within five working days after receiving the report.

Canada uses its Financial Administration Act (FAA/C) as a vehicle for establishing accountability and transparency requirements for Canada's Crown corporations. It includes the following;

- Preparation annually of a corporate (business) plan to the responsible minister for the approval of the Governor in Council

- Preparation annually of a summary of a corporate plan, operating budget or capital budget to the appropriate minister, and tabling of this summary before each House of Parliament
- Preparation of an annual report for the responsible minister and the President of the Treasury Board, and the tabling by the minister of the annual report in each House of Parliament.

Review and Oversight of Agency Performance

Generally speaking, the oversight of performance and operations is meant to be carried out through the implementation of the accountability framework and specific documentation. For example the annual review and approval by the minister of agency business plans is an important opportunity for oversight.

Ontario's Agency Establishment and Accountability Directive places special emphasis on risk assessment as part of an oversight regime. This does not seem to be an explicit feature of other jurisdictions' approach to oversight.

There is a noteworthy difference between Ontario and other jurisdictions with respect to the regular review of agencies. There is no general applicable requirement in Ontario that agencies undergo regular reviews of their mandates or performance. These can take place if the responsible minister or Treasury Board/Management Board of Cabinet directs it. This is similar to New Zealand, where the Crown Entities Act provides the responsible minister with the authority to review the agency's operations and performance at any time. It is possible that an agency's constituting instrument may require a review. For example, the constituting regulation of the Ontario Immigrant Investor Corporation has such a requirement.

Other jurisdictions are more consistent in the requirement for periodic reviews.

- Alberta, by administrative policy, requires that all agencies be subject to regular review processes to ensure that they are meeting their mandates and continue to be aligned with government direction. In submitting a request to Cabinet for the creation of a new agency, ministries are required to include as part of the business case a procedure for agency review and dissolution. Alberta's legislation (not yet proclaimed) requires a review by the minister every seven years to include and ensure the following;
 - Mandate continues to be relevant to the goals, priorities, and policies of the government
 - Functions performed are best performed by the agency, by another agency, or by a department
 - Governance structure continues to be appropriate to its mandate and functions

- Agency is carrying out its activities and operations effectively.
- Under the federal Financial Administration Act/Canada, each Crown corporation is required to be subject to a special examination at least once in every 10 years to determine if financial and management control, and information systems and management practices meet required standards.
- Australia's guidelines on the creation of new agencies call for regular reviews to be scheduled that consider the ongoing need for a body. Preferably these reviews are scheduled at the time the agency is established and can be specified in the constituting legislation.

New Zealand has placed special emphasis on Cabinet oversight of agency performance. The central agencies of government in New Zealand provide a report to Cabinet every six months of the performance of the agencies. These reports have been focusing on the larger agencies (the top 14 out of approximately 80 board-governed agencies). The responsible departments work with the central agencies in the development of these regular reports.

The oversight role of the Auditor General in other jurisdictions can be different than it is in Ontario. For example, New Zealand requires its agencies to provide to the Auditor General, their annual financial statements, statements of service performance, and any other information that the Auditor General has agreed is required to audit, within three months after the end of each financial year.

Section 2: Latest Trends in Governance

There is extensive literature and documentation about board governance issues and practices. The following discussion will focus on the accepted standards of and guidance on issues of board governance in the private sector, as well as the trends in the not-for-profit and the public sectors. The discussion will conclude with an overview of how practices in selected Ontario agencies compare to these standards and practices.

Introduction

The issue of board governance has taken on greater importance in the past 10 to 20 years because of the accounting scandals in the United States.

In response to the bankruptcy of the Enron Corporation, the U.S. government introduced new rules and amendments to the 1934 Securities Exchange Act, through the Sarbanes-Oxley Act, 2002. It improved disclosure and oversight at publicly-traded companies and auditing firms in order to retain and strengthen confidence in the capital markets.

While most of these tough, new regulations were designed to address extreme problems such as fraud and the falsification of accounts, they also led to a new focus on the role of boards of directors, and interest in issues of conflict of interest and unethical behaviour. As a result, there has been a closer scrutiny of board operations, and new expectations of and standards for corporate governance.

The Sarbanes-Oxley Act, 2002 influenced corporate governance rules and best practices not only in the United States but also in other countries including Canada. Governments here have introduced similar legislative requirements, which have led to new standards across the country.

Standards of Best Practice

The Ontario Securities Commission (OSC)

The OSC is the regulatory body responsible for overseeing Ontario's capital markets. It expects publicly-traded companies to meet the Corporate Governance Guidelines set out in the national policy NP 58-201 of the Canadian Securities Administrators, a voluntary umbrella organization of Canada's provincial and territorial securities regulators.

The guidelines prescribe practices with respect to a number of issues including the following:

- The composition of boards of directors and the independence of the majority of a board's directors and its chair

- The regular scheduling of in-camera meetings of the independent directors
- The job descriptions of the chair of a board of directors and the chairs of a board's committees
- A written Code of Business Conduct and Ethics that includes sections about conflicts of interest and the board's responsibility for monitoring compliance with the code
- The nomination processes for directors among others, including a written charter for the nominating committee
- The competencies and skills that board requires for its directors and chair
- The composition and practices of the compensation committee, including a written charter for it
- The regular assessment of the board, its committees, and each individual director.

In addition, the guidelines prescribe practices to two other important aspects of board governance.

The first is the need for written mandate statements for the board that explicitly acknowledge responsibility for, among other things, strategic planning, risk assessment and management and the oversight of internal controls as well as the development and adoption of corporate governance principles. These mandate statements also set out the expected responsibilities of the directors including their attendance at board meetings as well as the measures established for receiving feedback from stakeholders.

The second is the need for an orientation process for new directors that helps them understand the role of the board and its committees, as well as the contribution that is expected of individual members and the requirement for the continuing education for all directors.

Companies are required to submit annually a corporate governance disclosure form that reflects the extent of compliance with these guidelines. Where boards are not compliant, they are asked to explain how they meet the intent of the guidelines.

The guidelines have raised the bar of corporate governance in Canada. These new standards and expectations have also resulted in a growing effort on the part of a number of parties to push for better qualified directors and more effective governance practices.

The Conference Board of Canada

The Conference Board of Canada is one of the most authoritative sources on corporate board governance in the private sector. Its Corporate Governance Handbook is a detailed reference tool published by the Conference Board's U.S. parent. It was updated in 2009 and reflects the expectations of securities regulators and the demands of directors, who require guidance on their oversight responsibilities, particularly in turbulent financial times.

The handbook is far ranging in its discussion of good corporate governance.

Standards and Practices – The handbook describes standards and practices with respect to the fiduciary duties of the directors, the independence of the directors, and the separation of the positions of the chair of the board and the chief executive officer. It also looks at the benchmark data for consideration in the appointment process such as size of board, diversity of appointments, and tenure of appointments.

Roles of the Board and Management – The handbook discusses the distinctive roles of the board and the management. According to the handbook, boards are focused primarily on strategic directions, selection of the CEO, approval of strategic and business plans, enterprise risk oversight, and performance assessment. This is in contrast to the role of management, which is to implement the business strategy and run the company's day-to-day operations with the goal of increasing shareholder value for the long term.

Skills and Experience of the Board – The handbook is concerned with the ideal composition of a corporate board in terms of skills and experience. This may vary according to the company's strategic vision and particular challenges. It is advised that boards be composed of a mix of knowledge and expertise in marketing, human resources, risk management, international trade, accounting and finance, strategic and business planning, legal and compliance issues, and business-specific research and development.

Characteristics of Effective Board Members – The handbook lists a number of characteristics of effective board members, ones that will add value to a board's discussions and decisions. These include being alert and inquisitive, asking hard questions, preparing for meetings and contributing to long-range planning. The handbook also is concerned about the quality of the flow of information to board members in advance of their meetings.

Standing Board Committees – The handbook discusses the role of standing board committees and their importance to good governance. Consistent with securities regulators, these committees should be audit and compensation, and nominating and corporate governance. These standing committees will enhance the overall effectiveness of the board's oversight and ensure its focus on matters of particular concern. In addition the handbook does the following:

- It emphasizes importance of the nominating and corporate governance committee in developing internal corporate governance guidelines for adoption by the full board and notes that the "checks and balances" are needed to prevent conflicts of interest and to ensure the integrity of the board. Interestingly, a growing number of companies are considering designating a chief governance officer to facilitate the adoption of strong corporate governance.

- It details the role of the audit committees and the effectiveness of internal controls, the establishment of whistleblower procedures and the quality of the company's risk management processes. The importance of setting the expectation of integrity and accuracy in financial reporting is noted.
- It discusses the roles, expectations, and operations of board committees and advises that each have a written charter reviewed by the full board at least annually.

Board Performance – The handbook talks about the need for performance assessments of boards and their directors to inform the board's responsibility for oversight, to sharpen its strategies for the long term, to improve the skills and experience of its directors, and to determine the adequacy of the committee structures. It also addresses the need for the orientation of directors and their ongoing education.

Ethics and Compliance – The handbook examines a board's role in overseeing the design and implementation of a comprehensive ethics and compliance program.

Board Operations – The handbook is also concerned about how boards operate, including the frequency of meetings, the policies for board attendance, the distribution of materials for meetings, and the communications between boards and shareholders. It also addresses the need for regular in-camera sessions of the independent directors.

The Canadian Coalition for Good Governance

The Canadian Coalition for Good Governance (CCGG) is a not-for-profit corporation that represents the interests of institutional investors in promoting good governance at publicly-traded companies. The seven-year-old coalition has issued guidelines and position papers on key topics such as high-performing boards, board engagement, executive compensation, and best practices in disclosure.

The CCGG's Building High Performance Boards, 2010 handbook identifies governance best practices that are consistent with other sources. The coalition's handbook covers a wide range of topics including the independence of directors and the separate roles of the chair and CEO. It also discusses the following subjects:

- The board's role in overseeing strategic planning, risk management, and the hiring and evaluation of management
- The requirement of directors who are knowledgeable and competent, and prepared to commit the time and effort required to serve effectively
- The need for continuing education programs that update directors' skills and knowledge and address issues such as audit, corporate governance, compensation practices, and risk management
- The role of directors in making integrity the "hallmark of the company"
- The need for written charters for board committees that are reviewed annually
- The requirement of in-camera sessions for independent directors only
- A charter of expectations for directors as the basis for evaluating board, committee, and individual director performance.

The Canadian Institute of Chartered Accountants (CICA)

The CICA is not a standard-setting body, but does provide comprehensive and practical advice to board directors on a variety of issues. It specifically established its Risk Oversight and Governance Board to support directors of for-profit, not-for-profit, and public sector boards in improving their understanding of their risk oversight and governance responsibilities. The CICA has developed concise, informative, and practical publications and resource materials for boards of directors and senior managers. One is a series entitled 20 Questions Directors Should Ask About. It was prepared by leading experts and covers governance issues such as the following:

- Building a Board
- Codes of Conduct
- Governance Assessments
- Risk
- Strategy
- Internal Audit.

In each series, key questions are posed and answered with contextual information provided for background. While many are designed for corporate directors, there are several in the series that are focused specifically on the needs of directors of not-for-profit and public sector boards.

The Council of International Federation of Accountants (IFAC)

Through its Public Sector Committee, IFAC has provided guidance to regional and national organizations by developing governance frameworks to support the responsibilities of governing bodies in the public sector.

Supports to Good Governance: Director Education and Resource Centres

As these standards and guidelines have taken hold, the education of directors has taken on tremendous importance, providing valuable support to boards and individual directors in their efforts to successfully adopt best practices and meet expectations. A number of Ontario business schools offer director education programs as do a number of highly-qualified independent experts.

The Institute of Corporate Directors (ICD), affiliated with the Rotman School of Management at the University of Toronto, is a leading organization in advocacy of best practices in governance.

The institute is considered by many to be the “gold standard” in director education. Its programs cover topics such as board and director effectiveness, the board’s relationship to management, board’s role in strategy and enterprise risk management, and board culture and communications. ICD offers a range of resources to the public, through links to materials covering the governance principles and practices of top-ranked Canadian companies, not-for-profit, and public organizations as well a resource centre to its members and alumni.

The Directors College at the DeGroote School of Business, jointly founded by McMaster University and the Conference Board of Canada, offers an accredited corporate director development program as well as a number of specialized programs and courses tailored to the needs of board chairs, committee chairs, and members.

Ryerson University has developed a certificate program in Public/Private Management and Governance. Among other topics, it focuses on the range of issues faced by agency boards of directors in terms of public demands for transparency and accountability, and governments’ expectations with respect to governance practices, performance, and integrity.

The major consulting firms also offer a range of resources to support good corporate governance. For example, KPMG LLP has published resources on leading practices in board governance. Deloitte LLP, through its Centre for Good Governance, provides a range of director education courses, best practices, technical resources, reference materials, and other information related to corporate governance, primarily aimed at their clients’ audit committees, and at boards of directors more generally.

The Not-for Profit Sector

Interest in improved governance is not limited to the private sector. Boards of directors in the not-for-profit (NFP) sector are increasingly interested in better understanding and exercising their governance duties and responsibilities. The public - whether donors, service-receivers, or other stakeholders - have become more demanding of boards’ roles in ethical, legal, and strategy oversight. With this public scrutiny, and the increasingly competitive conditions for securing funding, NFP directors are more conscious of their need for effective governance practices as well as a thorough understanding of their legal obligations and the non-legal expectations of stakeholders.

While much of the guidance directed at for-profit corporations may be equally applicable to NFPs, a number of organizations have developed advice and training materials and programs tailored for the NFP sector.

The Institute of Corporate Directors at the Rotman School of Management offers a program in director education specifically for those in the NFP sector.

The Canadian Institute of Chartered Accountants and the consulting firms have customized materials as well.

The Canadian Society of Association Executives publishes Board Governance Classics: A Compilation of Articles, Checklists, Tools and Templates, and Duties & Responsibilities of Directors of Not-For-Profit Organizations among other publications and guides for association leaders.

The Broader Public Sector – Ontario Hospitals

The Ontario Hospital Association (OHA) has taken a lead in addressing governance matters, in various reports on hospital governance and accountability in Ontario.

Through its Governance Leadership Council, the OHA has developed a comprehensive Guide to Good Governance, which provides an overview of the key components of good governance practices, as well as practical templates and tools to support their implementation.

It summarizes governance best practices for hospitals under the following themes.

- Hospital accountabilities
- The board's role
- Directors' expectations
- Director performance
- Board size for effective governance
- A skilled and qualified board
- Education of new directors
- Appointing qualified board leaders
- Board independence
- Appropriate use of board committees
- Ensuring meetings enhance board performance
- Commitment to continuous improvement.

Consistent with other sources, the guide cites the key areas in which the boards exercise a governance role including strategic planning, financial oversight, risk identification, and mission, vision and values. The guide also covers quality and performance management and measurement as well as succession planning, and the selection and supervision of CEOs.

This is a good example of adopting the best practice and trends in governance to the hospital environment, and it reflects a commitment to support effective government. In a 2008 report on Value-for-Money audit of hospital board governance, the Auditor General of Ontario cited the work of the OHA in supporting improved governance.

For his part, the Auditor General also outlined a number of best practices that should be followed including the following:

- Competency-based boards
- Transparent and fair recruitment processes

- Codes of conduct and confidentiality guidelines
- Written charter or bylaws that include descriptions of board roles and responsibilities
- Director orientation and education
- Board role in approval and oversight of strategic plans and risk management plans
- Board and individual director evaluation
- Assessment of CEO performance against established orientation.

Agency Governance Trends in Selected Jurisdictions

A number of jurisdictions have codified their expectations for good governance. Alberta and British Columbia are the most advanced in Canada; Newfoundland has made advances in this area as well.

As noted earlier, New Zealand has legislated detailed expectations with respect to appointments, including removal of board members, collective duties of boards, individual duties of members, and conflict of interest disclosure and other ethical matters.

An overview of some of these key trends follows.

Alberta

Alberta has made significant reforms to its board governance and accountability framework following the report of a Board Governance Review Task Force in 2007. Consistent with the Alberta Public Agencies Governance Act, the government has put in place a comprehensive governance framework that, in addition to describing parameters of agency establishment and accountability, sets out key governance standards and principles. The following are some of the provisions in the framework.

Principles for the appointments process – Appointments are to be based on competency. The government advises the use of a competency matrix developed by the board and approved by the minister, and the involvement of the agency in the selection process as well as the transparency, openness, and consistency of the process. The principles also call for the timeliness of appointments and the diversity of candidates for appointment. Criteria are established for the appointment of elected or senior government officials to agency boards.

Standards for term lengths – For public trust, corporate enterprise, service delivery, and advisory agencies, the maximum consecutive service for directors is 10 or fewer years. For adjudicative agencies, the maximum consecutive service is 12 or fewer years. Renewal will be conditional on performance.

Standards for director orientation and training – All directors are to receive a general orientation to public sector governance, in addition to orientation to the particular business and governance practices of the agency. Recognizing the importance of ensuring that directors understand their roles, government officials, including ministers who work with agencies, are also to be offered an orientation to agency governance.

Standards for agency codes of conduct – Agencies are to develop codes of conduct that are consistent with the public service code of conduct and ethics, conflict of interest disclosure practices, and safe disclosure practices.

Standards for evaluations – The agency is responsible for the evaluations of the performance of the directors and of the success of the board. This is to inform strategic planning and the education of directors and as well pinpoint missing competencies on the board. The Agency Governance Secretariat is responsible for providing the tools and templates to support the evaluation process.

Standards for boards and criteria for appointments – The agency is to establish a system of committees, likely to include audit, human resources, and governance committees.

The Alberta government has set up an Agency Governance Secretariat within Treasury Board to support the implementation of the standards in the governance framework. For example, the secretariat develops and offers governance orientation programs for agency directors, ministers, and departments.

British Columbia

British Columbia has been proactive in addressing issues of the good governance of its agencies, boards and commissions. The government issued a new Appointments Guidelines in 2001, citing recent events in the private and public sectors around the world and important developments in governance, accounting, and other areas leading to a new focus on board performance. In 2005, the government published comprehensive Best Practice Guidelines. The guidelines were published through its Board Resourcing and Development Office (BRDO). They established broad provincial standards for board governance practices in a range of areas.

- Board composition and succession
- Competency matrices and their use
- Board charters that reflect key responsibilities
- Committee structures and roles
- Audit committee competencies and roles
- Board chair role
- The importance of the working relationship with the minister
- Expectations for individual directors
- Code of conduct and ethics

- Orientation and director development
- Disclosure.

In addition, the BRDO publishes a series of checklists, resource documents on board committees and other issues, to assist in the professional development of directors. It has also emphasized the importance of the performance of individual directors as they come up for re-appointment.

Newfoundland and Labrador

The Transparency and Accountability Act is intended to ensure appropriate levels of accountability throughout the public sector, including within agencies and the broader public sector. The Transparency and Accountability Office of the Cabinet Secretariat, responsible for supporting implementation of the Act, publishes a comprehensive Governance Handbook as a resource for board members.

New Zealand

New Zealand's Crown Entities Act, 2004 sets out highly detailed governance and accountability provisions for a variety of government bodies. The accountability framework is described elsewhere in this report. With respect to governance standards, the Act sets out explicit expectations with respect to the following:

- The duties and behaviours of the board as a whole, and members individually
- The terms of appointment
- The effect of non-compliance with duties, including removal for cause;
- Conflict of interest
- Board procedures, including quorum, method of holding meetings.

Where Ontario Agencies Stand

There are many instances of good practices among the board-governed agencies in Ontario, reflecting a concerted effort to improve and ensure effective governance. Some examples include the practices of these agencies:

- The Cancer Care Ontario board has developed a document, the Preferred Profile of CCO Board Members, which reflects key competencies, attributes, and experience of board members. This profile is used to help provide advice to government on appointments to the board.
- The board of Hydro One Inc. has a particularly robust committee system, with clear mandates and work plans. (Note: as an issuer of debt, the company is required by the Ontario Securities Commission to meet the Corporate Governance Guidelines of the national policy cited above.)
- The board of the Liquor Control Board of Ontario (LCBO) has developed a comprehensive five-year strategic plan for the company. Further, the board undertakes comprehensive annual updates against the plan.

- The board of Metrolinx has a well-developed approach to board evaluation. Its governance committee is charged with recommending and implementing a method for assessing the effectiveness of the board, the committees, the chair and committee chairs, and individual directors.
- The Ontario Pension Board has put in place a comprehensive by-law that identifies governance principles; allocates responsibilities and authorities among the board, its committees, and management; sets out detailed mandates for the board, its committees, chair, and board members; authorizes a strong committee system, and describes board procedures.
- The board of TVO has placed particular emphasis on ongoing director education by including a special “Continuing Orientation” item on each board meeting agenda, which covers a range of topics unique to TVO’s mandate.
- The Workplace Safety and Insurance Board promotes transparency by publicly posting all competitively procured services and goods including all consultant contracts, its quarterly financial reports, and all Workers’ Compensation Benefits policies

CHAPTER 3

RECOMMENDATIONS

The recommendations chapter breaks into two sections. The first gives an overview – a full listing of the recommendations. The second section provides a discussion and rationale for the recommendations.

Section 1: Recommendations at a Glance

There are 14 recommendations in this report.

1. The government adopt a comprehensive governance framework for the boards of all board-governed agencies, to include the following elements:

- a) Board mandate statement including,
 - I. Board's authority
 - II. Memorandum of understanding with the minister
- b) Statement of fiduciary responsibilities, agency oversight responsibilities, and accountabilities to government
- c) Statement of responsibility in relation to risk oversight;
- d) Statement of responsibility in relation to the CEO/management, human resources, and compensation
- e) Committee structure and role description, at a minimum audit and finance and governance committees
- f) Roles and responsibilities statements/position descriptions for the chair of the board, the CEO, the chairs of committees, and directors
- g) Board succession planning and advice to government on competencies required;
- h) Profile/matrix of skills required on the board
- i) Conflict of interest policy and codes of ethics/conduct
- j) Board operations (conduct of meetings, materials, in camera sessions, etc.)
- k) Board orientation, including orientation to government
- l) Director remuneration and expense reimbursement
- m) Board indemnification
- n) Ongoing director education and development
- o) Board self assessment and individual board member assessment.

2. The government ensure that all elements of the framework are operational at the board level, by providing the following support:

- a) An updated and expanded "Tools for Agency Governance" document
- b) An orientation module specifically aimed at assisting chairs of agencies in understanding the government environment, including the accountability framework, the roles of the ministries and central agencies, legislative committees and officers, and the essential public service role of agencies

- c) Access to ongoing governance education for agency appointees, through suppliers/supplier institutions identified by government.

3. The government establish a forum for agency chairs and CEOs to come together on a regular, but not necessarily frequent, basis with ministers and senior government officials in order to share best practices and to keep abreast of government initiatives.

4. The government establish in legislation the governance and accountability framework for board-governed agencies to ensure that all elements are transparent and subject to review by the legislature. The legislation should contain the following elements:

- a) A purpose statement to set out the government's intention to compel high standards of governance, accountability, transparency, and efficiency in its agencies
- b) Powers, accountabilities, and responsibilities of ministers
- c) Powers and responsibilities of the central agencies of government
- d) The responsibilities and accountabilities of agencies
- e) The framework of accountability policies that apply to agencies
- f) The new governance framework requirements and direction on the public disclosure of these practices
- g) Codes of conduct and conflict of interest
- h) Competency, recruitment and appointment of members.

5. The government review the policy application and classification designation among the board-governed agencies to ensure that these differences are still relevant and do not impede good governance or accountability.

6. The government revise agency memoranda of understanding to reflect the proposed governance framework.

7. The annual discussion that takes place between the minister and the agency chair/board regarding the agency business plan should focus on results and be followed with a formal ministerial response.

8. The materiality threshold for board-governed agency audit authorities be changed as it relates to expenses for board members and senior executives and procurement, and provides annual or more frequent audit reports for the boards on these sensitive topics.

9. A process be established for the timely public reporting of results achieved by agencies on an annual basis, and that the process be followed by agencies and ministries.

10. Each ministry formally establish a designated lead executive to assist the minister, the Minister's Office, and the deputy minister in fulfilling their accountability for its agencies and to provide a single window coordination point for agencies. This lead executive would be responsible for the internal coordination of the following:

- a) Data base
- b) Agency board appointments, including consistent tax treatment of appointees' per diems
- c) Support on memorandum of understandings, business plans, and annual reports
- d) Consultation
- e) Information on ministry requests/requirements
- f) Support in establishing contacts and facilitating meetings
- g) Advice to the deputy minister on the agency relationship
- h) Functions delegated by the deputy minister
- i) Coordination with the Minister's Office.

11. The government centralize and expand within one of the central organizations full responsibility for all aspects of corporate oversight of and governance support for agencies. This organization would have the following responsibilities:

- a) Full data base on agencies including classification, reporting documents, appointments status
- b) Appointments support to the Premier's Office
- c) Agency policy development responsibility
- d) Keeping abreast of governance trends
- e) Training and development for appointees
- f) Corporate analysis and reports
- g) Centralizing and expanding on the input provided to internal corporate audit.

12. The central organization provide Cabinet with an annual analysis of the ministries' compliance with oversight with regard to their agencies.

13. The central organization provide Cabinet with an annual report on the status of the financial and operational performance of board-governed agencies and provide an analysis of whether the agencies' mandates are being met and are still relevant.

14. The Ontario Internal Audit Division conduct system-wide governance reviews of agencies from time to time to gauge progress on the implementation of the proposed governance framework.

Section 2: Recommendations with Discussion and Rationale

In this section you will find a discussion and the rationale behind the recommendations. This section is divided into two parts: Strengthening Agency Board Governance and Accountability, and Improving Ministry and Central Agency Monitoring and Evaluation Practices.

Strengthening Agency Board Governance and Accountability

1. The government adopt a comprehensive governance framework for the boards of all board-governed agencies, to include the following elements:

- a) Board mandate statement including,
 - I. Board's authority**
 - II. Memorandum of understanding with the minister****
- b) Statement of fiduciary responsibilities, agency oversight responsibilities, and accountabilities to government**
- c) Statement of responsibility in relation to risk oversight**
- d) Statement of responsibility in relation to the CEO/management, human resources, and compensation**
- e) Committee structure and role description, at a minimum audit and finance and governance committees**
- f) Roles and responsibilities statements/position descriptions for the chair of the board, the CEO, the chairs of committees, and directors**
- g) Board succession planning and advice to government on competencies required**
- h) Profile/matrix of skills required on the board**
- i) Conflict of interest policy and codes of ethics/conduct**
- j) Board operations (conduct of meetings, materials, in camera sessions, etc.)**
- k) Board orientation, including orientation to government**
- l) Director remuneration and expense reimbursement**
- m) Board indemnification**
- n) Ongoing director education and development**
- o) Board self assessment and individual board member assessment.**

Discussion and Rationale

Classified agencies in the advisory and adjudicative categories and some of the regulatory agencies do not have governing boards.

Classified agencies in the categories of operational enterprise, operational service, and some of the regulatory agencies plus certain trust agencies, as well as certain non-classified agencies in the provincial electricity sector, do have governing boards.

The mandates of these boards are set out either in legislation or in regulation and through these instruments they have been delegated the authority to oversee the operations of their agencies.

From a good governance perspective, since they have been delegated this authority, it would be appropriate for the government to set out the standard of governance it expects from these boards.

Chapter two of the report describes highlights of the review of advice and guidance on governance from a wide variety of sources in the private sector, the not-for-profit sector, the broader public sector, and from other jurisdictions. Based on this material, it is clear that the government can derive a standard framework that all agencies with governing boards should strive toward.

While there was not an audit of governance practices, from the interviews and a review of certain agency governance material, it is evident that many of the agencies with governing boards already have sophisticated governance frameworks. The best practices noted in chapter two would bear this out.

However, the additional measures outlined in this recommendation would further reassure the government that all agencies with governing boards are in fact operating to the highest standards of governance, and that the agencies are clear about governance expectations.

2. The government ensure that all elements of the framework are operational at the board level, by providing the following support:

- a) An updated and expanded “Tools for Agency Governance” document**
- b) An orientation module specifically aimed at assisting chairs of agencies in understanding the government environment, including the accountability framework, the roles of the ministries and central agencies, legislative committees and officers, and the essential public service role of agencies.**
- c) Access to ongoing governance education for agency appointees, through suppliers/supplier institutions identified by government.**

Discussion and Rationale

As noted earlier, in 2007 the Public Appointments Secretariat, with the assistance of an external advisory committee, developed the Government Agency Tools document to assist agency chairs with establishing position descriptions, core competencies, codes of conduct, and learning and development for their appointees. As well, an online resource for agencies - the AGENCY NETwork Solutions (AGNES) website – has been created by the Ministry of Government Services, although it is limited in its offerings. This work can be built upon to provide more detailed assistance on establishing or refining the proposed governance framework in Recommendation 1.

Although agency governance may be improved and sustained with a clear governance framework, the practice of good governance can only be successful if board members, and most especially chairs of boards, are chosen for their competence and, in the case of chairs, their ability to lead a board.

The calibre of appointees of the agencies interviewed is impressive. The people of Ontario are fortunate that so many qualified people give their time, potentially opening their reputations to public scrutiny through their public service.

While over the years many qualified individuals have given themselves to public service by accepting appointments to agencies, they usually come to government with little or no understanding of how government operates.

The roles and relationships within the ministries, the relationships between the ministries and the central agencies of government, the roles of the civil service versus political staff, and the responsibility of the legislature and its officers form a complex environment that chairs of agencies must understand and translate to their boards. Appointees expect to be held to high standards of ethics, but they may not appreciate the full public service ethos. This is one element of education and development that the government itself must develop.

Similarly, most of the civil servants and political staff who interact with agencies have not themselves served on boards and have not received training about board governance. Any initiatives aimed at ongoing education and development in governance should be available to them so that they approach their advice and analysis from an informed perspective.

Some of the agencies interviewed had quite formal elements of ongoing director education and development. It is obvious that agencies can develop and enhance ongoing education and development in relation to the business of the agency and its environment.

However, when it comes to ongoing education and development of directors in relation to best practices in good governance, it would make sense and be more efficient for the government to offer some centralized support. There are a number of institutions offering governance programs and courses. The government would want to ensure that the type of governance training made available to agency appointees is relevant to the public sector environment. For example, Ryerson's certificate program in public/private management and governance and some of the curricula are directly relevant. Hopefully, a number of suppliers would be responsive to a call for tenders for such a service.

If implemented, this recommendation will ensure support for the detailed development of the governance framework and will assist all agencies in ongoing education and development for directors/appointees.

3. The government establish a forum for agency chairs and CEOs to come together on a regular, but not necessarily frequent, basis with ministers and senior government officials in order to share best practices and keep abreast of government initiatives.

Discussion and Rationale

Agencies with governing boards oversee a wide variety of services and functions.

Typically, there is not much interaction among the agencies, yet they do share common interests in terms of their relationship with government and board governance.

Chairs of adjudicative agencies come together twice a year to discuss common issues. The forum “Circle of Chairs” is thought to be very beneficial for participants.

From time to time, government needs to communicate directly with agencies from all the ministries. Meetings such as these are an opportunity to convey the rationale for government decisions and to give agencies a sense of the broader environment within which government operates.

If implemented, this recommendation would enhance communication between government and the agencies with governing boards, and among the boards themselves on topics of interest.

4. The government establish in legislation the governance and accountability framework for board-governed agencies to ensure that all elements are transparent and subject to review by the legislature. The legislation should contain the following elements:

- a) A purpose statement to set out the government’s intention to compel high standards of governance, accountability, transparency and efficiency in its agencies**
- b) Powers, accountabilities, and responsibilities of ministers**
- c) Powers and responsibilities of the central agencies of government**
- d) Responsibilities and accountabilities of agencies**
- e) The framework of accountability policies that apply to agencies**
- f) The new governance framework requirements and direction on the public disclosure of these practices**
- g) Codes of conduct and conflict of interest**
- h) Competency, recruitment, and appointment of members.**

Discussion and Rationale

All jurisdictions have put in place accountability frameworks for the agencies they have created. Some are complex; some are set out in legislation. At the heart of all of these frameworks, laws, and policies is the acknowledgement that governments must set out who is responsible for what when it delegates authority to agencies.

This is done to ensure that the delegation is carried out properly, but of greater importance, it also allows the legislature and the public to understand how this delegation is expected to work.

These laws and frameworks are meant to clarify for the legislature and the public what agencies or ministers should be accountable for, a very important distinction.

The Adjudicative Tribunals Accountability, Governance and Appointments Act (see Appendix D) sets out the public accountability documents and how they must be made public; governance accountability documents; and the appointment standards and process for adjudicative agencies. This legislation sets very clear accountability and transparency expectations for these agencies.

Classified agencies are subject to the Agency Establishment and Accountability Directive as well as certain laws such as the Financial Administration Act and other directives such as the Government Appointees Directive. Other trust agencies, such as the Workplace Safety and Insurance Board and other non-classified entities, such as those in the electricity sector, are covered by the Public Sector Expenses Review Act.

The array of policies and separate laws that apply to different categories of agencies does not help the public's nor the media's understanding of who should be held accountable when things go wrong. If boards are given clear mandates, clear standards of governance and clear accountabilities, they should be held accountable and responsible for their own actions. Transparency around agencies can be improved with clarity about accountability mechanisms.

As stated in the terms of reference for this review, the government wishes to assure itself that all agencies are operating with an appropriate governance and accountability framework.

A suggested governance framework is set out in Recommendation 1. With regard to the current accountability framework and policies, no policy gaps have been identified. However, the accountability framework for all board-governed agencies could be enhanced, and the public's understanding of that framework could be improved, by establishment in legislation.

If legislation covering board-governed agencies is established, the only category of agencies whose governance and accountability is not set out in legislation would be the regulatory category. This category requires further consideration by government.

5. The government review the policy application and classification designation among the board-governed agencies to ensure that these differences are still relevant and do not impede good governance or accountability.

Discussion and Rationale

The review of the policies that apply to agencies indicates that there are some inconsistencies regarding which policies apply to which category of agency. To an external reviewer these inconsistencies have no apparent rationale.

Similarly, there are some practices such as who appoints the CEO or who has the power to set the CEO's compensation, which vary among agencies in the same category.

A practice observed in several board-governed agencies is the appointment of civil servants as voting members. There are pros and cons to this practice. For example, having a civil servant from the responsible ministry sit on the agency board may provide the agency with valuable context for its decision making. On the other hand, if the agency is to be held accountable for its own governance and operations, having someone from government on the board may confuse accountabilities and place the civil servant in an awkward role. On balance this is not a good practice.

It may be that all of these differences result simply from when each agency was established, or there may be some rationale for the differences.

In either case, it would be timely to take a more detailed look at these differences to obtain greater clarity.

6. The government revise agency memoranda of understanding to reflect the proposed governance framework.

Discussion and Rationale

The memorandum of understanding and the agency annual business plan are the most substantial requirements of the accountability framework for agencies.

Aside from the legislation, regulation or Order in Council establishing the agency, these two elements are crucial to the success of the agency/ministry relationship and to their joint assurance to the legislature and the public that the operations of the agency are being run appropriately and efficiently.

The memorandum of understanding sets out, for the longer term, the mandate for the agency, expected outcomes, financial arrangements where applicable, communications and meetings protocols and so on. For more information, see Appendix B, Agency Establishment and Accountability Directive, Schedule F, page 24.

A number of the MOUs were reviewed. It was noted that while the quality of the documents overall was reasonably high and they were in apparent compliance with the governing directive, there were some differences in approach.

While the MOUs set out the responsibilities of the minister and the agency board, and the requirements of the agency are detailed, certain responsibilities of the minister are not always evident, e.g., to provide timely decision making or the timely tabling of annual reports.

Given the vast differences in agency mandates, it is not suggested that the MOUs be identical, but the government may wish to review the MOUs to ensure that there is good balance in the statement of accountabilities.

The one area where there can be more consistency in MOUs is in the adaptation of the proposed governance framework for board-governed agencies. This can be accomplished as MOUs are updated on change of minister or agency head.

7. The annual discussion that takes place between the minister and the agency chair/board regarding the agency business plan should focus on results and be followed with a formal ministerial response.

Discussion and Rationale

In contrast to the multi-year nature of the memorandum of understanding, the agency annual business plan provides the opportunity for the minister to determine whether the agency is on track to achieving financial, revenue and other agreed upon goals.

Moreover, the agency's business planning process should provide the opportunity for the agency to place the plan in a business, stakeholder, client, and regulatory context for the minister. Discussion around the business plan is the opportunity for the minister to restate expectations, and to give the agency insight into the government environment, including financial and political constraints. A formal written response to the business plan would ensure the board is clear about the government's expectations.

A few ministries provide their agencies with an annual "mandate letter". When this is done, the written response could address both the business plan and the expectations related to mandate.

The recent public emphasis on procurement and expense issues in agencies has the potential to obscure the important discussion that should take place around whether the agencies are in fact achieving the results they were set up to reach, and, indeed, whether their current mandates are still appropriate.

The workload of ministers today is far greater than at any time in the past. Ministers must judge how to spend their oversight time in relation to their agencies. Face-to-face meetings, however with the agency board, or the agency chair to discuss the annual business plan is an extremely important way for the minister to exercise informed, strategic oversight with board-governed agencies and to determine the performance of the board.

This recommendation would reinforce the importance of having a focus on results during this personal interaction.

8. The materiality threshold for board-governed agency audit authorities be changed as it relates to expenses for board members and senior executives and procurement, providing annual or more frequent audit reports for the boards on these sensitive topics.

Discussion and Rationale

As noted above there has been recent public emphasis on procurement and expense issues in agencies.

While the terms of reference for this review did not include agency expenses or procurement, the ability of the agencies to monitor such practices, thereby enhancing their accountability, would be strengthened if their internal or external auditors, or their ministry's internal auditors, provided regular reports to the board on these topics.

9. A process be established for the timely public reporting of results achieved by agencies on an annual basis and that the process be followed by agencies and ministries.

Discussion and Rationale

The board-governed agencies have many vehicles to convey information to the public, to clients, and to stakeholders. Most agencies have websites that convey information on a variety of aspects of their operations and programs on a timely basis.

An agency's annual report is still an important public information document that is required by either the agency's legislation or the Agency Establishment and Accountability Directive. The AEAD sets out the timeframes within which agencies must submit their annual reports to the minister, and within which the minister must table these in the legislature. If this process is not completed on a timely basis, it diminishes the legislature's and the public's ability to judge the agency's performance.

During the review it became clear that these timeframes were not being universally adhered to.

If the government still wishes to require agencies to compile annual reports, this recommendation, if implemented, will see that this is accomplished.

Improving Ministry and Central Agency Monitoring and Evaluation Practices

Role of the Ministries

10. Each ministry formally establish a designated lead executive to assist the minister, the Minister's Office, and the deputy minister in fulfilling their accountability for its agencies and to provide single window coordination point for agencies. This lead executive would be responsible for the internal coordination of the following:

- a) Data base**
- b) Agency board appointments, including consistent tax treatment of appointees' per diems**
- c) Support on memoranda of understandings, business plans, and annual reports**
- d) Consultation**
- e) Information on ministry requests/requirements**
- f) Support in establishing contacts and facilitating meetings**
- g) Advice to the deputy minister on the agency relationship**
- h) Functions delegated by the deputy minister**
- i) Coordination with the Minister's Office.**

Discussion and Rationale

The role of deputy ministers in relation to agencies is framed by the Agency Establishment and Accountability Directive.

The directive sets out the deputy's role in supporting the minister with his/her responsibilities, and it details the deputy's controllership role. The deputy minister's oversight role is clear in the directive. However, with the exception of the requirement to "facilitate regular briefings and consultations" between the chair and the minister or the chair and ministry staff, the deputy minister's role in providing ministry support or in coordinating overall interaction is not touched on.

The directives and policies governing agencies are very comprehensive, but will only bring about the desired results if the relationship between ministries and agencies is mutually respectful and supportive. Such a relationship must be based on an acceptance and a clear understanding of each others accountabilities, as well as on the principles of openness based on trust, and most importantly, frequent and frank communication.

The way in which ministries oversee and coordinate agency interactions varies greatly. Given the wide variety of agency functions and range in size and capabilities of ministries, there is no one organizational model to oversee and support the agency relationship that would work in every ministry.

In light of the importance of the ministry/agency relationship, it would be good practice for all ministries to embrace a “lead executive” approach to the relationship. By this, it is meant that one senior position be designated as the lead to coordinate support for all aspects of the ministry/agency interface. This does not mean that agency or ministry staff is limited in their contacts, but that from the ministry perspective, the “lead executive” makes sure that appointments and reports are processed in a timely manner, key data on agencies is collected and kept-up-to-date, information is provided, and meetings are regularly held.

In some ministries the lead would be the chief administrative officer, in others a line assistant deputy minister. In any case, the responsibility should be attached to an office, not a name so that continuity is not lost on turnover of staff.

Role of the Central Agencies

11. The government centralize and expand within one of the central agencies full responsibility for all aspects of corporate oversight of and governance support for agencies. This organization would have the following responsibilities:

- a) Full data base on agencies including classification, reporting documents, and appointments status**
- b) Appointments support to the Premier’s Office**
- c) Agency policy development responsibility**
- d) Keeping abreast of governance trends**
- e) Training and development for appointees**
- f) Corporate analysis and reports**
- g) Centralizing and expanding on the input provided to internal corporate audit.**

Discussion and Rationale

In chapter one of the report, there is a description of the role of the central agencies of government with respect to all agencies. The Premier’s Office is supported in the appointments process by a group of civil servants in the Ministry of Government Services.

The roles of Cabinet, Treasury Board/Management Board of Cabinet and the Minister of Finance are set out in the Agency Establishment and Accountability Directive.

All of these existing responsibilities are essential, but the government’s corporate oversight can be improved with better coordination, and by taking a different corporate perspective of agencies.

There are some functions carried out by the Minister of Finance that would obviously remain in the Ministry of Finance. However, there a number of other functions that would be better delivered if they were centralized within one office in one of the central agencies. For example, currently the civil servants who support the Premier's Office in the appointments process reside in one location and the staff responsible for agency policies in another.

An enhanced governance framework is recommended for board-governed agencies as well as support for them with new governance tools and new orientation, and ongoing education and development.

If the existing functions were combined and built upon, sustainable improvements could be made over time. This organization would work in collaboration with ministries and provide a focus of expertise and assistance in agency support and oversight.

12. The central organization provide Cabinet with an annual analysis of the ministries' compliance with oversight with regard to their agencies.

Discussion and Rationale

The oversight responsibilities of ministries are clearly set out in the Agency Establishment and Accountability Directive. The directive mentions the role of the Secretary of the Treasury Board/Management Board of Cabinet with regard to "documentation demonstrating compliance".

Nevertheless, it is not clear that the Premier or Cabinet is provided with reports on the quality and consistency of ministry compliance.

It is important that a central agency office dedicated to agency management have the expertise to provide corporate advice on the ministries' compliance with their oversight roles.

This does not mean that new or additional reports need to be generated by ministries, but that an insightful analysis is available for the Premier and Cabinet.

13. The central organization provide Cabinet with an annual report on the status of the financial and operational performance of board-governed agencies and provide an analysis of whether the agencies' mandates are being met and are still relevant.

Discussion and Rationale

The recommendations above speak to better corporate coordination in the management of agencies.

A different corporate perspective on agencies would recognize that not all ministries have the capacity or the resources to uniformly determine whether operational agencies, classified or not, are in fact operating efficiently, or are necessarily using appropriate performance measures to demonstrate results.

Given the operational costs of these agencies and, in some cases, their revenue potential, the government should have a sophisticated data base of information on agencies and certainly on the more substantial ones. A data base would give the government the ability to gauge whether or not the Province is deriving maximum return, or citizens are deriving maximum service from the agencies. If the government is to exercise informed, strategic oversight of all agencies, it should have the comprehensive corporate analytical capability required to do so.

Furthermore, the central organization could be a valuable resource in providing expert advice to ministries and Treasury Board/Management Board of Cabinet during the entire lifecycle of an agency. For example, when the creation of a new agency is contemplated, a central organization would help the government to take a step back and to ask what level of control it wishes to exert over the new entity.

In other jurisdictions, and in the past in Ontario, attempts have been made to fix sunset dates for comprehensive reviews of agencies. These reviews were not seen as effective and, on occasion, became paper exercises. Nonetheless, it may be useful when establishing an agency to fix a timeframe for its dissolution, if that is known at the outset. In Australia, departments are advised to consider establishing sunset clauses in a newly-created agency's constituting legislation in order to provide for winding up the agency at a later date.

Whatever process is used to assess the relevance and performance of agencies, some level of expertise and analysis is required to provide a corporate perspective that fulfills Cabinet's strategic oversight responsibilities. Emphatically, this is not intended to supersede or lessen ministry oversight.

14. The Ontario Internal Audit Division conduct system-wide governance reviews of agencies from time to time to gauge progress on the implementation of the proposed governance framework.

Discussion and Rationale

The Ontario Internal Audit Division has undertaken a number of individual and corporate audits of agencies. The division is developing an understanding of the agencies and expertise in agency management. It can be a source of expertise on audit planning and risk assessment processes.

The division could play a role in assessing the progress that agencies are making in achieving high governance standards. The division may determine that external assistance is required in some aspects of this work.

CHAPTER 4

CONCLUSION

The objective of this report is to provide government with recommendations on how to strengthen the governance framework and accountability mechanisms of agencies and how to improve ministry and central agency monitoring and evaluation practices with regard to agencies.

Ontario's agencies are diverse and complex. For the most part, they operate at the highest standards and set many best practice examples for government agencies in other jurisdictions.

Agencies play an important role in delivering government programs and services. They are established for one of three primary reasons:

1. To obtain expert or technical advice, or advice from the community, or a sector of the economy
2. To separate from government and from political interference, decision making in quasi-judicial matters
3. To deliver a service or operate an enterprise using specialized expertise or capabilities (e.g., responsiveness to commercial markets, flexibility in administration to realize priority projects) not found within conventional government structures.

The first category, the advisory agencies, do not have operating budgets and are subject to less detailed accountability requirements than other groups of classified agencies.

With the second category, the adjudicative agencies, the government has made significant improvements in the operation, accountability requirements, and support of these bodies.

It is on the third category of agencies, those that have governing boards responsible for delivering a service or operating an enterprise on behalf of government that the review focused.

This category of agency is probably the most complex because of the balance required between independence and accountability.

Building on Strengths

The government has already introduced strong measures such as the Public Sector Expenses Review Act, 2009 in response to a few recent situations within the board-governed agencies.

As well, the revised Agency Establishment and Accountability Directive, 2010 provides significantly more rigorous direction and clarity on roles and responsibilities, and accountability mechanisms.

The recommendations provided in this report build on the measures already taken by government and further strengthen the governance and accountability framework for agencies as well as the roles of ministries and central agencies of government.

At the heart of all the recommendations is the acknowledgement that government must set out who is responsible for what, when it delegates authority to agencies. It is vital that the balance of accountabilities between agencies and government is clearly established, set out and understood by all parties.

Key Considerations for Government

In considering the recommendations in this report, the government must step back and ask itself what type of control it wishes to exert.

When establishing an enterprise or service agency, the understanding is that the government wishes to delegate operational control to a responsible board, i.e., the government continues to be responsible for strategic control but does not exert operational control.

If the service or the enterprise agency is so closely linked to government that the government believes it needs to exert operational control, then that service or enterprise should be brought back into the government ministry structure.

Given the key benefits of the agency structure, such as special expertise and opportunities for innovation, the government is likely to continue to establish agencies. It can do so successfully if it has the framework and processes it requires to exercise informed, strategic oversight.

When the government chooses to deliver the service or operate the enterprise through an agency structure, then the following should be considered:

- The government should be responsible for providing a clear mandate, and clear rules of accountability to the agency. As well, the government must have the capacity to exercise informed, strategic oversight of agencies, monitor results, and take action when results are not achieved.
- The appointed board should be responsible for operational control. In accepting operational control, boards must also accept that this delegation comes with accountability to government and the expectation by the public that they will operate to high standards of public service accountability, ethics, and transparency.

Continuing Good Governance and Accountability

There is an equal onus on government and the agencies to demonstrate to the public that Ontario's agencies are operating in the public interest. In the end however, it is government that is held accountable by the public when problems occur in agencies.

In calling for this review, the government's objective was to ensure that all its agencies operate within an appropriate governance and accountability framework so that the public will have confidence in the value and the integrity of the province's agencies.

If implemented, the recommendations in this report will lead to a much stronger governance and accountability framework.

However, to ensure good governance over the long term and to maintain continued public confidence, the government must be prepared to review these accountabilities from time to time.

One final consideration for government would be that it undertakes a more extensive review of all agencies to determine whether their mandates are still relevant and whether overall efficiencies can be achieved in this sector.

REPORT OF THE SPECIAL ADVISOR ON AGENCIES

DECEMBER 20, 2010

APPENDICES

- A. KEY INFORMANT INTERVIEWS**
- B. LIST OF CLASSIFIED PROVINCIAL AGENCIES**
- C. ADJUDICATIVE TRIBUNALS ACCOUNTABILITY, GOVERNANCE AND APPOINTMENTS ACT**
- D. AGENCY ESTABLISHMENT AND ACCOUNTABILITY DIRECTIVE**

APPENDIX A

KEY INFORMANT INTERVIEWS

CLASSIFIED AGENCIES:

Alcohol and Gaming Commission of Ontario

Cancer Care Ontario

eHealth Ontario

Environment and Land Tribunals Ontario

Health Services Appeal and Review Board/
Health Professions Appeal and Review Board

Liquor Control Board of Ontario

Metrolinx

Ontario Clean Water Agency

Ontario Educational Communications Authority (TVO)

Ontario Energy Board

Ontario Financing Authority

Ontario Human Rights Commission

Ontario Infrastructure Projects Corporation (Infrastructure Ontario)

Ontario Lottery and Gaming Corporation

Ontario Pension Board

Ontario Racing Commission

Ontario Realty Corporation

Ontario Science Centre

Workplace Safety and Insurance Appeals Tribunal

Workplace Safety and Insurance Board

NON-CLASSIFIED AGENCIES:

Hydro One

Ontario Power Authority

Ontario Power Generation

OTHER INDIVIDUALS AND GROUPS:

Auditor General of Ontario

Mr. Jim McCarter

Chief Administrative Officers Roundtable

Chiefs of Staff to Ministers

Conflict of Interest Commissioner

Justice Sidney Linden

Deputy Ministers Council

Rotman School of Management

Clarkson Centre for Business Ethics and Board Effectiveness

Mr. David Beatty, Conway Director and Professor of Strategic Management

University of Manitoba

Hon. Reg Alcock



Agency Establishment & Accountability Directive

Management Board of Cabinet

Effective January 26, 2010

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PURPOSE

Agencies classified under this directive are part of the Government of Ontario and represent a key method for the Ontario government to deliver its services to the public.

This directive indicates how new agencies are to be established and classified. It also details the accountability framework in which ministries and agencies operate, supporting transparency between ministries and agencies. In addition, this directive aligns oversight with risk, reducing exposure to risk while requiring ministries to have strategies to manage it.

APPLICATION AND SCOPE

This directive applies to all ministries and all agencies classified under this directive, to which the government makes the majority of the appointments.

The directive:

- sets out the requirements for establishing classified agencies of the government of Ontario;
- lays out the accountability framework governing agencies and ministries in the operation of agencies; and
- uses a risk-based approach in managing agency accountability.

Definition of Agency

For the purposes of this directive, “Agency” means a provincial government entity that is not organizationally part of a ministry, and:

- is established by government through a constituting instrument (under or by statute, regulation, or order in council);
- is accountable to a minister for fulfilling its legislative obligations, the management of the resources it uses, and its standards for any services it provides;
- where government makes the majority of appointments; and
- with the authority and responsibility granted by the government to perform an ongoing public function or service.

Classified agencies that administer transfer payment programs must also comply with those requirements of the *Transfer Payment Accountability Directive* that govern the operations of transfer payment programs and the relationship between the funding classified agency and the transfer payment recipient organization.

Classification

Based on primary function, all agencies are classified under this directive as:

- Advisory;
- Crown Foundation;
- Adjudicative;
- Regulatory, with or without a governing board;
- Operational service;
- Operational enterprise; or
- Trust.

For further details on agency classification, please see Schedule A.

PRINCIPLES

Government is accountable for protecting the public interest. The higher the potential risk posed by a classified agency, the greater the need for oversight to mitigate such risk and also recognize the level of public interest and obligation of financial management.

Ministries and agencies respect their differing roles and responsibilities in the delivery of public services through agencies.

Ministries balance the need for the agency's operational flexibility from the ministry with the Minister's accountability for the agency to Cabinet and the Legislative Assembly.

A risk-based approach is to be used to manage agencies. Agencies employ a risk framework when making operational decisions. They are responsible for ensuring that funds are spent effectively, efficiently, and are used towards the provided purpose. Value for money is expected in the expenditure of government funds.

Transparency guides good governance and accountability practices for ministries and agencies.

ACCOUNTABILITY FRAMEWORK

A Minister is responsible to Cabinet and the Legislative Assembly for each agency.

Central agencies, such as the Ministry of Finance and the Ministry of Government Services, are accountable to their ministers and to Cabinet for oversight of ministries' responsibilities regarding classified agencies.

The Chair of an agency reports to the Minister for the agency and its activities.

Agency Boards are accountable, through the Chair, to the Minister; Executive directors and Chief Executive Officers are accountable to the Agency's Board and report to the board through the Chair.

Deputy Ministers support Ministers in discharging their responsibilities. They are responsible for ensuring the organizational capacity to monitor agencies and in ensuring that agencies manage any risks appropriately.

RISK-BASED MANAGEMENT AND ACCOUNTABILITY APPROACH

Key to the management of classified agencies is the overlay of a risk-based approach. Risk management practices provide the opportunity to establish the optimum level of oversight, control and discipline enabling ministries and classified agencies to manage risk in changing environments and help provide the proper level of assessment.

Risk management helps ministries and agencies identify risks, assess exposures and develop appropriate action plans to help ensure classified agencies meet business objectives.

Accountability of the Minister for each agency cannot be delegated. However, agency oversight activities can be delegated to appropriate ministry officials. Consistent with this principle, risk-based reviews of any agency can be requested by TB/MBC or the Minister.

The accountability cycle, as noted in the *Accountability Directive*, 1997, consists of:

- defining expectations and managing consistent action;
- reporting on and monitoring performance; and
- taking actions based on results.

Please see Schedule B for further details.

AGENCY ESTABLISHMENT

MANDATORY REQUIREMENTS:

TB/MBC APPROVAL

Treasury Board/Management Board of Cabinet must approve the establishment and classification of any agency. TB/MBC must also approve the merger or termination of agencies as well as any change in the mandate of an agency.

TB/MBC may require a hold back of allocated agency funding for non-compliance with the mandatory requirements of this directive.

TB/MBC BUSINESS CASE

A submission to TB/MBC to establish a new agency must have a business case containing the following criteria:

- public interest
- provincial responsibility
- operational flexibility
- risk assessment
- accountability mechanisms
- cost of establishing and operating the agency
- cost of increased ministry oversight
- source of funding, assets and liabilities, a fiscal evaluation and controllership mechanisms
- public reporting requirements (consolidation/presentation in Public Accounts)
- designation under statutes of particular application to government
- ministry's capacity for controllership.

(See Schedule C for a full list of criteria for agency establishment)

CONSTITUTING INSTRUMENT

In order to provide an appropriate legal framework, all agencies require a constituting instrument (under or by statute, regulation, or Order in Council). The constituting instrument setting out the agency's mandate and authority must accompany the submission. (See Schedule D for further information about constituting instruments.)

STATUTES OF PARTICULAR APPLICATION TO GOVERNMENT

In order to establish the applicability of statutes of particular application to government, a TB/MBC submission to establish a new agency must identify whether an agency is to be designated specifically under such statutes. See schedule E for a list of statutes of particular application.

CORPORATE STATUS

Corporate status must be addressed in the submission to be reviewed by TB/MBC when establishing a new agency.

CROWN AGENCY STATUS

Ministries must identify in a submission to TB/MBC whether or not a proposed new agency will be a Crown agency or otherwise identify its proposed legal relationship to the Crown.

FINANCIAL MANAGEMENT

Ministries must identify the source of funding, fiscal impact and the agency's Consolidation/Presentation in Public Accounts in TB/MBC submissions proposing the establishment of new agencies. The business case must also identify the government accounting and financial policies that apply to the agency. Deviations from government accounting and financial policies must be explicitly stated and a rationale provided.

Ministries must identify the cost of establishing and operating the agency, including the incremental overhead costs and the costs of increased ministry oversight

MEMORANDUM OF UNDERSTANDING (MOU)

An MOU identifying the applicable directives and policies must accompany the TB/MBC submission seeking approval for the establishment of a new agency in order to ensure a full understanding of the relationship between the Minister and the agency. (See Schedule F on information on the required content of an MOU.)

REMUNERATION

Remuneration for government appointees must be authorised by an order in council. Orders in council identifying remuneration for all government appointees to a classified agency must accompany the TB/MBC submission.

SHORT-TERM BODIES

Bodies established by government within a mandate of less than three years are not considered to be classified agencies. However, short-term bodies require:

- a constituting instrument with a termination date;
- terms of reference;
- a remuneration Order in Council, if necessary; and
- the approval of Treasury Board/Management Board of Cabinet.

AGENCY ACCOUNTABILITY

MANDATORY REQUIREMENTS:

All agencies classified under this directive are accountable for using government funds with efficiency, effectiveness, and economy for the purpose of fulfilling the agency's mandate. Ministries may institute additional accountability requirements on a classified agency, based on the agency's risk assessment.

Ministries must respect the independence of the decisions made by adjudicative and regulatory agencies.

In order to ensure effective oversight and accountability, ministries must have in place accountability tools for every classified agency. These tools allow ministries the opportunity to determine that what is being delivered to the public meets government standards of timeliness, effectiveness, economy, and quality.

RISK ASSESSMENT EVALUATION

Ministries and agencies must assess risks in each of the risk categories identified in the *Guide to the Risk-based Approach in the Agency Establishment and Accountability Directive* which supports this Directive. Ministries must also develop risk management plans to manage each applicable risk.

Ministries will report to TB/MBC on each agency's high risk categories, including a description of each high risk, the reason it is considered to be a high risk, and what management plan is in place to manage the risk. The *Guide to the Risk-based Approach in the Agency Establishment and Accountability Directive* will identify the process through which the agency risks will be reported to TB/MBC.

See Schedule B for further details.

MEMORANDUM OF UNDERSTANDING (MOU)

All agencies require a memorandum of understanding that reflects the accountability framework in addition to the parties' mutual understanding of the responsibilities of the ministry and the agency. A memorandum of understanding is between the responsible minister and the agency and expires after five years from the date of the minister's signature. The MOU will remain in force for no more than six additional months until a signed MOU is provided to the Secretary, MBC. (See Schedule F for further details.)

Regulatory agencies, operational services, and operational enterprises must submit new MOUs to TB/MBC for review and approval.

For MOUs that have received TB/MBC approval, the MOUs must be signed within three months of TB/MBC approval or, for a new agency, within three months of its operational functioning.

Upon a change in the minister or the chair of the agency, the MOU must be affirmed by the new party to the MOU. A letter of affirmation must be provided to the Secretary, Management Board of Cabinet, within six months of the new party's commencement.

GOVERNMENT DIRECTIVES AND POLICIES

Agency MOUs must indicate the government directives and policies, including accounting and financial policies that apply to the agency. Deviations from stated directives and policies must be explicitly stated and rationale provided. In order to define the obligations and authority of ministries and agencies, directives and policies are issued by the Ministry of Finance, the Public Service Commission, and Treasury Board/Management Board of Cabinet. Directives and policies are key tools for ministry controllership of classified agencies. Ministries must ensure compliance with legislation, directives, accounting and financial policies. Guidance on the application and scope of directives is provided in Schedule G.

ANNUAL BUSINESS PLAN

In order to ensure understanding of agency objectives and operations, all agencies other than advisory agencies must annually develop a business plan, which includes a financial budget covering a minimum of three years from the current fiscal year. The business plan must be approved by the Minister. The business plan must include a risk management plan per the requirements of this Directive and the Guide to the Risk-Based Approach. The responsible minister or TB/MBC may also request an agency business plan to be brought forward for review, as required.

For the required elements of an annual business plan, see Schedule H.

ANNUAL REPORTS

All agencies, except advisory agencies, must submit an annual report to the responsible minister within 120 days of its fiscal year end in order to inform the Legislative Assembly and the public of the agency's activities. When the agency does not have a governing board, it must submit its report to the minister within 90 days. The ministry must table an agency's annual report in the Legislative Assembly within 60 days of receiving the annual report. (When the Legislative Assembly is not sitting, the Minister will file the report with the Clerk's Office within 60 days of receipt.

A financial statement that has been audited or subject to another appropriate level of external assurance must be tabled in the Assembly as part of the agency's annual report. The financial statements must contain actual results, variances and explanations of the variance against estimates.

After review by the ministry, the following must be submitted to Office of the Provincial Controller for the preparation of the Province's Public Accounts, within the timelines established each year to meet Public Accounts deadlines:

- draft or audited financial statements; and
- all relevant consolidation adjustments

See Schedule I for the required elements of an agency annual report.

FINANCIAL MANAGEMENT AND REPORTING

Agencies must report financial information in accordance with the Province's stated accounting policies issued by the Office of the Provincial Controller.

Agencies are required to submit to the Ministry of Finance their salary information according to the Public Sector Salary Disclosure Act. This information must be submitted according to the Ministry of Finance's specified filing directions and schedule.

With the exception of Advisory, Adjudicative, and Regulatory agencies (without a governing board), agencies are required to submit quarterly expenditure budget – variance reports to the responsible Minister.

TB/MBC can request additional and more regular financial and non-financial reporting from the agency to protect the public interest.

AUDITS

In order to further financial accountability, all agencies, except advisory agencies, are subject to an external financial statement audit when the agency has any of the following attributes:

- holds capital assets;
- incurs financial liabilities or other commitments, such as borrowing or lending;
- enters into commitments with third parties; or
- the agency's revenues and/ or expenditures are material to government operations.

At any time, an agency classified under this directive is subject to periodic review and Value-for-Money audit by the Auditor-General of Ontario, under the *Auditor General Act*. (In some cases, the Auditor General is the auditor of record.)

At any time, an agency classified under this directive is subject to a periodic review and internal audit by the Ontario Internal Audit Division.

For further details about auditing requirements, see Schedule J.

ATTESTATION

Ministers and deputy ministers are required to sign and submit to the Secretary, Management Board of Cabinet, an annual attestation indicating that the agencies

that are a responsibility of their ministry are in compliance with the mandatory requirements of this directive.

With this attestation, ministers and deputy ministers are also to provide documentation demonstrating compliance with this directive by indicating each agency's compliance with each mandatory requirement in a report to the Secretary, Management Board of Cabinet.

ROLES AND RESPONSIBILITIES

CABINET

Cabinet is accountable to the Legislative Assembly, to the Crown, and the public for:

- approving the establishment, merger, termination, and acquisition of all agencies, including subsidiaries, and all related funding.

TREASURY BOARD / MANAGEMENT BOARD OF CABINET

Treasury Board and Management Board of Cabinet are accountable to the Cabinet for:

- establishing a framework, policies and procedures to classify and govern agencies;
- approving the establishment, merger, or termination of agencies;
- approving changes to an existing agency;
- recommending approval of funding for agencies;
- directing that appropriate actions be taken for the improvement of agency management; and
- directing the review and evaluation of agencies and their management through periodic reviews of agencies including risk-based reviews and audits.

SECRETARY OF TREASURY BOARD / SECRETARY OF MANAGEMENT BOARD OF CABINET

The Secretary of Treasury Board and the Secretary of Management Board of Cabinet are accountable to the Chair of Treasury Board / Management Board of Cabinet for:

- providing advice to the Chair of Treasury Board / Management Board of Cabinet;
- identifying a central unit to review agency risk assessments and documentation demonstrating compliance with the requirements of this

- directive as submitted by ministries and to make necessary recommendations;
- recommending to the Treasury Board / Management Board of Cabinet a framework for the sound management and administration of classified agencies.

WITHIN MINISTRIES

MINISTER

The Minister is accountable to Cabinet and to the Legislative Assembly for:

Controllership:

- reporting and responding to the Legislative Assembly on the affairs of classified agencies for which the minister is responsible;
- recommending the establishment, merger, or termination of a classified agency in the Minister's portfolio;
- recommending approval to Treasury Board/Management Board of Cabinet of ministry submissions establishing, merging, or eliminating a classified agency as well as those affecting the mandate, funding, and management of an agency;
- receiving and making the agency's annual report available to the public after tabling it in the Legislative Assembly;
- attesting, reporting and responding to Treasury Board/Management Board of Cabinet on the agency's performance and compliance with government's applicable directives and operational policies
- recommending ministerial prerogative appointments and re-appointments for the agency; and
- directing that an agency undertake a risk-based review or be audited.

Agency affairs:

- proposing the annual allocation for the agency to TB/MBC;
- directing the Chair of an agency to undertake reviews on a periodic basis and making recommendations to TB/MBC after the conclusion of such reviews;
- evaluating the chair's performance with the participation of board members, where applicable;
- approving MOUs and business plans; and
- approving agency bylaws and strategic directions, where applicable.

A Minister may delegate authority to a Deputy Minister or to any other appropriate person, for matters that fall under the purview of the Minister under this directive, subject to the limitations, conditions, and requirements that the Minister sets out in a delegation.

MINISTER OF FINANCE

The Minister of Finance is accountable to Cabinet and to the Legislative Assembly for:

- approving financing from third-party sources;
- recommending to the Lieutenant Governor in Council the issuing of shares by an agency that is a corporation with share capital;
- recommending to the Cabinet finance, economic, accounting and taxation policy;
- supervising, directing, and controlling all finance, economic, statistical and accounting functions, including financial and accounting functions of classified agencies, and all public money;
- approving any activity of an agency that would have financial implications for the government, such as investments, or that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario, such as loans or guarantees; and,
- controlling all finance, economic and accounting functions of the Government of Ontario, including establishing directives and guidelines for the proper conduct of the financial business of each classified agency that are binding on the agency's chief executive officer or equivalent.

DEPUTY MINISTER OF FINANCE

With regard to all agencies, the Deputy Minister of Finance is accountable to the Secretary of the Cabinet and to the Minister of Finance for:

- advising Ministers and Deputy Ministers on financial requirements (including reporting) and financial arrangements of agencies.

DEPUTY MINISTER

The Deputy Minister is accountable to the Secretary of the Cabinet and the Minister for:

Support for the Minister:

- advising, supporting and assisting the Minister regarding the minister's responsibilities for the agency;
- advising the Minister on the requirements of this Directive;
- recommending to the Minister the establishment, merger, or termination of a classified agency;
- recommending to the Minister the evaluation or review, including a risk-based review, of an agency program or the agency, or changes to the agency's management or operations;

- facilitating regular briefings and consultations between the Chair and Minister as well as between Ministry staff and agency management and staff;

Controllership:

- attesting to Treasury Board/ Management Board of Cabinet as required, on the agencies that are a ministry responsibility as to their compliance with all the mandatory requirements of this directive;
- ensuring that the ministry and the agencies that are a ministry responsibility have the capacity and systems in place for ongoing risk-based management of agencies, including appropriate oversight;
- supporting the Minister in reviewing the performance measures and results of the agency;
- submitting to the Minister as part of the annual planning process, a risk management plan including risk assessment and management plans for each risk category in relation to each objective for each agency reporting to the Minister;
- providing a process and framework for reviewing and assessing whether an agency's mandate, business planning, and reports comply with government and ministry directives, guidelines, policies, and procedures as well as with its constituting instrument.
- analysing reports and other sources to identify performance issues of concern to the ministry;
- undertaking timely risk-based reviews of agencies, their management or operations, as directed by the minister or TB/MBC;
- co-operating with any periodic review of the agency directed by the minister or TB/MBC;
- consulting with the Executive Director, Chief Executive Officer, or Chair as needed on matters of mutual importance, including application and requirements of TB/MBC Directives and ministry policies;
- facilitating regular briefings and consultations between the Chair and Minister as well as between Ministry staff and agency management and staff;
- informing the Chair, in writing, of new government directives and any exceptions to or exemptions from TB/MBC Directives or Ministry administrative policies.

In addition, when an agency is prescribed as a Commission public body with employees hired under Part III of the *Public Service of Ontario Act*, 2006, the Deputy Minister has some responsibilities for agency staff.

The Deputy Minister may delegate authority to an Assistant Deputy Minister, Chief Administrative Officer or any other appropriate person, for matters that fall under the purview of the Deputy Minister under this directive, subject to the

limitations, conditions and requirements that the Deputy Minister sets out in a delegation. Such delegations are guided by the *Delegation of Authority Key Directive*.

WITHIN CLASSIFIED AGENCIES

CHAIR

The Chair is accountable to the responsible Minister for:

- advising the other appointees on the requirements of this Directive;
- seeking strategic policy direction from the Minister, where appropriate;
- ensuring the implementation of actions that support the goals, objectives, and strategic directions of the agency;
- reporting to the Minister, as requested, on the agency's activities;
- ensuring timely communications with the Minister regarding any issue that affects the Minister's responsibilities for the agency;
- consulting with the Minister in advance and receiving the Minister's approval regarding any activity which may have an impact on the government and ministry's directives, policies, guidelines, and procedures, or the agency's constituting instrument;
- co-operating on and sharing any relevant information for any risk-based or other periodic review directed by the minister or TB/MBC;
- ensuring that all agency board members and staff are informed of and comply with relevant conflict of interest rules, Ministry of Finance, TB/MBC, and Public Service Commission directives;
- undertaking to ensure that public funds are used for the purpose intended and according to applicable legislation, regulations, directives and the principles of integrity and honesty, and ensuring value for money;
- reviewing the agency's business plan, budget, and financial reports required by this directive;
- ensuring that the Deputy Minister is given notice of Board meetings and upon request, receives all board meeting materials; and
- recommending to the Minister proposals affecting the agency's mandate, management, operations, and funding.

AGENCY BOARD (where applicable)

Note: Not all agencies have governing boards. Advisory and Adjudicative agencies typically do not have boards; some regulatory bodies do not have boards.

An Agency Board is accountable for oversight and governance of the agency, through the Chair, to the Minister for:

- establishing the goals, objectives, and strategic direction for the agency consistent with the agency mandate and government policies, including Minister's directions where appropriate;

- setting overall priorities for the agency;
- managing and controlling the affairs of the agency;
- approving the agency's business plan and annual reports for recommendation to the Minister within the time lines established by the agency's constituting instrument or by this directive;
- ensuring compliance with Directives, policies (including financial and accounting policies)
- establishing such board committees as are required for effective management, governance and accountability, such as audit or governance committees, to advise the board on agency affairs;
- establishing the goals, objectives, and strategic direction for the agency consistent with the agency mandate and government policies, including Minister's directions where appropriate;
- setting overall priorities for the agency;
- directing the affairs of the agency so as to fulfill the agency mandate and responsibilities as set out in its constituting instrument, agency by-laws, minister-approved business plans, risk assessment and management plans, as well as relevant government and ministry directives, guidelines, policies, and procedures;
- passing by-laws or resolutions regulating agency procedures;
- establishing guidelines, policies, and practices under which the agency operates;
- monitoring the use of funds and assets and setting policies to ensure that funds and assets are used for their intended purposes with integrity and honesty and according to applicable legislation, regulations, directives, and the principles of value for money, fairness, transparency, and effective controllership;
- ensuring that the agency operates within its TB/MBC-approved allocations and minister-approved business plan;
- developing effective performance measures, targets, and management systems for assessing the agency's performance;
- preparing and submitting to the Minister an annual report within the time lines established by the agency's constituting instrument or by this directive;
- arranging for risk-based reviews and audits of the agency as needed;
- directing corrective action be taken, when needed, and undertaking any corrective action as required by the Minister;
- co-operating on and sharing relevant information for any risk-based or periodic review directed by the minister or TB/MBC;
managing the staff and advisors of the agency, including the Executive Director/CEO, when allowed for by the constituting instrument;
setting performance objectives for the Executive Director/CEO;
- approving conflict of interest rules for appointees and employees where the board wants agency-specific conflict of interest rules, which must be approved by the Conflict of Interest Commissioner;
- appointing advisory committees of the Board as required;
- selecting and appointing non-Board members to committees of the Board;

- proposing changes to the mandate of the agency to the Minister as required; and
- providing policy advice to the government, through the Minister, concerning issues within or affecting the agency's mandate;

EXECUTIVE DIRECTOR / CHIEF EXECUTIVE OFFICER OF A CLASSIFIED AGENCY

The Executive Director / Chief Executive Officer of an agency is accountable to the Chair for:

- advising the Chair on the requirements of this Directive as well as other government and ministry directives, guidelines, policies, and procedures as well as agency by-laws and policies;
- ensuring that the agency meets the requirements of this Directive;
- providing leadership, guidance, and management to the agency staff, including human and financial resources management;
- translating the goals, objectives, and strategic directions of the Board into operation plans and activities in accordance with the minister-approved business plan;
- keeping the Chair and Board informed of the implementation of policy and operations of the agency;
- ensuring that the agency has the oversight capacity for monitoring its management and operations;
- ensuring proper conduct of the financial business of the agency in accordance with applicable Minister of Finance controllership directives, policies, and guidelines;
- implementing a system of performance measures for the agency and reporting on them to the Chair and Board;
- maintaining effective communications with the Deputy Minister, pertinent ministry staff, and key stakeholders;
- keeping the Ministry and Chair advised of issues or events, including contentious matters, that may concern the Minister, the Deputy Minister, and the Chair in the exercise of their responsibilities;
- establishing a system for the retention of agency documents, for making such documents publicly available when appropriate, for complying with the *Freedom of Information and Protection of Privacy Act* and the *Archives and Recordkeeping Act*;
- providing advice for setting the goals, objectives, and strategic directions of the agency, within its mandate as defined by its constituting instrument and accountability agreement with the ministry and
- undertaking timely risk-based reviews of the agency

When the ED/CEO is appointed by the Lieutenant Governor in Council, the position is also accountable, through the responsible minister, to Cabinet.

When the ED/CEO is employed under Part III of the *Public Service of Ontario Act, 2006*, the position is also accountable to the Deputy Minister of the responsible Minister.

SCHEDULE A: AGENCY CLASSIFICATION

Agencies are classified according to their primary function.

Advisory Agency

Provides ongoing information and advice to assist in the development of policy and / or in the delivery of programs.

Crown Foundation

Solicits, manages, and distributes donations of money or other assets donated for a named organization in whose interests the Foundation has been established. In this Directive, "Crown Foundation" includes only a foundation established under the *Crown Foundations Act* or under the *University Foundations Act*.

Before establishing a Crown Foundation, ministries must obtain further direction from the Office of the Provincial Controller.

Adjudicative Agency

Makes independent quasi-judicial decisions and resolves disputes on the obligations, rights, and responsibilities of an individual, business, or corporate body against existing policies, regulations, and statutes. It may also hear appeals against previous decisions.

Regulatory Agency

Makes independent decisions (including inspections, investigations, prosecutions, certifications, licensing, rate-setting) that may limit or promote the conduct, practice, obligations, rights, responsibilities of an individual, business, or corporate body.

Operational Service

Delivers goods or services to the public usually with no, or only minimal, fees.

Operational Enterprise

Sells goods or services to the public in a commercial manner (including, but not necessarily, in competition with the private sector).

Trust Agency

Administers funds or other assets for beneficiaries named under statute.

Before establishing a Trust agency, ministries must obtain further direction from the Office of the Provincial Controller.

SCHEDULE B: RISK-BASED MANAGEMENT AND ACCOUNTABILITY APPROACH

The Directive requires a risk-based approach to be used to focus ministry and central agency resources on higher risk agencies and to ensure compliance with Directive requirements.

Ministers and ministries are accountable for working with their agencies to ensure effective management of agency risks.

The requirements for risk assessments under the risk-based approach are:

- assessing risks for each agency in each of the specified corporate risk categories;
- keeping a record of the risk assessments for each agency by risk category; and
- reporting to TB/MBC on each agency's high risk categories including a description of each high risk, the reasons it is a high risk and what management plan is in place to manage the risk.

The risk-based approach should include an assessment and analysis of financial and fiscal implications and appropriate mitigation strategies.

While the Directive requires the adoption of a risk-based approach to managing the ministry-agency relationship, the directive does not prescribe a methodology to be used for risk assessment.

The purpose of Ministries' risk assessment reporting to TB/MBC is to identify any high risks for agencies and the management plans in place to address those risks. On the basis of these risk assessments, TB/MBC may require further information from the Ministry or direct that corrective action be taken. TB/MBC may also, on the basis of agency compliance data provided by the Ministry, direct the Ministry to take action including providing a timetable for achieving compliance or to report back within a specified period of time confirming that compliance has been achieved.

(See Guide To The Risk-Based Approach In The Agency Establishment And Accountability Directive for further details.)

SCHEDULE C: REQUIREMENTS FOR ESTABLISHING, MERGING, OR TERMINATING AN AGENCY

1. Establishing a classified agency

TB/MBC submission

The establishment, merger, and termination of all agencies must be approved by Treasury Board/Management Board of Cabinet through a submission signed by the responsible Minister and Deputy Minister. A TB/MBC submission is also required to establish subsidiaries of existing agencies or to acquire controlling interest in an existing entity.

Submissions to TB/MBC for establishing a new classified agency must provide a sound business case, including an extensive financial assessment, the delivery options for providing the service or product and explaining why the recommended method of delivery is an agency.

Characteristics of a classified agency include:

Government control

- public interest (There is an overriding public interest in the delivery of the function or service and the role that the government needs to have.)
- provincial responsibility (The provincial government is constitutionally accountable for the subject matter area of the agency's mandate.)

Operational flexibility

- source of advice and need for expertise from outside of the Ontario Public Service;
- autonomous decision-making to ensure public confidence in the impartiality or objectivity of decisions or actions;
- distinct arrangement for involving others in a public function or service;
- separate authority for collecting and managing donations to the Crown;
- authority to establish an independent trust account (i.e., administer trusts (not public funds) on behalf of beneficiaries);
- delivery of goods and services where, to achieve program objectives or specific service standards, there is a demonstrated need to provide financial, human resource and / or administrative authority outside ministry structures, as follows:

Financial flexibility

- a need for specific financial authority, such as revenue retention, fee setting, borrowing in order to carry out a function or service that is commercial or has a commercial element or to become financially self-sustaining

Human resource flexibility (not for Commission public bodies)

- professional skills or expertise not normally found in government, such as expertise in commodity markets or fund management)
- staff compensation arrangements that are not typical to government;
- more flexible hiring practices (seasonal work, flexible contracts to respond to changes in the market);
- a need for an agency to be directly responsible for terms and conditions of employment.

Administrative flexibility

- a need for administrative flexibility and possible exemption with rationale from some MBC directives to promote entrepreneurial opportunities or other operational requirements.

In addition, the business case for establishing a classified agency must show how the proposed agency meets the following criteria:

- public interest;
- provincial responsibility;
- provides value for money;
- operational flexibility;
- agency's capacity for effective stewardship of public resources; and,
- ministry's capacity for controllership.

In addition to the business case, the submission proposing the establishment of a new agency must identify:

- name and classification;
- mandate and powers of the new agency;
- board composition, if any, including number of members, method of appointment, and remuneration;
- ministry's risk assessment;
- source and amount of funding, assets and liabilities, fiscal evaluation and controllership mechanisms, and the agency's consolidation/presentation in Public Accounts.
- staffing arrangements, including whether staff are hired under the *Public Service of Ontario Act, 2006*, Part III, and their pension treatment;
- statutes of particular application to government;
- Crown status; and
- corporate status, if applicable.

Supporting Documentation

Ministries seeking TB/MBC permission to establish a new agency must provide with the submission the following documentation:

- constituting instrument (by or under a statute, regulation, or OIC);
- MOU that meets this directive's requirements, including a list of applicable TB/MBC directives. TB/MBC may require an MOU of any agency to be approved by TB/MBC based on the characteristics of the agency and the agency's risk;
- initial business plan, performance measures, and if possible a risk management plan;
- OIC for proposed remuneration, if necessary.

2. Merger or termination of agencies

TB/MBC submission

Proposals to merge agencies, to change the mandate of an existing agency, or to terminate an agency must be in the form of a submission to TB/MBC and be supported by a business case. Approval from a Cabinet policy committee may be required before proceeding to TB/MBC.

The submission must outline the financial and human resource impacts of the proposed merger or termination and also detail the ministry's plans for the disposition of any assets of the agency, the completion by the agency of any outstanding responsibilities, and the end of any government appointments.

In addition, TB/MBC or Cabinet may approve or direct the termination of an agency and may require a report-back to TB/MBC.

Where a report-back to TB/MBC is not required, the Deputy Minister will submit a report to the Secretary of Management Board on the wind-down of an agency immediately following the disposition of any assets of the agency, the completion by the agency of any outstanding responsibilities, and the end of any government appointments.

Supporting documentation

In order to terminate, merge, or change the mandate of any agency, the appropriate legal instrument (statute, regulation, order in council) necessary to rescind or amend the constituting instrument must accompany the submission.

3. Liaison with staff from central agencies

Ministries are encouraged to consult early in the planning process with Treasury Board Office and MGS staff for advice on TB/MBC requirements.

SCHEDULE D: CONSTITUTING INSTRUMENTS

The constituting instrument (by or under a statute, regulation, or Order-in-Council) for a proposed new agency must accompany the TB/MBC submission to establish a new agency.

The constituting instrument includes the powers, accountability mechanisms, and responsibilities that are appropriate for the class of agency to which the agency is assigned and that have been justified in the submission to MBC.

Existing statutes and regulations apply to a new agency unless a statute specifically provides for an exemption.

SCHEDULE E: STATUTES OF PARTICULAR APPLICATION

Since classified agencies are part of the government of Ontario, they may be subject to some or all of such statutes as:

- *Financial Administration Act*;
- *French Language Services Act*;
- *Ministry of Treasury and Economics Act*, and
- *Pay Equity Act*.

In addition, there are acts that require designation by regulation or Order in Council:

- *Accessibility for Ontarians with Disability Act, 2005*;
- *Archives and Recordkeeping Act, 2006*;
- *Emergency Management and Civil Protection Act*;
- *Freedom of Information and Protection of Privacy Act*. and
- *Public Service of Ontario Act, 2006*.

When establishing an agency, ministries should indicate the statutes under which the agency should be designated.

In addition, the Memorandum of Understanding between the ministry and the agency must indicate which of these statutes apply to the agency.

SCHEDULE F: MEMORANDUM OF UNDERSTANDING (MOU)

A memorandum of understanding is an important controllership tool since it reflects the accountability framework that exists between the responsible minister and the agency. It clarifies the roles, relationships, and mutual expectations within the framework. The MOU also notifies readers of the accountability mechanisms in place to ensure good governance and accountability. While it is generally not intended to serve as a legal contract that is enforceable by the courts, it is an administrative agreement that serves as an important tool that promotes mutual understanding of the roles and responsibilities of each party.

MOUs must be signed within three months of TB/MBC approval or, for a new agency, within three months of its operational functioning. The original copy of the MOU is to be held by the ministry's legal branch. A copy of the signed MOU is to be shared with the Secretary, Management Board of Cabinet.

It is good practice to ensure that all of the information necessary to understand the MOU is within the MOU. It is not helpful when readers must reference other documents in order to understand the meaning and impact of the MOU.

An MOU for an advisory agency must contain:

- mandate
- expected outcomes with time lines
- financial, staffing, and administrative support provided by the ministry to the agency.

An MOU for an advisory agency must indicate that all TB/MBC and Ministry of Finance directives and policies apply. All MBC and Public Service Commission directives under the *Public Service of Ontario Act, 2006*, apply when the agency has been designated as a Commission public body under the *Public Services of Ontario Act, 2006*.

An MOU for all other classifications of agencies must contain the following sections:

- Purpose
- Definitions
- Agency Classification, Corporate status, and Crown agent status
- Mandate
- Applicable government directives and policies
- Conflict of Interest
- Duration of MOU and Process for Review and Amendment
- Accountability Framework, noting key roles of the:
 - Minister
 - Deputy Minister
 - Board

- Chair
- Chief Executive Officer
- Consultation and Communications, including media relations, reports and publications
- Reporting Requirements, including performance measurements, annual business plan, annual reports, financial reports
- Audit arrangements
- Financial Arrangements, including agency funding, recovery of unspent funds, assets, and HST liability
- Agreements with Third Parties
- Procurement Arrangements
- Administrative Arrangements
- Staffing, Remuneration, and Appointments
- Intellectual Property
- Service standards
- Creation, Collection, Maintenance and Disposition of Records
- Insurance liability

A schedule of the applicable statutes of particular application must be attached to the MOU. Please see Schedule E for information on statutes of particular application.

A schedule of the specifically applicable directives, policies, and guidelines (including accounting and financial policies) must be attached to the MOU. Please see Schedule G on information regarding the applicability of directives.

Please note that only the responsible minister and the agency chair sign the MOU in order to avoid confusion as to the ultimate responsibility for execution of the MOU's provisions.

(See Guide To Developing a Memorandum of Understanding for Agencies for further details.)

SCHEDULE G: APPLICABLE GOVERNMENT DIRECTIVES

Most TB/MBC directives differentiate among the types of agencies in their Application and Scope section, noting those to which the directive automatically applies and those to which it applies only when noted in the Memorandum of Understanding between the agency and the minister.

Ministry of Finance Directives

The following Ministry of Finance (FIN) directive applies to all classified agencies:

- *Delegation of Authority Key Directive.*

Any Classified agency that is funded by the Consolidated Revenue Fund is bound by all Ministry of Finance policies, directives, and guidelines.

TB/MBC Directives

There are five TB/MBC directives that apply in their entirety to all classified agencies:

- *Accountability Directive;*
- *Advertising Content Directive;*
- *Agency Establishment and Accountability Directive;*
- *Government Appointees Directive;*
- *Travel, Meal and Hospitality Expenses Directive.*

In addition, all classified agencies must be in compliance with the *Procurement Directive*, which applies to an agency in whole or in part, depending on criteria set out in that directive.

Agencies that use the Government of Ontario Information Technology Network are subject to all IT directives.

Agencies that are Commission public bodies must follow all MBC and PSC Human Resources directives.

Advisory and Adjudicative agencies are subject to all TB/MBC Directives.

Where TB/MBC Directives do not apply to an agency, the agency must adhere to the principles of those Directives.

SCHEDULE H: ANNUAL BUSINESS PLAN

All agencies classified under this directive, except advisory agencies, must submit an annual business plan to the responsible minister for approval. All agency business plans are to be submitted for the responsible minister's signature and are only to be considered valid after the minister has approved the plan by affixing a signature. An agency business plan is for a three-year period or longer and is prepared every year.

All agency business plans must report on the following elements:

- mandate;
- strategic directions;
- overview of current and future programs and activities;
- resources required to meet objectives of mandate and strategic directions;
- risk identification, assessment, and mitigation strategies;
- environmental scan;
- summary of staff numbers; impact of business plan on human resources; and compensation strategy including employee benefits and benchmarking against other public sector bodies;
- performance measures and targets over three-year life of business plan;
- financial budget over three-year life of business plan (including proposed operating expenditures and projected revenues);
- initiatives involving third parties, such as other levels of government or not-for-profit foundations;
- implementation plan; and
- communication plan.

To support ministers in fulfilling their responsibility for agencies, ministry staff are to exercise due diligence upon receipt of an agency business plan before ministry staff recommend that the minister sign it. Moreover, the agency annual budget is to be submitted to the ministry's CAO within three months from fiscal year-end.

(See Guide To Developing Agency Business Plans for further details.)

SCHEDULE I: ANNUAL REPORTS

All agencies classified under this directive, except advisory agencies, must prepare an annual report for submission to the Minister. The agency must submit its annual report to the minister within 120 days of the agency's fiscal year-end. Agencies that do not have a governing board must submit the annual report to the minister within 90 days.

The Minister is to table the agency's annual report in the Legislative Assembly within 60 days of receiving the annual report. When the Legislative Assembly is not in session, the Minister will file the report with the Clerk's Office within 60 days, at which time the annual report becomes a public document. When the Legislative Assembly is next sitting, the receipt of the annual report will be recorded.

The annual report must contain the following elements:

- description of activities over the year;
- analysis of operational performance;
- analysis of financial performance;
- discussion of performance targets achieved and of action to be taken when not achieved;
- names of appointees, including date when first appointed and when the current term of appointment expires; and
- audited financial statements or, where an audit is not practical, financial statements subject to another appropriate level of external assurance with actual results, variances and explanations of the variances against estimates

The following must be submitted to Office of the Provincial Controller for the preparation of Province's Public Accounts, within the timelines established each year:

- draft or audited financial statements; and,
- all relevant consolidation adjustments.

When an agency has subsidiaries, the annual report must also contain the same information regarding each subsidiary.

(See Guide To Tabling Agency Annual Reports for further details.)

SCHEDULE J: AUDITING

External financial statement audits are to be performed by:

- The Auditor General of Ontario (when auditor-of-record);
- An accredited external auditing firm chosen through tender by the agency's governing board.

When agencies are subject to an annual financial statement audit, the agency's annual report will include its audited financial statements.

In addition to external financial statement audits, the Ontario Internal Audit Division may undertake an internal audit engagement, as defined by their service delivery framework, if approved by the Ministry's Audit Committee, by the Corporate Audit Committee, or at the Minister's request. Under the *Financial Administration Act*, the Minister of Finance may also request an audit. Furthermore, the agency may be subject to an audit by the Auditor General of Ontario under the *Auditor General Act*.

An agency will promptly provide a copy of every report, including its response to the audit report and any recommendations, to the Minister, the Deputy Minister, and the Minister of Finance. The agency will advise the Minister annually, at minimum, on any outstanding recommendations.

The Ontario Internal Audit Division, Ministry of Finance, may also undertake an internal audit engagement at the request of the agency board and with the approval of the Ministry's Audit Committee. Reports and outstanding issues may be shared with the respective ministry's Minister and Deputy Minister upon their request.

The agency's chair, other appointees to the agency, and staff of the agency and ministry are to co-operate in any audit of the agency.

PROVINCE OF ONTARIO

**MINISTRY OF GOVERNMENT
SERVICES**

**LIST OF CLASSIFIED PROVINCIAL
AGENCIES**

SORTED BY AGENCY CLASSIFICATION

15-Dec-10

Agencies by Classification

Adjudicative

Agriculture, Food and Rural Affairs

Agriculture, Food and Rural Affairs Appeal Tribunal

Board of Negotiation (Environmental Protection Act)

Normal Farm Practices Protection Board

Attorney General

Assessment Review Board

Board of Negotiation (Expropriation Act)

Conservation Review Board

Criminal Injuries Compensation Board

Environmental Review Tribunal

Human Rights Tribunal of Ontario

Ontario Municipal Board

Children and Youth Services

Child and Family Services Review Board

Custody Review Board

Community and Social Services

Social Assistance Review Board

Social Benefits Tribunal

Community Safety and Correctional Services

Animal Care Review Board

Fire Safety Commission

Ontario Civilian Police Commission

Ontario Parole Board

Ontario Police Arbitration Commission

Education

Ontario Special Education Tribunal (English)

Ontario Special Education Tribunal (French)

Government Services

Licence Appeal Tribunal

Public Service Grievance Board

Health and Long-Term Care

Chiropody Review Committee

Consent and Capacity Board

Dentistry Review Committee

Health Professions Appeal and Review Board

Health Services Appeal and Review Board

Medical Eligibility Committee (Health Insurance)

Ontario Review Board

Optometry Review Committee

Physician Payment Review Board

Labour

Crown Employees (Grievance Settlement Board)

Ontario Labour Relations Board

Pay Equity Hearings Tribunal

Workplace Safety and Insurance Appeals Tribunal

Municipal Affairs and Housing

Building Code Commission

Landlord and Tenant Board

Training, Colleges and Universities

College Relations Commission

Advisory

Agriculture, Food and Rural Affairs

Livestock Medicines Advisory Committee

Ontario AgriStability Review Committee

Rural Economic Development (RED) Panel Board of Directors

Attorney General

Investment Advisory Committee of the Public Guardian and Trustee

Judicial Appointments Advisory Committee

Justices of the Peace Appointments Advisory Committee

Office for Victims of Crime

Citizenship and Immigration

Advisory Council to the Order of Ontario

Ontario Medal for Young Volunteers Advisory Council

Province of Ontario Medal for Fire Fighters Bravery
Advisory Council

Province of Ontario Medal for Good Citizenship
Advisory Council

Province of Ontario Medal for Police Bravery Advisory Council

Community and Social Services

Accessibility Standards Advisory Council

Ontario Youth Council

Community Safety and Correctional Services

Constable Joe MacDonald Public Safety Officers'
Survivors Scholarship Fund Advisory Committee

Death Investigation Oversight Council

Fire Marshal's Public Fire Safety Council

Economic Development and Trade

Ontario Investment and Trade Advisory Council

Small Business Agency of Ontario

Education

Advisory Council on Special Education

Curriculum Council

Education Relations Commission

Languages of Instruction Commission of Ontario

Ontario Parent Council

Safe Schools Action Team

Environment

Advisory Council on Drinking Water Quality and Testing
Standards

Lake Simcoe Coordinating Committee

Lake Simcoe Science Committee

Pesticides Advisory Committee

Finance

Commodity Futures Advisory Board

Financial Disclosure Advisory Board

Ontario Economic Forecast Council

Francophone Affairs

Provincial Advisory Committee on Francophone Affairs

Government Services

Deputy Judges Remuneration Commission

Justices of the Peace Remuneration Commission

Provincial Judges Remuneration Commission

Health and Long-Term Care

Citizens' Council

Committee to Evaluate Drugs

French Language Health Services Advisory Council

Healing Arts Radiation Protection Commission

Health Professions Regulatory Advisory Council

Joint Committee on the Schedule of Benefits

Ontario Advisory Committee on HIV/AIDS

Pharmacy Council

Physician Services Payment Committee

Municipal Affairs and Housing

Building Code Energy Advisory Council

Greenbelt Council

Natural Resources

Committee on the Status of Species at Risk in Ontario

Fish and Wildlife Advisory Board (Fish and Wildlife Heritage Commission)

Kawartha Highlands Signature Site Park Management Advisory Board

Ontario Geographic Names Board

Ontario Moose-Bear Allocation Advisory Committee

Ontario Parks Board

Rabies Advisory Committee

Species at Risk Program Advisory Committee

Wildlife Rehabilitation Committee

Northern Development, Mines and Forestry

Ring of Fire Advisory Committee

Office of the Premier

Premier's Climate Change Advisory Panel

Research and Innovation

Biopharmaceutical Investment Program Marketing Advisory Committee

Ontario Network of Excellence Advisory Board

Ontario Research Fund Advisory Board

Tourism and Culture

Minister's Advisory Council for Arts and Culture

Training, Colleges and Universities

Industry Committee - Agricultural Equipment Technician

Industry Committee - Appliance Service Technician

Industry Committee - Arborist

Industry Committee - Auto Body & Collision Damage Repairer

Industry Committee - Automotive Service Technician

Industry Committee - Baker-Patisserie

Industry Committee - Cabinetmaker

Industry Committee - Chef/Cook

Industry Committee - Construction Craft Worker

Industry Committee - Early Childhood Educator

Industry Committee - Elevating Device Mechanic

Industry Committee - Facilities Operation

Industry Committee - Hairstylist

Industry Committee - Heavy Duty Equipment Technician

Industry Committee - Horticultural Technician

Industry Committee - Industrial Electrician

Industry Committee - Industrial Mechanic Millwright

Industry Committee - Instrumentation Control Technician

Industry Committee - Motive Power Machinist

Industry Committee - Motorcycle/Marine and Small Engine Mechanic

Industry Committee - Network Cabling Specialist

Industry Committee - Parts Technician

Industry Committee - Powered Lift Truck Technician

Industry Committee - Precision Machining and Tooling

Industry Committee - Surface Blaster

Industry Committee - Tractor-Trailer Commercial Driver

Industry Committee - Truck and Coach Technician

Industry Committee - Utility Arborist

Industry Committee - Welder/Fabricator

Post Secondary Education Quality Assessment Board

Provincial Advisory Committee - Construction and Maintenance Electrician

Provincial Advisory Committee - Construction Boilermaker

Provincial Advisory Committee - Construction Millwright

Provincial Advisory Committee - Drywall Finisher and Plasterer

Provincial Advisory Committee - Drywall, Acoustic and Lathing Applicator

Provincial Advisory Committee - Floor Covering Installer

Provincial Advisory Committee - General Carpenter

Provincial Advisory Committee - Glazier and Metal Mechanic

Provincial Advisory Committee - Hoisting Engineer

Provincial Advisory Committee - Ironworker

Provincial Advisory Committee - Masonry and Allied Crafts

Provincial Advisory Committee - Painter and Decorator

Provincial Advisory Committee - Plumber and Steamfitter

Provincial Advisory Committee - Powerline Technician

Provincial Advisory Committee - Refrigeration and Air Conditioning Mechanic

Provincial Advisory Committee - Reinforcing Rodworker

Provincial Advisory Committee - Roofer

Provincial Advisory Committee - Sheet Metal Worker

Provincial Advisory Committee - Sprinkler and Fire Protection Installer

Provincial Advisory Committee - Terrazzo, Tile and Marble Setter

Selection Board (Ontario Graduate Scholarship Program)

Training Completion Assurance Fund Advisory Board

Crown Foundation

Training, Colleges and Universities

Brock University Foundation

Foundation at Queen's University at Kingston

McMaster University Foundation

Operational Enterprise

Agriculture, Food and Rural Affairs

AgriCorp

Ontario Food Terminal Board

Attorney General

Economic Development and Trade

Ontario Immigrant Investor Corporation

Ontario, Eastern Ontario and Northern Ontario Development Corporation

Ortech Corporation

Education

L'Office des telecommunications educatives de langue
francaise de l'Ontario

Ontario Educational Communications Authority (TV Ontario)

Environment

Ontario Clean Water Agency

Finance

Deposit Insurance Corporation of Ontario

Liquor Control Board of Ontario

Ontario Electricity Financial Corporation

Ontario Financing Authority

Ontario Lottery and Gaming Corporation

Stadium Corporation of Ontario Ltd.

Infrastructure

Ontario Infrastructure Projects Corporation

Ontario Realty Corporation

Municipal Affairs and Housing

North Pickering Development Corporation

Ontario Mortgage and Housing Corporation

Ontario Mortgage Corporation

Toronto Islands Residential Community Trust Corporation

Natural Resources

Algonquin Forestry Authority

Northern Development, Mines and Forestry

Northern Ontario Grow Bonds Corporation

Ontario Northland Transportation Commission

Owen Sound Transportation Company

Research and Innovation

Ontario Capital Growth Corporation

Tourism and Culture

Centennial Centre of Science and Technology (Ontario Science Centre)

McMichael Canadian Art Collection

Metropolitan Toronto Convention Centre Corporation

Niagara Parks Commission

Ontario Heritage Trust

Ontario Place Corporation

Ottawa Convention Centre Corporation

Royal Ontario Museum

Science North

St. Lawrence Parks Commission

Transportation

Metrolinx

Toronto Area Transit Operating Authority

Operational Service

Agriculture, Food and Rural Affairs

Agricultural Research Institute of Ontario

Attorney General

Human Rights Legal Support Centre

Legal Aid Ontario

Community and Social Services

Soldiers' Aid Commission

Education

Education Quality and Accountability Office

Provincial Schools Authority

Environment

Walkerton Clean Water Centre

Health and Long-Term Care

Cancer Care Ontario

ECHO: Improving Women's Health in Ontario

eHealth Ontario

HealthForceOntario Marketing and Recruitment Agency

Local Health Integration Network - Central

Local Health Integration Network - Central East

Local Health Integration Network - Central West

Local Health Integration Network - Champlain

Local Health Integration Network - Erie St. Clair

Local Health Integration Network - Hamilton Niagara
Haldimand Brant

Local Health Integration Network - Mississauga Halton

Local Health Integration Network - North East

Local Health Integration Network - North Simcoe Muskoka

Local Health Integration Network - North West Ontario

Local Health Integration Network - South East

Local Health Integration Network - South West
Local Health Integration Network - Toronto Central
Local Health Integration Network - Waterloo Wellington
Ontario Agency for Health Protection and Promotion
Ontario Health Quality Council
Ontario Mental Health Foundation
Trillium Gift of Life Network

Labour

Office of the Employer Adviser
Office of the Worker Adviser

Northern Development, Mines and Forestry

Northern Ontario Heritage Fund Corporation

Tourism and Culture

Ontario Media Development Corporation
Ontario Tourism Marketing Partnership Corporation
Ontario Trillium Foundation
Province of Ontario Council for the Arts (Ontario Arts Council)

Training, Colleges and Universities

College of Trades Appointments Council
Higher Education Quality Council of Ontario

Regulatory

Agriculture, Food and Rural Affairs

Ontario Farm Products Marketing Commission

Attorney General

Office of the Independent Police Review Director

Ontario Human Rights Commission

Public Accountants Council

Citizenship and Immigration

Office of the Fairness Commissioner

Consumer Services

Ontario Film Review Board

Finance

Financial Services Tribunal

Francophone Affairs

Office of the French Language Services Commissioner

Government Services

Advertising Review Board

Office of the Conflict of Interest Commissioner

Public Service Commission

Health and Long-Term Care

Board of Directors for Drugless Therapy

Labour

Pay Equity Office

Municipal Affairs and Housing

Building Materials Evaluation Commission

Natural Resources

Niagara Escarpment Commission

Northern Development, Mines and Forestry

Crown Timber Board of Examiners

Transportation

Ontario Highway Transport Board

Regulatory (governing board)

Attorney General

Alcohol and Gaming Commission of Ontario

Energy

Ontario Energy Board

Finance

Financial Services Commission of Ontario

Ontario Racing Commission

Ontario Securities Commission

Trust

Agriculture, Food and Rural Affairs

Grain Financial Protection Board

Livestock Financial Protection Board

Government Services

Ontario Public Service Pension Board (Ontario Pension Board)

Provincial Judges Pension Board

Labour

Workplace Safety and Insurance Board

**REPORT OF THE SPECIAL ADVISOR ON AGENCIES:
APPENDIX D**

**Adjudicative Tribunals Accountability, Governance and
Appointments Act, 2009**

Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009

S.O. 2009, CHAPTER 33 SCHEDULE 5

Consolidation Period: From April 7, 2010 to the [e-Laws currency date](#).

No Amendments.

PURPOSE AND INTERPRETATION

Note: Section 1 comes into force on a day to be named by proclamation of the Lieutenant Governor. See: 2009, c. 33, Sched. 5, s. 24.

Purpose

1. The purpose of this Act is to ensure that adjudicative tribunals are accountable, transparent and efficient in their operations while remaining independent in their decision-making. 2009, c. 33, Sched. 5, s. 1.

Definitions

2. In this Act,

“adjudicative tribunal” means an agency, board, commission, corporation or other entity that is prescribed; (“tribunal décisionnel”)

“governance accountability documents” means the memorandum of understanding, business plan and annual report required by sections 11, 12 and 13, respectively; (“documents de responsabilisation en matière de gouvernance”)

“prescribed” means prescribed by regulations made under this Act; (“prescrit”)

“public accountability documents” means the mandate and mission statement, consultation policy, service standard policy, ethics plan and member accountability framework required by sections 3, 4, 5, 6 and 7, respectively; (“documents de responsabilisation à l’égard du public”)

“responsible minister”, in relation to an adjudicative tribunal, means the minister of the Crown who is responsible to the Assembly for the tribunal. (“ministre responsable”) 2009, c. 33, Sched. 5, s. 2.

Note: Sections 3-14 come into force on a day to be named by proclamation of the Lieutenant Governor. See: 2009, c. 33, Sched. 5, s. 24.

PUBLIC ACCOUNTABILITY DOCUMENTS

Mandate and mission statement

3. (1) Every adjudicative tribunal shall develop a mandate and mission statement. 2009, c. 33, Sched. 5, s. 3 (1).

Contents

(2) The mandate and mission statement must contain,

- (a) a statement of the tribunal’s legislative mandate, with reference to the Act that establishes its mandate and to any Act or Acts that add to its mandate;
- (b) the tribunal’s mission statement; and
- (c) any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 3 (2).

Approval

(3) The mandate and mission statement must be approved by the tribunal’s responsible minister. 2009, c. 33, Sched. 5, s. 3 (3).

Consultation policy

4. (1) Every adjudicative tribunal shall develop a consultation policy. 2009, c. 33, Sched. 5, s. 4 (1).

Contents

(2) The consultation policy must describe whether and how the tribunal will consult with the public when it is considering changes to its rules or policies, including consultation with any persons, entities or groups of persons or entities whose interests, in the opinion of the tribunal’s chair, would be affected by those changes. 2009, c. 33, Sched. 5, s. 4 (2).

Same

(3) The consultation policy must contain any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 4 (3).

Approval

(4) The consultation policy must be approved by the tribunal's responsible minister. 2009, c. 33, Sched. 5, s. 4 (4).

Service standard policy

5. (1) Every adjudicative tribunal shall develop a service standard policy. 2009, c. 33, Sched. 5, s. 5 (1).

Contents

(2) The service standard policy must contain,

- (a) a statement of the standards of service that the tribunal intends to provide;
- (b) a process for making, reviewing and responding to complaints about the service provided by the tribunal; and
- (c) any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 5 (2).

Approval

(3) The service standard policy must be approved by the tribunal's responsible minister. 2009, c. 33, Sched. 5, s. 5 (3).

Relationship to other remedies

(4) Nothing in the service standard policy shall be interpreted as affecting,

- (a) a process or remedy available under the *Ombudsman Act*;
- (b) a right of appeal from decisions of the tribunal available under any Act; or
- (c) a right to bring an application for judicial review. 2009, c. 33, Sched. 5, s. 5 (4).

Ethics plan

6. (1) Every adjudicative tribunal shall develop an ethics plan. 2009, c. 33, Sched. 5, s. 6 (1).

Contents

(2) The contents of the ethics plan shall be prescribed and must also include any matter specified in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 6 (2).

Approval

(3) The ethics plan must be approved by the Conflict of Interest Commissioner appointed under the *Public Service of Ontario Act, 2006*. 2009, c. 33, Sched. 5, s. 6 (3).

Conflict with *Public Service of Ontario Act, 2006*

(4) In the event of any conflict between an adjudicative tribunal's ethics plan and the conflict of interest rules made under the *Public Service of Ontario Act, 2006* that apply to the tribunal, the conflict of interest rules prevail. 2009, c. 33, Sched. 5, s. 6 (4).

Member accountability framework

7. (1) Every adjudicative tribunal shall develop a member accountability framework. 2009, c. 33, Sched. 5, s. 7 (1).

Contents

(2) The member accountability framework must contain,

- (a) a description of the functions of the members, the chair and the vice-chairs, if any, of the tribunal;
- (b) a description of the skills, knowledge, experience, other attributes and specific qualifications required of a person to be appointed as a member of the tribunal;
- (c) a code of conduct for the members of the tribunal; and
- (d) any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 7 (2).

Approval

(3) The member accountability framework must be approved by the tribunal's responsible minister. 2009, c. 33, Sched. 5, s. 7 (3).

PUBLICATION, AMENDMENT AND REVIEW OF PUBLIC ACCOUNTABILITY DOCUMENTS

Publication of public accountability documents

8. Every adjudicative tribunal shall make its public accountability documents, approved as required by section 3, 4, 5, 6 or 7, as the case may be, available to the public. 2009, c. 33, Sched. 5, s. 8.

Amendments to public accountability documents

9. An adjudicative tribunal may amend its public accountability documents, and the person required to approve the original document is also required to approve any amendment to the document. 2009, c. 33, Sched. 5, s. 9.

Review of public accountability documents

10. Every adjudicative tribunal shall review its public accountability documents to determine whether they require amendment every three years after their initial publication. 2009, c. 33, Sched. 5, s. 10.

GOVERNANCE ACCOUNTABILITY DOCUMENTS

Memorandum of understanding

11. (1) Every adjudicative tribunal shall enter into a memorandum of understanding with its responsible minister. 2009, c. 33, Sched. 5, s. 11 (1).

Contents

- (2) The memorandum of understanding must address,
 - (a) the financial, staffing and administrative arrangements for the tribunal;
 - (b) the accountability relationships of the tribunal, including its duty to account to its responsible minister;
 - (c) the recruitment, orientation and training of the tribunal's members;
 - (d) the committee structure of the tribunal, if any;
 - (e) the tribunal's planning and reporting requirements; and
 - (f) any other matters specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 11 (2).

Expiry

(3) The memorandum of understanding expires five years after the day it is entered into, and may be renewed before that day for another five years. 2009, c. 33, Sched. 5, s. 11 (3).

Review

(4) The tribunal and its responsible minister shall review the memorandum of understanding after there is a change in the responsible minister or the chair of the tribunal, and, in any event, at least once before it expires. 2009, c. 33, Sched. 5, s. 11 (4).

Continuation of expired memorandum

(5) A memorandum of understanding that has expired continues in effect, despite its expiry, until it is renewed or replaced. 2009, c. 33, Sched. 5, s. 11 (5).

Publication

(6) The tribunal's responsible minister shall make the memorandum of understanding available to the public. 2009, c. 33, Sched. 5, s. 11 (6).

Transition

(7) An adjudicative tribunal and its responsible minister may agree that a memorandum of understanding entered into by them before the day that subsection (1) becomes applicable to the tribunal and that is still in effect on that day is a memorandum of understanding entered into by them on the day subsection (1) becomes applicable to the tribunal for the purposes of this section. 2009, c. 33, Sched. 5, s. 11 (7).

Business plan

12. (1) Every adjudicative tribunal shall develop a business plan for a prescribed period of time. 2009, c. 33, Sched. 5, s. 12 (1).

Contents

(2) The contents of the business plan shall be prescribed and must also include any matter specified in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 12 (2).

Approval

(3) The business plan must be approved by the tribunal's responsible minister. 2009, c. 33, Sched. 5, s. 12 (3).

Publication

(4) The tribunal shall make the business plan available to the public. 2009, c. 33, Sched. 5, s. 12 (4).

Annual report

13. (1) Every adjudicative tribunal shall prepare and give its responsible minister an annual report within 90 days after the end of its fiscal year. 2009, c. 33, Sched. 5, s. 13 (1).

Contents

(2) The annual report must contain,

- (a) a report on the tribunal's activities, including recruitment activities, during the preceding fiscal year;
- (b) a financial statement for the tribunal for the preceding fiscal year; and
- (c) any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 13 (2).

Tabling in the Assembly

(3) The responsible minister shall submit the report to the Lieutenant Governor in Council and, within 60 days after the day the responsible minister receives the report, shall table the report in the Assembly. 2009, c. 33, Sched. 5, s. 13 (3).

Tribunal-specific Act prevails

(4) In the event of any conflict between this section and a provision of an other Act respecting the tabling of an annual report by an adjudicative tribunal, the provision of the other Act prevails in the case of that tribunal. 2009, c. 33, Sched. 5, s. 13 (4).

APPOINTMENT TO ADJUDICATIVE TRIBUNALS

Adjudicative tribunal members to be selected by competitive, merit-based process

14. (1) The selection process for the appointment of members to an adjudicative tribunal shall be a competitive, merit-based process and the criteria to be applied in assessing candidates shall include the following:

- 1. Experience, knowledge or training in the subject matter and legal issues dealt with by the tribunal.
- 2. Aptitude for impartial adjudication.
- 3. Aptitude for applying alternative adjudicative practices and procedures that may be set out in the tribunal's rules. 2009, c. 33, Sched. 5, s. 14 (1).

Tribunal-specific qualifications

(2) If a member of an adjudicative tribunal is required by or under any other Act to possess specific qualifications, a person shall not be appointed to the tribunal unless he or she possesses those qualifications. 2009, c. 33, Sched. 5, s. 14 (2).

Publication

(3) The responsible minister of an adjudicative tribunal shall make public the recruitment process to select one or more persons to be appointed to the tribunal and in doing so shall specify,

- (a) the steps intended to be taken in the recruitment process; and
- (b) the skills, knowledge, experience, other attributes and specific qualifications required of a person to be appointed. 2009, c. 33, Sched. 5, s. 14 (3).

Chair to recommend appointments, reappointments

(4) No person shall be appointed or reappointed to an adjudicative tribunal unless the chair of the tribunal, after being consulted as to his or her assessment of the person's qualifications under subsections (1) and (2) and, in the case of a reappointment, of the member's performance of his or her duties on the tribunal, recommends that the person be appointed or reappointed. 2009, c. 33, Sched. 5, s. 14 (4).

Conflict with other Acts, regulations

(5) In the event of any conflict between this section and a provision of another Act or of a regulation made under another Act respecting the appointment of members of an adjudicative tribunal, the provision of the other Act or regulation prevails. 2009, c. 33, Sched. 5, s. 14 (5).

TRIBUNAL CLUSTERING

Designation of clusters

15. The Lieutenant Governor in Council may by regulation designate two or more adjudicative tribunals as a cluster if, in the opinion of the Lieutenant Governor in Council, the matters that the tribunals deal with are such that they can operate more effectively and efficiently as part of a cluster than alone. 2009, c. 33, Sched. 5, s. 15.

Governance structure of clusters

Executive chair

16. (1) The Lieutenant Governor in Council may appoint an executive chair to be responsible for all of the adjudicative tribunals included in a cluster. 2009, c. 33, Sched. 5, s. 16 (1).

Associate chairs

(2) The Lieutenant Governor in Council may appoint an associate chair for each adjudicative tribunal that is included in a cluster. 2009, c. 33, Sched. 5, s. 16 (2).

Alternate executive chairs

(3) The Lieutenant Governor in Council may appoint one or more of the associate chairs as alternate executive chairs of the cluster, and an alternate executive chair shall act in the place of the executive chair if the executive chair is unable to act or if the position of executive chair is vacant. 2009, c. 33, Sched. 5, s. 16 (3).

Vice-chairs

(4) The Lieutenant Governor in Council may appoint one or more vice-chairs for each adjudicative tribunal that is included in a cluster, and a vice-chair shall act in the place of the tribunal's associate chair if the associate chair is unable to act or if the position of associate chair is vacant. 2009, c. 33, Sched. 5, s. 16 (4).

Chairs must be members of tribunals

(5) The executive chair and each alternate executive chair must also be members of each of the adjudicative tribunals in the cluster and the associate chair and each vice-chair must also be members of the tribunal to which they are appointed as associate chair and vice-chair. 2009, c. 33, Sched. 5, s. 16 (5).

Powers, duties, etc., of executive chair

17. (1) The executive chair shall have the powers, duties and functions assigned to the chair of each adjudicative tribunal that is included in the cluster by this or any other Act or by any regulation, order-in-council or ministerial or Management Board of Cabinet directive. 2009, c. 33, Sched. 5, s. 17 (1).

Delegation

(2) The executive chair may delegate to an associate chair or vice-chair of an adjudicative tribunal that is included in the cluster any power, duty or function, except a power, duty or function he or she may have as an ethics executive under the *Public Service of Ontario Act, 2006*. 2009, c. 33, Sched. 5, s. 17 (2).

Protection from liability

(3) The executive chair, alternate executive chair and associate chair of an adjudicative tribunal that is included in a cluster shall be entitled to the same protection from liability as the chair of the tribunal. 2009, c. 33, Sched. 5, s. 17 (3).

Same

(4) The vice-chairs and members of an adjudicative tribunal that is included in a cluster shall be entitled to the same protection from liability as the members of the tribunal. 2009, c. 33, Sched. 5, s. 17 (4).

Crown liability

(5) Any provision in another Act that addresses the Crown's liability for the actions or omissions of an adjudicative tribunal that is included in a cluster or of a chair, vice-chair or member of an adjudicative tribunal that is included in a cluster applies with necessary modifications to the adjudicative tribunal. 2009, c. 33, Sched. 5, s. 17 (5).

References to chair in other Acts, etc.

(6) Except as provided in a regulation made under this Act, any reference in this or any other Act or a regulation to the chair of an adjudicative tribunal that is included in a cluster shall be read as a reference to the tribunal's executive chair. 2009, c. 33, Sched. 5, s. 17 (6).

Note: Section 18 comes into force on a day to be named by proclamation of the Lieutenant Governor. See: 2009, c. 33, Sched. 5, s. 24.

Joint accountability documents

18. (1) All the adjudicative tribunals included in a cluster shall jointly develop, prepare or enter into, as the case may be, the public accountability documents and governance accountability documents required by this Act. 2009, c. 33, Sched. 5, s. 18 (1).

Same

(2) Section 3, 4, 5, 6 or 7, as the case may be, and sections 8, 9 and 10 apply with necessary modifications to any public accountability document jointly developed by all the adjudicative tribunals in a cluster. 2009, c. 33, Sched. 5, s. 18 (2).

Same

(3) Section 11, 12 or 13, as the case may be, applies with necessary modifications to any governance accountability document jointly developed, prepared or entered into, as the case may be, by all the adjudicative tribunals in a cluster. 2009, c. 33, Sched. 5, s. 18 (3).

This Act prevails re governance of clusters

19. In the event of any conflict between section 16 or 17 and a provision of another Act or a regulation respecting the governance of an adjudicative tribunal that is included in a cluster, section 16 or 17 prevails. 2009, c. 33, Sched. 5, s. 19.

GENERAL MATTERS

Note: Sections 20 and 21 come into force on a day to be named by proclamation of the Lieutenant Governor. See: 2009, c. 33, Sched. 5, s. 24.

Chair is responsible for tribunals

20. (1) The chair of an adjudicative tribunal is responsible for ensuring that the tribunal performs the duties and functions required of it under this or any other Act and that it is in compliance with any other Act or any regulation applicable to it. 2009, c. 33, Sched. 5, s. 20 (1).

Effect of failure to comply

(2) Any failure of an adjudicative tribunal or its chair to comply with this Act does not affect the validity of any action taken or decision made by the tribunal or the chair. 2009, c. 33, Sched. 5, s. 20 (2).

Review of tribunals

21. (1) An adjudicative tribunal's responsible minister shall direct a public servant employed under Part III of the *Public Service of Ontario Act, 2006* or any other person to conduct a review of the adjudicative tribunal at least once every six years. 2009, c. 33, Sched. 5, s. 21 (1).

Matters for review

- (2) The review required by subsection (1) must address,
- (a) the tribunal's mandate and whether it continues to be relevant;
 - (b) the functions performed by the tribunal, and whether they are best performed by the tribunal or whether they would be better performed by another entity;
 - (c) the tribunal's governance structure and management systems, and whether they continue to be appropriate to its mandate and functions;
 - (d) the tribunal's financial and human resources and its financial and information systems;
 - (e) the tribunal's business planning, performance measurement and reporting practices;
 - (f) whether the tribunal has effective processes in place to ensure its compliance with any applicable Act, regulation or directive of the Management Board of Cabinet;
 - (g) whether the tribunal is effective in achieving its mandate and serving the public;
 - (h) whether changes should be made to the tribunal or whether the tribunal should be discontinued; and
 - (i) any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 21 (2).

Additional reviews

(3) An adjudicative tribunal's responsible minister may at any time direct a public servant employed under Part III of the *Public Service of Ontario Act, 2006* or any other person to conduct a review of the adjudicative tribunal in respect of any of the matters listed in subsection (2). 2009, c. 33, Sched. 5, s. 21 (3).

Protection of personal information

(4) Nothing in this section authorizes a person conducting a review under subsection (1) or subsection (3) to collect, or an adjudicative tribunal to disclose to such person, any information that is personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* or personal health information within the meaning of the *Personal Health Information Protection Act, 2004*. 2009, c. 33, Sched. 5, s. 21 (4).

Application of *Public Service of Ontario Act, 2006, Management Board of Cabinet Act*

22. Nothing in this Act affects any obligation or requirement imposed by or under the *Public Service of Ontario Act, 2006* or the *Management Board of Cabinet Act* on a person who is appointed as a chair, vice-chair or member of an adjudicative tribunal. 2009, c. 33, Sched. 5, s. 22.

REGULATIONS

Regulations

23. The Lieutenant Governor in Council may make regulations,

- (a) prescribing agencies, boards, commissions, corporations or other entities for the purpose of the definition of “adjudicative tribunal” in section 2;
- (b) prescribing the contents of the ethics plan required by section 6;
- (c) prescribing a period of time for the purpose of subsection 12 (1) and the contents of the business plan required by section 12;
- (d) governing the publication of the recruitment process required by subsection 14 (3);
- (e) respecting the waiver of any requirement set out in section 14, including waiving any such requirement;
- (f) prescribing references in this or any other Act or in a regulation to the chair of an adjudicative tribunal that are to be read other than as described in subsection 17 (6) and prescribing how such references shall be read in relation to the adjudicative tribunal that is included in a cluster;
- (g) prescribing other matters to be addressed in a review of an adjudicative tribunal required by section 21;
- (h) prescribing other matters to be addressed or included in any public accountability document or governance accountability document;
- (i) prescribing the date by or time within which an adjudicative tribunal must comply with any provision or requirement of this Act or of a regulation made under this Act respecting a public accountability document or governance accountability document;
- (j) prescribing the form and format of any public accountability document or governance accountability document;
- (k) governing the publication of the public accountability documents or governance accountability documents or of the review required by section 21. 2009, c. 33, Sched. 5, s. 23.

24. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2009, c. 33, Sched. 5, s. 24.

25. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2009, c. 33, Sched. 5, s. 25.

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