

Agencies & Appointments Directive

Management Board of Cabinet

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Agencies & Appointments Directive

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Introduction

The Agencies & Appointments Directive is a Management Board of Cabinet Directive, issued under the *Management Board of Cabinet Act*.

Provincial agencies provide goods or services as a part government but are not organizationally part of a ministry. They are led by government appointees and are expected to provide a high level of service to their public. The provincial agency model addresses the need for such operational flexibility as may be necessary.

Advisory appointments may be made by a minister or by the Lieutenant Governor in Council (LGIC) to obtain expert advice or receive recommendations on specific subject matter. Advisory appointments are not governed by the same accountability framework as provincial agencies.

Government appointees are individuals appointed to perform specific functions and they are accountable to a minister. Appointees are required to perform their functions in a professional, ethical and competent manner.

Purpose

The purpose of this directive is to set out rules for:

- provincial agencies;
- short-term advisory bodies and special advisors;
- government appointments; and
- remuneration.

The directive is divided into three main parts:

- Part 1 sets out the requirements for provincial agencies;
- Part 2 sets out the requirements for short-term advisory bodies and special advisors; and
- Part 3 sets out the requirements for appointments and remuneration.

Application and Scope

The application and scope are different for each of the three main parts.

Part 1: Provincial Agencies

This part of the directive applies to all ministries and provincial agencies.

Part 1 sets out:

- Requirements for establishing provincial agencies;
- The accountability framework for provincial agencies that includes the roles of provincial agencies, responsible ministries and Treasury Board/Management Board of Cabinet (TB/MBC); and

- A risk-based approach to managing provincial agency oversight.

Part 2: Short-Term Advisory Bodies & Special Advisors

This part of the directive applies to all ministries and to all people appointed or re-appointed by the government to provide advice or make recommendations to a Minister or the Premier for the maximum duration of 3 years¹.

Part 2 sets out requirements for:

- Creation of short-term advisory bodies;
- Appointment and remuneration of one or more appointees to short-term advisory bodies;
- Appointment of special advisors; and
- The accountability framework for short-term advisory bodies and special advisors.

Part 3: Government Appointments and Remuneration

This part of the directive applies to all ministries and to all persons appointed or re-appointed by the government to undertake any function on behalf of the government other than individuals referred to in Part 2 of this directive to serve on short-term advisory bodies or as special advisors. This includes persons appointed by the LGIC or by a minister to serve on a provincial agency or other entity under the authority of a ministry act or other legislation or the Royal prerogative.

Part 3 sets out requirements for the appointment and remuneration of:

- All government appointees who are accountable to a minister of the Government of Ontario other than individuals referred to in Part 2 of this directive;
- All government appointees to provincial agencies; and
- All appointments made by the province to other entities where appointees are not directly accountable to a minister of the Government of Ontario (for example, a police services board, port authority).

This part does not apply to persons employed under Part III of the *Public Service of Ontario Act, 2006* (PSOA) who hold a government appointment in addition to their employment except where indicated otherwise.

¹This refers to ministerial appointments and Order in Council appointments pursuant to a statute or Royal Prerogative and is not intended to address consulting arrangements or employment arrangements.

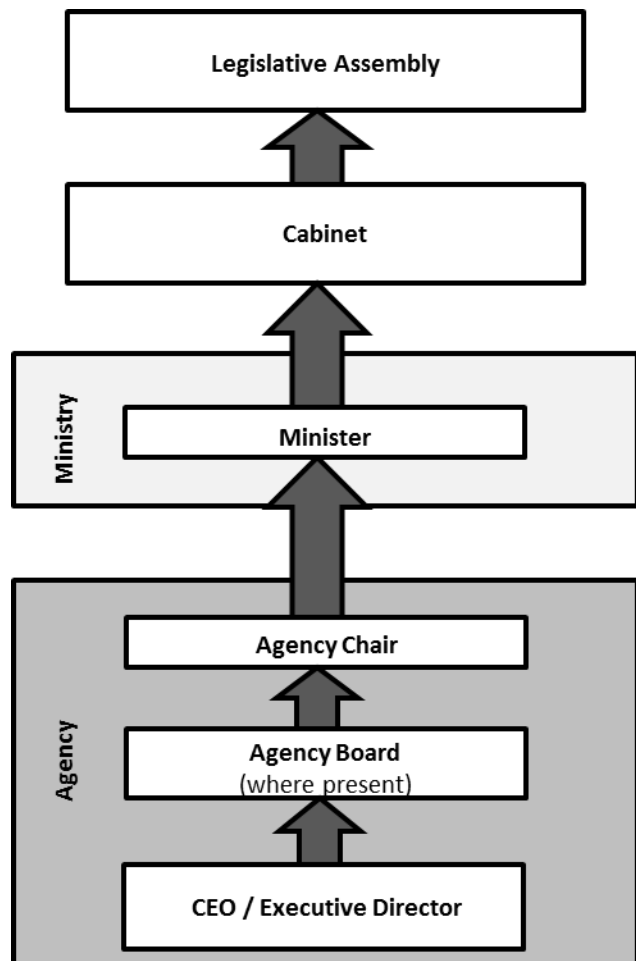
Part 1 – Provincial Agencies

1.1 Executive Summary – Accountability Framework & Mandatory Requirements

The minister’s accountability for each provincial agency cannot be delegated. However, provincial agency oversight activities can be delegated to appropriate ministry officials. Consistent with this principle, TB/MBC or the Minister can request risk-based reviews of any provincial agency.

TB/MBC monitoring of ministry oversight and compliance is required for board-governed agencies, adjudicative tribunals and regulatory agencies without governing boards.

Advisory agencies are subject to reduced TB/MBC monitoring requirements reflecting their limited power and authority, and their lower risk profile.



The accountability cycle relating to provincial agencies consists of:

- Defining expectations and managing consistent action;

- Establishing effective MOUs and business plans;
- Reporting on and monitoring performance through annual reporting and risk assessment evaluation; and
- Taking actions based on results.

This table summarizes the mandatory requirements for all three types of provincial agencies.

Requirement	Board-Governed Agencies	Adjudicative Tribunals ² and Regulatory Agencies (without governing boards)	Advisory Agencies
Directives	<p>Must comply with all TB/MBC directives whose application and scope covers Board-Governed Provincial Agencies, unless exempted.</p> <p>Must adhere to the principles of directives that do not apply.</p>	<p>Must comply with all TB/MBC directives.</p> <p>Ministries provide administrative support and are subject to all TB/MBC directives.</p>	
Mandate Reviews	Required once every 7 years.		
Business Plan	<p>Must be submitted to minister no later than one month before the start of the provincial agency's fiscal year. Must be minister approved.</p> <p>Must be submitted to CAO or Executive Lead for provincial agencies three months prior to the beginning of the fiscal year.</p>	<p>Must be submitted to minister and reviewed by ministry staff. Must be minister approved.</p>	<p>Not required.</p>

² Prescribed tribunals must also fulfil the legislated requirements of the *Adjudicative Tribunals Accountability, Governance & Appointments Act*, 2009.

Requirement	Board-Governed Agencies	Adjudicative Tribunals ² and Regulatory Agencies (without governing boards)	Advisory Agencies
Annual Report	<p>Must be submitted to minister:</p> <p>No later than 120 days after the provincial agency's fiscal year-end.</p> <p>Or, where the Auditor General is the auditor of record, within 90 days of the provincial agency's receipt of the audited financial statement.</p>	<p>Must be submitted to minister within 90 days after the provincial agency's fiscal year-end.</p>	<p>Not required.</p>
Compliance Attestation	<p>Chairs of board-governed provincial agencies must send a letter to the responsible minister, at a date set by annual instructions, confirming their agency's compliance with legislation, directives, and accounting and financial policies.</p> <p>To support the chair, CEOs of provincial agencies should attest to the chair that the provincial agency is in compliance with mandatory requirements.</p>	<p>Must be submitted with the Public Accounts Certificate of Assurance attestation by deputy minister.</p>	<p>Not required.</p>

Requirement	Board-Governed Agencies	Adjudicative Tribunals ² and Regulatory Agencies (without governing boards)	Advisory Agencies
Public Posting	<p>MOU, business plan, and annual report must be made available to the public on a government or provincial agency website within 30 days of minister's approval of each.</p> <p>For annual reports that require tabling in the legislature under statute, public posting must occur after tabling.</p>		Not required.
	<p>Expense information for appointees and senior executives must be posted on the provincial agency or ministry website (see the Travel, Meal and Hospitality Expenses Directive).</p>		
Memorandum of Understanding (MOU)	<p>Must have a current MOU signed by the chair and minister.</p> <p>Upon a change in one of the parties, an MOU must be affirmed by all parties within 6 months.</p>		Must have Terms of Reference (TOR) instead of an MOU.
Risk Assessment Evaluation	<p>Ministries are required to complete risk assessment evaluations for each provincial agency.</p> <p>Ministries must report high risks to TB/MBC on a quarterly basis.</p>		<p>Ministries are required to complete risk assessment evaluations.</p> <p>Ministries are not required to report high risks to TB/MBC.</p>
Financial Audit	Financial statements must be audited and reported based on meeting audit threshold criteria.	Administratively part of the ministry and not audited as a separate entity unless specifically required.	Not required.

1.2 Provincial Agencies – Details of Framework and Requirements

Provincial agencies provide goods or services. They are not organizationally part of a ministry, but are part of government. They are led by government appointees and are expected to provide a high level of service to the public. The provincial agency model addresses the need for operational flexibility as necessary.

1.3 Principles

Provincial agencies are accountable to the government through the responsible minister. They must use public resources efficiently and effectively to carry out their mandates, as established by their respective constituting instruments.

Good governance and accountability practices for ministries and provincial agencies are critical. These are complemented by transparency in the form of public posting of governance documents and expenses information. Open communication between provincial agencies and their responsible ministry helps ensure that expectations are clearly understood and helps to manage risks or issues as they arise.

Ministries must provide a sound business case to TB/MBC to justify using the provincial agency model.

For provincial agencies with operational responsibilities, ministries and provincial agencies must balance the need for each provincial agency's operational flexibility with the Minister's accountability for the provincial agency to Cabinet and the Legislative Assembly.

For provincial agencies with adjudicative and regulatory responsibilities, impartial decision-making is the paramount requirement.

For provincial agencies with an advisory mandate, their role is to give advice and recommendations to government.

Accountability of the minister for each provincial agency cannot be delegated. However, provincial agency oversight activities can be delegated to appropriate ministry officials.

A provincial agency is provided only those powers needed to fulfil its mandate and deliver its programs and services. Every provincial agency provides a high standard of service to its public. Every provincial agency is expected to comply with all applicable legislation, directives, and policies.

1.4 Characteristics of a Provincial Agency

A provincial agency has the following characteristics:

- Is established by government through a constituting instrument (under or by statute, Order in Council or regulation);

- 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;
- The majority of its appointments are made by the government;
- Is not organizationally part of a ministry but is part of the Government of Ontario; and
- Has authority and responsibility, granted by the government, to perform an ongoing public function or service that involves adjudicative or regulatory decision-making, operational activity, or an advisory function.

1.5 Types of Provincial Agencies

There are three types of provincial agencies:

1. Board-governed provincial agencies;
2. Non-board-governed provincial agencies (adjudicative tribunals and regulatory agencies and other non-board-governed provincial agencies); and
3. Advisory agencies.

1.5.1 Board-Governed Provincial Agencies

This type of provincial agency is characterised by the authority to make operating decisions. The board of directors is therefore a governing board.

These provincial agencies have the financial and operating authority to carry on a business and conduct operations in support of their mandates. The board of directors of the provincial agency is accountable to the minister for the achievement of its mandate, and the chair is the board's representative to the minister.

Many of these provincial agencies have their own staff and organizational structure and do not rely on ministries for these functions.

Appointees are required to exercise a duty of care for their provincial agencies, which requires them to act honestly, in good faith, and in the best interest of the provincial agency.

There are four kinds of board-governed provincial agency:

Operational Enterprise

- Sells goods or services to the public in a commercial manner (including, but not necessarily, in competition with the private sector).
- Receives revenues from its commercial activities; however, it may also receive some funding from the Consolidated Revenue Fund.

Operational Service

- Delivers goods or services to the public, usually with no or minimal fees.
- Principally funded out of the Consolidated Revenue Fund.

Trust

- Administers funds and / or other assets for beneficiaries named under statute. The Funds and / or other assets are administered by a Trust Agency for named beneficiaries (that is, the funds and / or other assets do not belong to the government).
- Is fully responsible for its operations.
- Is not funded out of the Consolidated Revenue Fund.

Regulatory (with governing board)

- Is authorized to make independent decisions for a designated sector that include inspections, investigations, prosecutions, certifications, licensing and rate-setting. The decisions may limit, promote or correct the conduct, practice, obligations, rights and responsibilities of an individual, business or corporate body.
- Is self-funding.

Note: many Regulatory Agencies do not have a governing board.

1.5.2 Non-Board-Governed Provincial Agencies (Adjudicative Tribunals, Regulatory Agencies and Other Non-Board-Governed Agencies)

The main characteristic of this group is the lack of authority to make their own operational decisions. This means that ministries must provide the operational support for these provincial agencies. Adjudicative tribunals must comply with the provisions of this directive and with the *Adjudicative Tribunals Accountability, Governance and Appointments Act (ATAGAA)*, 2009. However, both instruments should be applied in a way that promotes effective use of resources and minimizes duplication.

Some small-scale operational service agencies that are not board-governed have been established in the past.

Adjudicative Tribunals

- Independently and impartially make binding decisions to resolve disputes regarding the obligations, rights and responsibilities of an individual, business or corporate body under existing policies, regulations and statutes.
- Appointees need experience, knowledge or training in the subject matter dealt with by the tribunal, and on adjudicative practices and are appointed in accordance with a competitive merit-based process.
- Chairs and vice chairs have provincial agency governance responsibilities.
- All appointees may serve as adjudicators.
- Tribunals are administratively supported by the ministry and do not have powers of their own to conduct human resources functions under non-Ontario Public Service (OPS) requirements.
- Tribunals are principally funded out of the Consolidated Revenue Fund.
- Fees are set in accordance with statutory or other requirements.

- Many tribunals are also governed by the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, when prescribed and must comply with the provisions of both the legislation and this directive.

Regulatory Agencies (Without Governing Boards)

- Make independent decisions for their respective sectors that include inspections, investigations, prosecutions, certifications, licensing, and rate-setting.
- Appointees do not form a governing board and are administratively supported by the ministry.
- Their decisions may limit, promote or correct the conduct, practice, obligations, rights and responsibilities of an individual, business or corporate body.
- Chairs and vice chairs have provincial agency governance responsibilities.
- All appointees may serve as regulators.
- The provincial regulatory agency is principally funded out of the Consolidated Revenue Fund.
- Fees are set in accordance with statutory or other requirements.

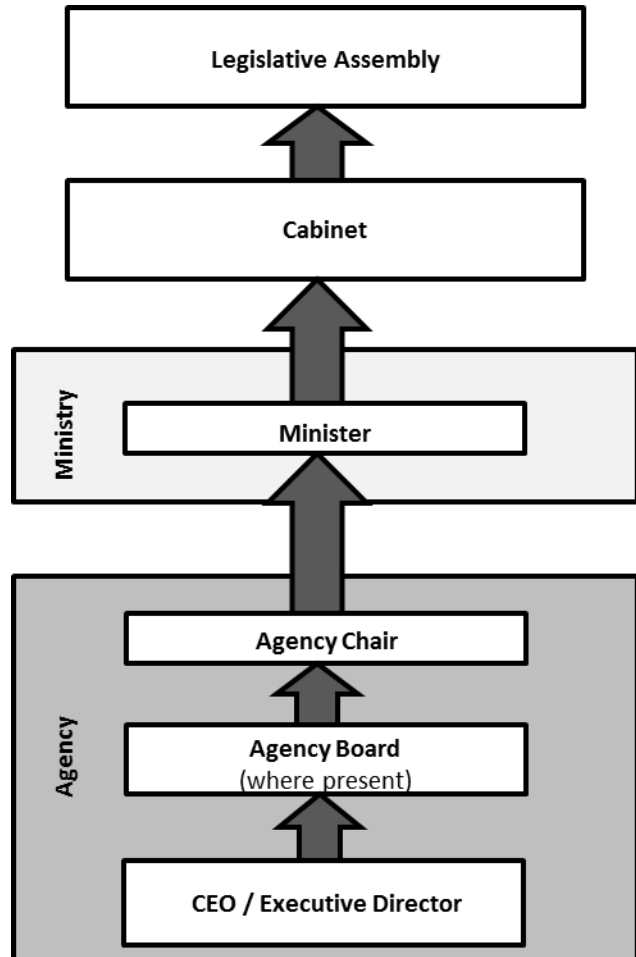
1.5.3 Advisory Agencies

The main characteristic of an advisory agency is that it provides specific advice to a minister or the Premier. Advisory agencies are composed of one or more individuals appointed by the government. These provincial agencies are established for more than 3 years.

Advisory agencies' administrative functions are carried out by the responsible ministry. These provincial agencies are created solely for the purpose of providing advice or recommendations as specified in their terms of reference.

1.6 Accountability Framework for Provincial Agencies

Provincial Agencies are considered part of government and have the following accountability framework.



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

For board-governed agencies, adjudicative tribunals and regulatory agencies without governing boards, TB/MBC will monitor ministry oversight and compliance.

For advisory agencies, TB/MBC monitoring will be at a lower level, reflecting the agencies' limited power and authority, as well as their lower-risk profiles.

The accountability cycle for provincial agencies consists of:

- Defining expectations;
- Establishing effective MOUs and business plans to guide action;

- Managing action consistent with expectations;
- Reporting on and monitoring performance through annual reporting and risk assessment evaluation; and
- Taking actions based on results.

1.7 Risk-based Management and Accountability for Provincial Agencies

The Government of Ontario uses a risk-based approach to manage provincial agencies. Consequently, provincial agencies are required to employ a risk framework when making operational decisions. Provincial agencies are responsible for ensuring that funds are spent effectively and efficiently, and are used for the intended purpose.

Risk-based management practices enable establishment of the optimum level of oversight, control, and discipline enabling ministries and provincial agencies to manage risk in changing environments and help provide the proper level of assessment.

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

The higher the potential risk posed by a provincial agency, including the degree of public interest and obligation of financial management, the greater the need for oversight to mitigate such risk.

1.8 Establishing, Changing, Merging, and Dissolving Provincial Agencies

The establishment, dissolution of all provincial agencies and changes to existing provincial agencies requires TB/MBC review and approval. A TB/MBC submission is also required to establish subsidiaries of existing provincial agencies or to acquire a controlling interest in an existing provincial agency.

Mandatory requirements for establishing, dissolving and changing provincial agencies are as follows:

- TB/MBC submission;
- Business case;
- Specific reference to the constituting instrument;
- Draft MOU (or Terms of Reference) meeting this directive's requirements; and
- List of applicable TB/MBC directives.

Changes that require TB/MBC approval include:

- A proposal to merge provincial agencies;
- A proposal to expand or amend the mandate, as per the objects within the constituting instrument; and
- A proposal to dissolve a provincial agency.

1.9 Details of Mandatory Requirements

1.9.1 Memorandum of Understanding

This section applies to:

- Board-Governed Agencies; and
- Adjudicative Tribunals, Regulatory Agencies without governing boards and other non-board-governed provincial agencies.

All information necessary to understand the MOU should be within the MOU. References to other documents that require readers of the MOU to refer to those documents to understand the MOU should be avoided.

An MOU for any Board-governed provincial agency must contain the following sections:

- Purpose;
- Definitions;
- Corporate status, and Crown agent status;
- Mandate;
- General Applicability of 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 provincial 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; and
- Insurance liability.

MOUs for adjudicative tribunals and regulatory agencies must contain all relevant sections, depending on the administrative relationship with their ministry.

For adjudicative tribunals prescribed under ATAGAA, MOUs must contain the information required under the Act.

Approvals

An initial draft MOU must be approved by TB/MBC when the provincial agency is first established.

Upon a change in minister or chair of a provincial agency, the parties must either sign a letter of affirmation that is attached to the MOU or sign the existing MOU within 6 months.

Changes to MOUs resulting from prior policy and TB/MBC approvals can be incorporated into existing MOUs. The ministry must forward a copy of the revised MOU to the Secretary of TB/MBC. The ministry should consult with Treasury Board Secretariat staff to obtain advice on proposed changes to existing MOUs.

While an MOU 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.

An MOU must be signed within three months of receiving TB/MBC approval, or for a new provincial agency, within three months of its operational functioning. Once approved by TB/MBC, the MOU will be signed by the chair followed by the responsible minister. The original copy of the MOU is to be held by the ministry's legal services branch. A copy of the signed MOU is to be filed with the Secretary of TB/MBC. A copy of the signed MOU must be made available to the public on a government or provincial agency website within 30 days of the minister's signature.

Only the responsible minister and the chair sign the MOU in order to avoid confusion as to the ultimate responsibility for execution of the MOU's provisions.

Statutory Requirements

Provincial agencies must comply with all statutory requirements. There are a number of statutes which require provincial agencies to be listed under in order that the statutes apply to listed provincial agencies. These statutes include the *Public Service of Ontario Act, 2006*; *Freedom of Information and Protection of Privacy Act* and the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*.

There are also statutes that, while not requiring provincial agencies to be listed individually in regulations, impose specific requirements. These acts include the *Financial Administration Act*, and the *French Language Services Act*.

Applicability of Government Directives to Provincial Agencies

Every MBC directive has an application and scope section which sets out the entities to which the directive applies. This includes specifying application to provincial agencies, and sometimes to specific types of provincial agencies. It is the Application and Scope section of a TB/MBC directive that determines applicability.

All MBC and Public Service Commission directives under the *Public Service of Ontario Act, 2006*, apply when a provincial agency has been designated as a Commission public body under the *Public Service of Ontario Act, 2006*. Refer to the statute and supporting guidance for additional information.

Provincial agencies administering transfer payment programs must comply with the requirements of the Transfer Payment Accountability Directive that govern the operations of transfer payment programs and the relationship between the funding agency and the transfer payment recipient.

Directives Applying to Adjudicative Tribunals and Regulatory Agencies without Governing Boards

All government directives apply to Adjudicative Tribunals and Regulatory Agencies without governing boards as they are administered by ministries and ministries are subject to all directives.

(See *Guide to Developing a Memorandum of Understanding for Provincial Agencies* and the *MOU Template* for further details.)

1.9.2 Business Plans for Board Governed Agencies

All provincial agencies with governing boards must submit an annual business plan to the responsible minister for approval. All 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 and the approval has been documented in writing. A business plan is for a three-year period or longer and is prepared every year. The provincial agency is required to make the business plan available to the public on a government or provincial agency website within 30 days of minister approval of the plan.

All business plans for provincial agencies with governing boards must contain 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 provincial agencies, ministry staff are to exercise due diligence upon receipt of a business plan before ministry staff recommend that the minister sign it. Moreover, the annual business plan is to be submitted to the ministry's Chief Administrative Officer or Designated Lead Executive within three months prior to the fiscal year-end.

(See *Guide to Developing Provincial Agency Business Plans* for further details.)

1.9.3 Business Plans for Adjudicative Tribunals, Regulatory Agencies without Governing Boards and Other Non-Board-Governed Provincial Agencies

All adjudicative tribunals and regulatory agencies must submit an annual business plan to the responsible minister for approval. All 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 and the approval has been documented in writing. A business plan is for a three-year period or longer and is prepared every year.

The following are the requirements for business plans:

- A detailed description of the mandate;
- The proposed budget for a three year period;
- The number of employees, expressed as full-time equivalents who are assigned as staff at the beginning of the three year period;
- The performance measures to be used to evaluate effectiveness and efficiency;
- The annual performance targets for the three year period; and
- Any other legislatively required content.

For adjudicative tribunals these requirements are consistent with ATAGAA's requirements. To support ministers in fulfilling their responsibilities, ministry staff are to exercise due diligence upon receipt of a business plan before ministry staff recommend that the minister sign it. Moreover, the annual business plan is to be submitted to the ministry's Chief Administrative Officer or equivalent within three months prior to the fiscal year-end.

(See *Guide to Developing Provincial Agency Business Plans* for further details.)

1.9.4 Mandate Reviews

This section applies to:

- Board-Governed Agencies;
- Adjudicative Tribunals, Regulatory Agencies without governing boards and other non-board-governed provincial agencies; and
- Advisory Agencies.

Ministries must complete reviews of the mandates of any provincial agency under this directive at least every 7 years. Prescribed adjudicative tribunals must comply with the review timing requirements under ATAGAA (every 6 years).

A provincial agency's mandate sets out the parameters within which it may perform its responsibilities or provide services.

The mandate is set out in a constituting instrument and reiterated within the Memorandum of Understanding (MOU). The depth and complexity for each mandate review will vary depending on the structure and complexity of provincial agency being reviewed. Regardless of overall complexity, all mandate reviews must address:

1. Whether the provincial agency is carrying out the activities and operations that represent its mandate;
2. Whether, and the extent to which, the mandate continues to be relevant to the goals and priorities of the Government of Ontario;
3. Whether all or part of the functions of the provincial agency are best performed by the provincial agency, or whether they might be better performed by a ministry, another provincial agency or another entity; and
4. Any other matter specified either in a directive or at the direction of Treasury Board/Management Board of Cabinet (TB/MBC).

Mandate reviews are *not* value-for-money audits and do not replace those audits. Mandate reviews also do not replace financial or other audits that may be required of a provincial agency. Ministries must ensure that all mandate reviews are conducted in a manner that ensures objectivity.

When determining scheduling for mandate reviews, ministries must consider the following:

- Results of risk assessment evaluations;
- Recent change of government/ministry policy direction that directly relates to an agency;
- Potential groupings of like provincial agencies with like mandates;
- Timing for any legislative or other requirements for mandate reviews;
- TB/MBC direction; and
- Any other relevant criteria.

The results of each mandate review will be reported to TB/MBC for approval. These results will inform TB/MBC decision-making relating to whether the provincial agency continues to be the best means for delivery of the services captured under its mandate. TB/MBC could decide to maintain, dissolve, change or adjust, or improve effectiveness of a provincial agency, and some of those decisions might require consequential legislative amendments in order to implement.

(See *Guide to Provincial Agency Mandate Reviews* for further details.)

1.9.5 Risk Assessment Evaluation

This section applies to:

- Board Governed Agencies; and

- Adjudicative Tribunals, Regulatory Agencies without governing boards and Other Non-Board-Governed Provincial Agencies.

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

The requirements for Risk Assessment Evaluations:

- Assessing risks for each provincial agency in each of the specified corporate risk categories;
- Keeping a record of the risk assessments for each provincial agency by risk category; and
- Reporting, on a quarterly basis, to TB/MBC on each high risk 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 must include an assessment and analysis of financial/fiscal implications as well as appropriate mitigation strategies.

The purpose of Ministry Risk Assessment Evaluation and high risk reporting to TB/MBC is to identify any high risks for provincial 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. On the basis compliance data provided by the Ministry, TB/MBC may also 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* for further details.)

1.9.6 Risk Assessment Evaluations for Advisory Agencies

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

The requirements for Risk Assessment Evaluations:

- Assessing risks for each provincial agency in each of the specified corporate risk categories; and
- Keeping a record of the risk assessments for each by risk category.

The risk-based approach must include an assessment and analysis of financial/fiscal implications as well as appropriate mitigation strategies.

(See *Guide to the Risk-Based Approach* for further details.)

1.9.7 Annual Reports for Board Governed Agencies

All board governed agencies under this directive must prepare an annual report for submission to the Minister and submit their annual report to the minister within 120 days of the provincial

agency's fiscal year-end when the auditor of record is not the Auditor General. When the Auditor General is the auditor of record, submit their annual report to the minister within 90 days of completing the financial audit.

Under statute, some provincial agencies may be required to table their annual report in the Legislative Assembly. Ministries need to refer to their provincial agencies' constituting instrument to determine whether this is required.

In addition, the annual report must be posted on a provincial agency or government website within 30 days of either tabling in the legislature (if required by statute), or approval by the minister (if there is not requirement to table the annual report in the legislature).

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 the Office of the Provincial Controller for the preparation of the Province's Public Accounts, within the timelines established each year:

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

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

(See *Guide to Provincial Agency Annual Reports* for further details.)

1.9.8 Annual Reports for Adjudicative Tribunals and Regulatory Agencies and Other Provincial Agencies without Governing Boards

An adjudicative tribunal or regulatory agency without a governing board must submit an annual report to the minister within 90 days after the end of the fiscal year.

There is a requirement that annual reports of provincial agencies be posted on the responsible ministry's website or on the provincial agency web-site.

The following are the requirements for annual reports:

- A report on the tribunal's activities, including recruitment activities, during the preceding fiscal year;

- A financial statement for the tribunal for the preceding fiscal year; and
- Any legislatively required content.

For adjudicative tribunals, these requirements are consistent with ATAGAA's requirements.

(See *Guide to Provincial Agency Annual Reports* for further details.)

1.9.9 Compliance Attestation

This section applies to:

- Board Governed Agencies; and
- Adjudicative Tribunals, Regulatory Agencies without governing boards and other non-board-governed provincial agencies.

Deputy Ministers are required to sign and submit an annual attestation indicating that the provincial agencies that are a responsibility of their ministry are in compliance with the mandatory requirements of this, and other directives.

With this attestation, deputy ministers are also to provide documentation demonstrating compliance with this directive by indicating each provincial agency's compliance with each mandatory requirement (MOU, annual report, business plan, and risk assessment evaluation) in a report to Treasury Board Secretariat.

Ministries must ensure compliance with legislation, directives, accounting, and financial policies. Compliance deviations from directives and policies must be explicitly stated and a rationale for the deviation provided. In order to define the obligations and authority of ministries and provincial agencies, directives and policies are issued by Treasury Board/Management Board of Cabinet, Ministry of Finance/Treasury Board Secretariat and the Public Service Commission. Directives and policies are key tools for ministry controllership.

Chairs of board-governed provincial agencies must send a letter to the responsible minister confirming their agency's compliance with legislation, directives, and accounting and financial policies. To support the Chair, CEOs of provincial agencies should attest to the Chair that the provincial agency is in compliance with mandatory requirements.

The letter from the Chair confirming compliance will be used by the Deputy Minister to provide assurance to TB/MBC of the provincial agency's compliance with legislation, directives, and accounting and financial policies.

1.9.10 Public Posting

This section applies to:

- Board-Governed Agencies; and
- Adjudicative Tribunals, Regulatory Agencies without governing boards and other non-board-governed provincial agencies.

The requirement of public posting of governance documents will fulfil the government's objective to increase transparency. The documents should not disclose personal information or other confidential information consistent with the requirements of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

Provincial agencies are required to post the following approved documents on the agency or ministry website:

1. Memorandum of Understanding (MOU);
2. Annual Business Plan; and
3. Annual Report.

Posted documents, particularly business plans should not disclose:

- Personal information;
- Sensitive employment and labour relations information;
- Solicitor-client privileged information;
- Cabinet confidential information;
- Trade secrets or scientific information, technical, commercial, financial or labour relations information of third parties supplied in confidence;
- Information that would prejudice the financial or commercial interests of the provincial agency in the marketplace; and
- Information that would otherwise pose a risk to the security of the facilities and/or operations of the provincial agency.

Adjudicative tribunals prescribed under the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009 (ATAGAA) are already legislatively required to make their MOU, Business Plan and Annual Report publicly available.

1.9.11 Financial Audit

This section applies to:

- Board-Governed Agencies; and
- Adjudicative Tribunals, Regulatory Agencies without governing boards and other non-board-governed provincial agencies.

In order to further financial accountability, all provincial agencies are subject to an external financial statement audit when the provincial 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 provincial agency's revenues and/ or expenditures are material to government operations.

At any time, a provincial agency under this directive can be 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 for provincial agencies.)

At any time, a provincial agency under this directive can be subject to a periodic review and internal audit by the Ontario Internal Audit Division.

External financial statement audits are to be performed by:

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

When provincial agencies are subject to an annual financial statement audit, the 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 or President of the Treasury Board, may also request an audit. Furthermore, the provincial agency may be subject to an audit by the Auditor General of Ontario under the *Auditor General Act*.

A provincial agency will promptly provide a copy of every report, including its response to the audit report and any recommendations, to the Minister of the responsible ministry, the Deputy Minister of the responsible ministry, and the President of Treasury Board. The provincial agency will advise the Minister annually, at minimum, on any outstanding recommendations.

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

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

1.9.12 Mandatory Requirements during the Writ Period

This section applies to:

- Board-Governed Agencies;
- Adjudicative Tribunals, Regulatory Agencies without governing boards and other non-board-governed provincial agencies; and
- Advisory Agencies.

During the Writ /election period when the legislature is dissolved, compliance timelines cannot always be achieved because the government is functioning in a custodial manner. TBS will inform ministries of their compliance obligations during the writ period.

1.9.13 Mandatory Requirements for TB/MBC Submissions and Business Case for Establishing a Provincial Agency, and Making Changes to/Dissolving the Agency

General TB/MBC Submission Content Requirements for Establishing a Provincial Agency

The establishment of all provincial 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 provincial agencies or to acquire controlling interest in an existing entity.

Submissions to TB/MBC for establishing a new provincial 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 a provincial agency.

At a minimum the requirements for establishing a provincial agency include:

Government Control Criteria:

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

Operational Flexibility Criteria:

- Advice or expertise from outside the Ontario Public Service;
- Autonomous decision-making is required to ensure public confidence in the impartiality or objectivity of decisions or actions;
- Involving others in a public function or service;
- Administering trusts (not using public funds) on behalf of beneficiaries; and
- Using financial, human resource or administrative authority outside of ministry structures to deliver goods and services and achieve program objectives or specific service standards.

Financial Flexibility Criteria:

- A need for specific financial authority, such as revenue retention, fee setting or 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 Criteria (not applicable to Commission public bodies):

- Professional skills or expertise that are not normally found in government;
- Unique staff compensation arrangements are required to achieve objectives;
- More flexible hiring practices; and
- A need for a provincial agency to be directly responsible for terms and conditions of employment.

Administrative Flexibility Criteria:

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

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

- Public interest;
- Provincial responsibility;
- Provides value for money;
- Operational flexibility;
- The provincial 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 provincial agency must identify:

- Name and provincial agency type;
- Mandate and powers of the new a provincial agency consistent with the proposed constituting instrument;
- 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 provincial 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 agency status; and
- Corporate status, if applicable.

Constituting Instrument

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

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

Constituting instruments must be sufficient to provide the provincial agency with the authority it requires to fulfill its mandate.

When establishing a provincial agency, consequential amendments to legislation or regulations must be identified in the TB/MBC submission to establish a new provincial agency.

A new provincial agency must comply with all applicable laws.

Additional TB/MBC Submission Content Requirements for Board-Governed Agencies and Adjudicative Tribunals and Regulatory Agencies without a Governing Board

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

- Constituting instrument (by or under a statute, regulation or Order in Council);
- MOU that meets this directive's requirements, including a list of applicable TB/MBC directives. TB/MBC may require an MOU of any provincial agency to be approved by TB/MBC based on the characteristics of the provincial agency and the provincial agency's risk (note that for provincial agencies without governing boards all TB/MBC directives apply);
- Initial performance measures, and a risk management plan; and
- OIC for proposed remuneration, if necessary.

Additional TB/MBC Submission Content Requirements for Advisory Agencies

The creation of all advisory agencies must be approved by TB/MBC.

Advisory agencies can be created through a number of constituting instruments (by or under a statute, regulation or Order in Council). In order to create a new advisory agency, a ministry requires:

- A constituting instrument;
- A Terms of Reference (see *Guide on Advisory Terms of Reference*);
- A remuneration Order in Council (if the appointee(s) will be remunerated); and
- TB/MBC approval.

TB/MBC Submission Requirements for Making Changes to a Provincial Agency or Dissolving a Provincial Agency

Proposals to merge provincial agencies, to change the mandate of an existing provincial agency, or to dissolve a provincial 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. Additionally, a request for Legislation and Regulations Committee (LRC) approval of necessary legislative changes should be sought after TB/MBC approval.

The submission must outline the financial and human resource impacts of the proposed merger or dissolution and also detail the ministry's plans for the disposition of any assets of the provincial agency, the completion by the provincial agency of any outstanding responsibilities, and the end of any government appointments. A draft of any proposed amendments to statutes or regulations must be included in the submission. Proposals for legislative change are ultimately the prerogative of the Legislative Assembly.

In addition, TB/MBC or Cabinet may approve or direct the termination of a provincial 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 TB/MBC on the wind-down of a provincial agency immediately following the disposition of any assets of the provincial agency, the completion by the provincial agency of any outstanding responsibilities, and the end of any government appointments.

1.10 Details of Roles and Responsibilities

1.10.1 Roles and Responsibilities for Board Governed Provincial Agencies and Their Responsible Ministries

Note that all the powers listed here are not granted to all provincial agencies, unless they are required for the fulfillment of their mandates under the constituting instrument.

Role	Accountability	Responsibilities
Minister	The Minister is accountable to Cabinet and the Legislature, representing the public.	<ul style="list-style-type: none"> • Reporting/responding, within prescribed timelines, to the Legislature and Cabinet on performance and compliance; and • Recommending establishment of new provincial agencies, changes in mandate and/or powers and public appointments for existing provincial agencies.
Deputy Minister	The Deputy Minister is accountable to the Secretary of Cabinet and the Minister.	<ul style="list-style-type: none"> • Advising, supporting and assisting the Minister regarding the Minister's oversight responsibilities for the provincial agency; and • Advising the Minister on the requirements of this Directive.
Chair	The Chair is accountable to the Minister for the mandate and conduct of the provincial agency.	<ul style="list-style-type: none"> • Keeping the Minister informed; • Providing leadership to the provincial agency board and staff; • Recommending appointments and reappointments; and • Ensuring compliance with legislative and TB/MBC policy obligations.
Governing Board of an Agency	Accountable to the Minister through the Chair of the board.	<ul style="list-style-type: none"> • Establishing the goals, objectives, and strategic direction for the provincial agency consistent with the provincial agency mandate and government policies, including Minister's directions where appropriate; • Setting overall priorities for the provincial agency; • Managing and controlling the affairs of the provincial agency;

Role	Accountability	Responsibilities
		<ul style="list-style-type: none"> • Approving the provincial agency's business plan and annual reports for recommendation by the Minister within the time lines established by the provincial agency's constituting instrument or by this directive; • Ensuring compliance with Directives and policies (including financial and accounting policies); and • Establishing such board committees as are required for effective management, governance, and accountability, such as audit or governance committees, to advise the board on provincial agency affairs.
Chief Executive Officer or equivalent	The Chief Executive Officer or equivalent is accountable to the Board.	<ul style="list-style-type: none"> • Advising the Chair on the requirements of this Directive as well as other government and ministry directives, guidelines, policies, and procedures as well as provincial agency by-laws and policies; • Ensuring that the provincial agency meets the requirements of this Directive; • Providing leadership, guidance, and management to the provincial 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; and • Keeping the Chair and Board informed of the implementation of policy and operations of the provincial agency.

1.10.2 Roles and Responsibilities for Adjudicative Tribunals, Regulatory Agencies without a Governing Board and Their Responsible Ministries

Role	Accountability	Responsibilities
Minister	The Minister is accountable to Cabinet and the Legislature, representing the	<ul style="list-style-type: none"> • Reporting/responding, within prescribed timelines, to the Legislature and Cabinet on performance and compliance; and • Recommending establishment of new provincial agencies, changes in mandate and/or powers and public

Role	Accountability	Responsibilities
	public.	appointments for existing provincial agencies.
Deputy Minister	The Deputy Minister is accountable to the Secretary of Cabinet and the Minister.	<ul style="list-style-type: none"> • Ensuring that the Executive Director or equivalent provides the agency with all the necessary administrative supports to deliver its mandate; and • Ensuring that the Executive Director or equivalent is aware of the administrative requirements of government and is compliant with them.
Chair	The Chair is accountable to the Minister for the mandate and conduct of the provincial agency.	<ul style="list-style-type: none"> • Keeping the Minister informed; • Providing leadership to the vice chairs, members, and Executive Director or equivalent; • Establishing the goals, objectives, and strategic direction for the provincial agency consistent with the provincial agency's mandate; • Setting overall priorities for the provincial agency; • Recommending appointments and reappointments; and • Liaising with the Executive Director or equivalent on the provincial agency MOU, annual report and business plan.
Executive Director or equivalent	The Executive Director or equivalent is accountable to the Deputy Minister and the Chair.	<ul style="list-style-type: none"> • Providing leadership, guidance, and management to the ministry staff assigned to provide administrative support for the provincial agency; and • Developing the annual reports and business plans with input from the Chair and Deputy Minister.
Roles/Responsibilities for tribunals clustered under ATAGAA		
Executive Chair	The Executive Chair is accountable to the Minister for the mandate and conduct of the tribunal cluster.	<ul style="list-style-type: none"> • Providing leadership to associate chairs within the cluster • Keeping the Minister informed; • Providing strategic leadership to the cluster; • Establishing the goals, objectives, and strategic direction for the cluster consistent with its mandate; • Setting overall priorities for the cluster; • Recommending appointments and re-appointments to the Minister; and • Liaising with the Executive Lead/CAO or equivalent on

Role	Accountability	Responsibilities
		the cluster MOU, Annual Report and Business Plan.

1.10.3 Roles and Responsibilities for Advisory Agencies

Role	Accountability	Responsibilities
Minister	The Minister is accountable to the Legislature, representing the public.	<ul style="list-style-type: none"> Reporting/responding, within prescribed timelines, to the Legislature and Cabinet on performance and compliance; and Recommending establishment of new provincial agencies, changes in mandate and/or powers and public appointments for existing provincial agencies.
Deputy Minister	The Deputy Minister is accountable to the Secretary of Cabinet and the Minister.	<ul style="list-style-type: none"> Ensures that the entity is provided with all the necessary administrative supports to deliver its mandate.
Chair	The Chair is accountable to the Minister for the mandate and conduct of the provincial agency.	<ul style="list-style-type: none"> Keeping the Minister informed; Providing leadership to the members; Establishing the goals, objectives, and strategic direction for the provincial agency consistent with the provincial agency's mandate; and Setting overall priorities for the provincial agency.

1.10.4 Other Roles and Responsibilities

In general, Cabinet Office, Ministry of Finance and Treasury Board Secretariat provide extensive support for Cabinet committees, including TB/MBC and Cabinet regarding provincial agencies, government appointments, and appointee remuneration. TB/MBC's controllership functions are jointly supported by the ministries tasked with the Treasury Board mandate (e.g., financial requests) and the Management Board of Cabinet mandate (e.g., provincial agency establishment, compliance, government appointments, appointee remuneration).

Role	Accountability	Responsibilities
Cabinet	Cabinet is accountable to the Legislature, representing the public	<ul style="list-style-type: none"> • Approving the establishment, merger, dissolution, and acquisition of all provincial agencies, including subsidiaries, and all related funding.
Treasury Board / Management Board of Cabinet	Treasury Board / Management Board of Cabinet are accountable to Cabinet	<ul style="list-style-type: none"> • Establishing a framework, policies, and procedures to govern provincial agencies; • Approving the establishment, merger, mandate changes, or dissolution of provincial agencies; • Recommending approval of funding for provincial agencies; • Directing that appropriate actions be taken for the improvement of provincial agency management; and • Directing the review and evaluation of provincial agencies and their management through periodic reviews of provincial agencies, including risk-based reviews and audits.
President of Treasury Board/ Minister of Finance	President of Treasury Board/ Minister of Finance is accountable to Cabinet and the Legislative Assembly	<ul style="list-style-type: none"> • Approving any activity of a provincial 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 provincial agency that are binding on the provincial agency's chief executive officer or equivalent.
Secretary of Treasury Board and Management Board of Cabinet	Secretary of Treasury Board and Management Board of Cabinet is accountable to the Secretary of Cabinet and the President of Treasury Board	<ul style="list-style-type: none"> • TB/MBC related responsibilities including advising Ministers and Deputy Ministers on financial requirements (including reporting) as well as administrative and financial arrangements of provincial agencies; and • Maintaining a list of provincial agencies.

Part 2 – Establishment & Remuneration of Short-Term Advisory Bodies & Special Advisors

2.1 Principles

The government may create short-term advisory bodies comprised of one or more individuals and may also appoint special advisors.

Such appointments are created to provide advice or make recommendations to a Minister or the Premier.

The maximum duration of such bodies is 3 years.

Short-term advisory bodies and special advisors do not have direct decision making authority and rely on their ministries for any administrative support.

2.2 Mandatory Requirements

Short-term advisory bodies / special advisors can be authorized under a statute and may be established through instruments such as an Order in Council or Minister's Letter. In order to establish a new short-term advisory body or appoint a special advisor, a ministry requires a submission to TB/MBC that includes:

- A business case for establishing a short-term advisory body or appointing a special advisor;
- Details of the proposed appointment(s) and governance structures;
- Terms of Reference with an end date (see Guide on Terms of Reference for Short-Term Advisory Bodies & Special Advisors);
- A constituting instrument (legislation, regulation, OIC with an end date);
- Information regarding proposed remuneration, if any;
- If applicable, any restrictions on matters such as a maximum number of per diems or total remuneration; and
- A remuneration Order in Council (if the appointee(s) will be remunerated).

The term of an appointment to a short-term advisory body or as a special advisor must not exceed three years.

Appointments are made by an Order in Council (Premier's prerogative or Minister's prerogative), Premier's letter or Minister's letter, at pleasure.

Short-term bodies and special advisors are required to fulfill the duties of their appointment in a professional, ethical and competent manner and avoid any real or perceived conflict of interest. In particular, and without limiting the generality of the foregoing obligations, a government appointee shall:

1. not use or attempt to use his or her appointment to benefit himself or herself or any person or entity;
2. not participate in or attempt to influence decision making as an appointee if he or she could benefit from the decision;
3. not accept a gift that could influence, or that could be seen to influence, the appointee in carrying out the duties of the appointment;
4. not use or disclose any confidential information, either during or after the appointment, obtained as a result of his or her appointment for any purpose unrelated to the duties of the appointment, except if required to do so by law or authorized to do so by the responsible Minister / Premier;
5. not use government premises, equipment or supplies for purposes unrelated to his or her appointment; and
6. comply with such additional requirements, if any, established by the short-term advisory body itself and/or the responsible Minister / Premier.

For the purposes of the above “confidential information” means information that is not available to the public.

An appointee must declare a personal or pecuniary interest that could raise conflict of interest concerns at the earliest opportunity to the Chair, if any, or to the responsible minister or minister’s designate.

In developing the Terms of Reference, consideration should be given to the ethical framework in the *Public Service of Ontario Act, 2006*.

Consultation with Treasury Board Secretariat is mandatory for all appointments, establishment or short-term advisory bodies and special advisors, as well as appointee remuneration.

2.3 Accountability Framework for Short-Term Advisory Bodies & Special Advisors

Appointees to short-term advisory bodies and special advisors are accountable to the Minister recommending their appointment or to the Minister designated in their Order in Council or terms of reference. Ministries must provide all administrative support related to short-term advisory bodies and special advisors and are responsible for ensuring compliance with all applicable government directives and policies.

2.4 Remuneration for Appointees to Short-Term Advisory Bodies & Special Advisors

There is no requirement that appointees receive remuneration, nor that they receive remuneration at the maximum rates authorized by this directive.

An element of public service is implied in any appointment by the Government of Ontario and, therefore remuneration that may be paid, if any, is not necessarily competitive with the marketplace.

If appointees to short-term advisory bodies and special advisors are to be remunerated, their remuneration shall be paid on a per diem basis unless otherwise specified by TB/MBC. If a special advisor or appointee to a short-term advisory body is not to be paid on a per diem basis, an appropriate OPS comparator must be identified and the remuneration rate shall be within the range applicable to the OPS comparator.

Appointees are entitled to reimbursement for work-related expenses in accordance with the Travel, Meal and Hospitality Expenses Directive and any other TB/MBC directives.

2.4.1 Business Case Requirements for Remuneration

If a ministry intends to provide the appointee with remuneration, the ministry is required to seek the approval of TB/MBC to set remuneration within the matrix set out in 2.4.2.

When a ministry seeks to remunerate appointees to short-term advisory bodies or special advisors at per diem rates up to \$398, the business case portion of its TB/MBC submission must include consideration of the following:

1. Details of the nature, timing and impact of the issues the short-term advisory body or special advisor is mandated to address;
2. A description of any professional competencies required to fulfil the responsibilities of the position (e.g. negotiation, engineering, medicine, law or other field);
3. Comparative research on remuneration, with a focus on public sector comparables, including other appointees with comparable skills, or current appointee remuneration in other jurisdictions; and
4. Restrictions on remuneration, if any, which may apply to appointees selected from within the Broader Public Sector for the purposes of minimizing the potential for individuals being remunerated twice in respect of their role as a special advisor.

When a ministry seeks to remunerate appointees to short-term advisory bodies or special advisors at per diem rates over \$398, the business case portion of its TB/MBC submission must also include the following information:

5. Verification of the comparable rate for the specialized services/skills provided by the appointee (e.g. signed contracts, paid invoices, or similar documents); and
6. Assurance, from the appointee, that the government will receive the appointee's best comparable rate.

2.4.2 Remuneration for Special Advisors and Appointees to Short-Term Advisory Bodies

There is no requirement that appointees receive remuneration, nor that they receive remuneration at the maximum rates set by this directive. An element of public service is implied in any appointment by the Government of Ontario and therefore remuneration, if any that may be paid is not necessarily competitive with the marketplace.

Appointment	Remuneration	Description	TB/MBC Approval & Enhanced Business Case Provisions
TB/MBC Judgement	\$2000+	TB/MBC Judgement on a case-by-case basis, in special circumstances Considerations to include: Urgency of issues, connection to government priorities, intensity of time commitment and length of time, specialized knowledge of a professional field and/or possesses unique experience, national or international professional reputation and profile, as well as unique or rare skills and other factors that indicate a higher rate of remuneration may be warranted.	Enhanced Business Case
Unique and Specialized Expertise	Per diem from \$0 - \$2000	Appointees have specialized knowledge of a professional field and possess unique experience and rare skills. Urgent issues affecting government priorities and requiring intense time commitments over a short period of time.	
Professional Designation or Certified Specialist	Per diem from \$0 - \$723	Appointees have specialized knowledge of a professional field. Issues affecting government priorities.	
Specific Knowledge	Per diem from \$0 - \$627	Appointees have specific subject matter knowledge.	
Expertise/ Technical Knowledge	Per diem from \$0 - \$491	Appointees have specific expertise and/or technical knowledge required.	
General and Technical Knowledge	Per diem from \$0 - \$398	Appointees have general and technical knowledge required.	Standard Business Case
General Knowledge to Unique and Specialized Expertise	\$0	Appointees have backgrounds ranging from general knowledge to unique and specialized expertise	

Note that if a special advisor or appointee to a short-term advisory body is not to be paid on a per diem basis, an appropriate OPS comparator must be identified and the remuneration rate shall be within the range applicable to the OPS comparator.

2.4.3 Benefits Entitlements

There is no entitlement to benefits for appointees to short-term advisory bodies or special advisors.

Part 3 - Appointments and Appointee Remuneration³

This part of the directive provides criteria for the equitable treatment and remuneration of all government appointees who are accountable to a minister of the Government of Ontario.

3.1 Principles

Government appointments will respect the needs of the entity to which they have been appointed, but will also reflect the diversity of the people of Ontario and the need to deliver services and decisions in a professional, ethical and competent manner.

Determinations regarding the remuneration of appointees shall include the following considerations:

- the nature of the service;
- the complexity of the tasks to be performed; and
- the amount of time to be spent.

However, an element of public service is implied in any appointment by the Government of Ontario and, therefore, any remuneration that may be paid is not necessarily competitive with the marketplace.

Remuneration that may be paid, if any, is intended to balance the importance of public service within a remuneration framework that demonstrates value for money.

3.2 Mandatory Requirements

Government appointments are made for either a fixed term or at the pleasure of the responsible minister and/or Lieutenant Governor in Council, and if the appointment is at pleasure, it may be revoked at any time, without cause and without giving notice. Subject to any provisions in the enabling legislation or as otherwise provided in this directive, most appointments other than to adjudicative tribunals or regulatory agencies are at pleasure.

3.2.1 Term of Appointment – Appointments Other than to Adjudicative Tribunals and Regulatory Agencies

Subject to any provisions in the enabling legislation or as otherwise provided in this directive, the term of an appointment must not exceed three years with further re-appointments allowable, each not exceeding three years.

³ Not including special advisors and appointees to short-term advisory bodies as set out in Part 2.

3.2.2 Term of Appointment – Adjudicative Tribunals and Regulatory Agencies

In the case of appointments to a given position on an adjudicative tribunal or regulatory agency and subject to the requirements of the provincial agency's enabling legislation or other law the term of appointment is a maximum of ten years, in total.

In the case of a person appointed as the Executive Chair or Chair of an adjudicative tribunal or regulatory agency:

- There will be an initial appointment for a period of two years. The two year period may be waived at the discretion of the responsible Minister;
- Where the initial two-year appointment is not waived, an Executive Chair or Chair is eligible for re-appointment for a term of three years; and
- After completion of a term or terms totalling five years, an Executive Chair or Chair is eligible for re-appointment for a further term of five years.

In the case of a person appointed as an Associate Chair, Vice-Chair or Member of an adjudicative tribunal or regulatory agency and, subject to the recommendation of the Executive Chair or Chair in exceptional circumstances:

- There will be an initial appointment for a period of two years;
- On the recommendation of the Executive Chair or Chair, the appointee is eligible for re-appointment for a term of three years; and
- After completion of terms totalling five years, and on the recommendation of the Executive Chair or Chair, the appointee is eligible for re-appointment for a further term of five years.

The ultimate decision to re-appoint rests with the appointing authority. Re-appointment to a further additional term beyond the maximum of ten years in total, may only be made in exceptional circumstances in the public interest.

Appointees will be notified of the expiry date of their appointment at least four months prior to the expiry of their term of appointment.

There is no obligation on the government to re-appoint individuals for subsequent terms at the conclusion of any appointment.

3.3 Ethical Framework

Government appointees are required to fulfill the duties of their appointment in a professional, ethical and competent manner and avoid any real or perceived conflict of interest. In particular, and without limiting the generality of the foregoing obligations, a government appointee shall:

1. not use or attempt to use his or her appointment to benefit himself or herself or any person or entity;
2. not participate in or attempt to influence decision making as an appointee if he or she could benefit from the decision;

3. not accept a gift that could influence, or that could be seen to influence, the appointee in carrying out the duties of the appointment;
4. not use or disclose any confidential information, either during or after the appointment, obtained as a result of his or her appointment for any purpose unrelated to the duties of the appointment, except if required to do so by law or authorized to do so by the responsible Minister;
5. not use government premises, equipment or supplies for purposes unrelated to his or her appointment; and
6. comply with such additional requirements, if any, established by the entity to which the person is appointed, and/or the responsible Minister.

For the purposes of the above “confidential information” means information that is not available to the public.

A government appointee must declare a personal or pecuniary interest that could raise a conflict of interest concern at the earliest opportunity to the Chair or to the responsible minister or the minister’s designate in the case of a Chair.

An appointee who is a public servant by virtue of being appointed to a “public body” that is prescribed under the *Public Service of Ontario Act* (PSOA) is subject to the conflict of interest rules set out in the PSOA and its applicable regulations.

3.4 Remuneration

There is no requirement that appointees receive remuneration, nor that they receive remuneration at the maximum rates authorized by this directive.

An element of public service is implied in any appointment by the Government of Ontario and therefore remuneration that may be paid, if any, is not necessarily competitive with the marketplace.

Any remuneration of an appointee who is paid by the government must be specifically authorized in an Order in Council and must be in accordance with the applicable rates set out in this directive except where provincial agencies or other entities have legislative authority to set remuneration rates. An Order in Council may provide for remuneration individually or with reference to a position such as Executive Chair, Chair, Associate Chair, Vice-Chair or Member of a provincial agency or other entities unless the enabling legislation provides otherwise.

For government appointments to a particular provincial agency or other entities, all appointees must be recompensed in a consistent manner.

Remuneration for part-time appointees must be on a per diem basis. Per diem is to be interpreted as the amount payable for work periods in excess of three hours; when less than three hours of work is involved, one-half of the established per diem rate must be paid.

Remuneration arrangements for any part-time appointees who will not be paid on a per diem basis must be approved by TB/MBC.

Only one per diem payment can be made to an appointee for a calendar day.

Full-time appointees who hold additional part-time appointments are not entitled to receive any per diem remuneration.

Payments for appointees will be made to the person named in the appointment instrument, not to a sole proprietorship, partnership, corporation, or charity. Ministries must ensure provincial agency compliance with the [Accounting for Order in Council Appointees Policy](#) (as amended from time to time) issued by the Office of the Provincial Controller.

Per diems may be paid for time spent on formal business approved by the provincial agency Chair on a case by case basis (may include attendance at, or provision of training, attendance at meetings, preparation time, etc.).

Travel time beyond that undertaken as part of the normal day's work may be remunerated, at an average hourly rate not to exceed a total payment of 60 percent of the approved per diem rate. For the purpose of this directive, a normal day's work is defined as 7.25 hours. The average hourly rate is to be calculated on the basis of a 7.25 hour work day.

Appointees are entitled to reimbursement for work-related expenses in accordance with the Travel, Meal and Hospitality Expenses Directive and any other TB/MBC directives. Where a provincial agency or other entity is not subject to TB/MBC directives governing expenses, the appointee is entitled to be reimbursed for expenses in accordance with the conditions set out in the appointing instrument.

Appointees are not entitled to reimbursement of professional dues or fees.

Public servants employed under Part III of the PSOA who also hold a government appointment (whether by Order in Council or Minister's letter) are not permitted to be paid or accept any remuneration in respect of that appointment other than their salaries as public servants employed under Part III of the PSOA.

Public servants who hold a government appointment as a requirement of their public service duties must resign their position when they cease to be employed by the OPS.

3.5 Rates of Remuneration

All rates of remuneration are provided in the Schedules to Part 3.

3.5.1 Disclosure of Remuneration

The per diem rates and remuneration ranges of appointees must be a matter of public record.

In the case of provincial agencies that prepare annual reports for tabling in the Legislature, the total annual remuneration of appointees must be included in the annual report.

3.5.2 Rates of Remuneration: Part-Time Per Diem

Appointees to Provincial Agencies other than Adjudicative Tribunals and Regulatory Agencies

Remuneration must be set on a per diem basis within the ranges set out in Schedule A except where a provincial agency has legislative authority to set remuneration rates.

Adjudicative Tribunals and Regulatory Agencies

Part-time appointees to adjudicative tribunals and regulatory agencies are paid a per diem pro rata of the full-time rate, based on 234 working days, at the minimum of the appropriate range, in accordance with Schedule B except where a provincial agency has legislative authority to set remuneration rates.

3.5.3 Rates of Remuneration: Full-Time Appointees

Appointees to Provincial Agencies other than Adjudicative Tribunals and Regulatory Agencies

Rates of remuneration for positions to which full-time appointments are made must be approved by TB/MBC unless otherwise specified in the provincial agency's statute.

Adjudicative Tribunals and Regulatory Agencies

Rates of remuneration for full time appointees to adjudicative tribunals and regulatory agencies where remuneration is set by the government are set out in Schedule B.

On appointment or reappointment, remuneration rates for full-time appointees are set within the SMG ranges according to their appointment term, as follows:

- First term (2 years) – minimum of the range.
- Second term (next 3 years) – mid-point of the range.
- Third term (final 5 years) – maximum of the range.

Remuneration of full-time appointees to adjudicative tribunals and regulatory agencies where remuneration is set by government are adjusted on the basis of parity with remuneration paid to OPS executives, to move in step with any future adjustments to executive remuneration. If executive remuneration ranges increase, full-time appointees in their first term will move to the new minimum, those in their second term will move to the new mid-point, and those in their third term will move to the new maximum of the applicable range.

3.6 Benefits Entitlements

Full-time appointees to adjudicative tribunals or regulatory agencies are eligible for benefits, including vacation, comparable to the benefit entitlements of OPS executives in the Senior Management Group, except to the extent that the appointees may choose to participate in the pension plan or may choose not to. While membership in the pension plan is optional, if the appointee declines to participate in the pension plan, the appointee shall not receive any

compensation in lieu of participation in the pension plan. Furthermore, there is no entitlement to severance or termination pay for full time appointees.

There is no entitlement to benefits for part-time appointees.

3.7 Indemnification

Government appointees to provincial agencies under this Directive may be indemnified for claims arising from their acts or omissions in the performance or intended performance of their duties as appointees, provided that they acted honestly and in good faith, with a view to the best interests of the provincial agency.

Appointees who enjoy statutory immunity from claims in respect of acts or omissions that occur in the good faith execution of their duties as appointees may be indemnified for legal expenses incurred in successfully asserting this statutory defence.

Appointees will not be indemnified in instances of bad faith, wilful misconduct or gross negligence.

3.7.1 Source of Indemnification

Indemnification in favour of government appointees to a provincial agency:

- that is permitted to retain its assets and revenues outside the Consolidated Revenue Fund; or
- to which section 136 of the *Business Corporations Act* or section 80 of the *Corporations Act* applies; or
- that otherwise has the power to indemnify persons appointed to it,

is to be provided by the provincial agency.

The indemnity in favour of government appointees to any other provincial agency may be provided by the minister responsible for the provincial agency.

The indemnities to be provided by either the provincial agency or the ministry must be provided in the form approved by the Minister of Finance / President of the Treasury Board pursuant to the class based approvals established in accordance with section 28 (1) (b) of the *Financial Administration Act*.

Staff responsible for preparing the form of indemnity should contact the Director of the Ministry of Finance Legal Services Branch and the Director of the Treasury Board Secretariat Legal Services Branch to obtain the current approved and correct form of indemnity.

Ministries must obtain the prior approval of the Minister of Finance / President of the Treasury Board in accordance with section 28 (1) (a) of the *Financial Administration Act* before any other form of indemnity can be provided.

Government appointees to other entities, to which the government has the right to appoint a minority of members to represent the public interest, may seek an indemnity directly from that

entity in accordance with its usual form of indemnity. Where such an indemnity is not available or the form of the indemnity is not appropriate, an indemnity may be provided by the ministry responsible for the appointment, upon the prior written approval of the Minister of Finance / President of the Treasury Board under section 28 of the *Financial Administration Act*.

3.8 Roles and Responsibilities for Appointments

3.8.1 Treasury Board/Management Board of Cabinet

Treasury Board and Management Board of Cabinet are responsible for:

- Establishing the ranges and/or rates of remuneration for government appointees except where provincial agencies and other entities have legislative authority to set remuneration rates;
- Determining remuneration for appointees who are paid by the government and appointed to newly created provincial agencies or other entities;
- Approving changes in remuneration for appointees;
- Granting exceptions to or exemptions from any matter governed by this directive, including any per diem and full-time rates of remuneration in excess of those prescribed by this directive except where the provincial agency or other entity has legislative authority to set remuneration rates; and
- Approving remuneration of all appointees undertaking a short-term assignment.

3.8.2 Minister of Finance / President of the Treasury Board

The Minister of Finance / President of the Treasury Board is responsible for providing approvals under section 28 of the *Financial Administration Act* for classes of government appointee indemnities and individual government appointee indemnities that fall outside the approved classes.

The Director of the Ministry of Finance Legal Services Branch and the Director of the Treasury Board Secretariat Legal Services Branch are responsible for maintaining records of forms of indemnity approved under section 28 of the *Financial Administration Act* and assisting legal counsel for government ministries and provincial agencies in connection with proposed government appointee indemnities.

3.8.3 Ministers

Ministers are responsible for:

- Acting, in co-operation with the Public Appointments Secretariat, as the prime contact with respect to any appointments within their portfolio;
- Obtaining the approval of the TB/MBC before specifying a rate of remuneration for an appointee; and
- Obtaining the prior written approval of the President of Treasury Board / Minister of Finance before providing an indemnity for an appointee, where such prior approval is required pursuant to this directive and section 28 of the *Financial Administration Act* outside the class-based approvals.

3.8.4 Deputy Ministers

Deputy Ministers are responsible for:

- Ensuring that their ministers and ministries are aware of the requirements of this directive;
- Providing adequate justification, on behalf of their ministers, for rates of remuneration for short-term bodies and special advisors, as well as for rates of remuneration in excess of those provided in this directive; and
- Providing sufficient information to the Public Appointments Secretariat to enable the maintenance of a current inventory of the rates of remuneration paid to appointees to provincial agencies and short-term advisory bodies and special advisors except where a provincial agency or other entity has legislative authority to set remuneration rates.

3.8.5 Treasury Board Secretariat

The Treasury Board Secretariat is responsible for:

- Providing advice and assistance to ministries on the process of remunerating individuals to perform a specific function, particularly with respect to any submissions to TB/MBC that may be required; and
- Providing advice and assistance to ministries with respect to the appropriate remuneration for appointees.

3.8.6 Public Appointments Secretariat

The Public Appointments Secretariat is responsible for:

- Providing advice to ministers and deputy ministers on public appointment processes;
- Maintaining a current inventory of all government appointees;
- Maintaining, with regard to provincial agencies and other entities, a record of the rates paid to government appointees except where a provincial agency or other entity has legislative authority to set remuneration rates.; and
- Coordinating appointee training.

3.8.7 Chairs of Provincial Agencies

Chairs of provincial agencies are responsible for informing all appointees and provincial agency staff of the requirements of this directive.

3.8.8 Chief Executive Officers of Provincial Agencies

Chief Executive Officers of provincial agencies are responsible for ensuring that all indemnities provided by their provincial agency to its appointees are in compliance with this directive and section 28 of the *Financial Administration Act*.

Schedule A

Per Diem Remuneration for Board-Governed Provincial Agencies and Advisory Agencies	
Remuneration for all part-time appointees (excluding appointees to adjudicative tribunals and regulatory agencies) must be within the following ranges:	
Level 1 – Basic	
Members	Up to \$150 per day
Vice-Chairs	Up to \$175 per day
Chairs	Up to \$225 per day
Level 2 – Specific Expertise	
Members	Up to \$200 per day
Vice-Chairs	Up to \$250 per day
Chairs	Up to \$350 per day

Schedule B

Remuneration of Appointees to Adjudicative Tribunals and Regulatory Agencies							
Position	Full-Time Appointees			Part-Time Appointees			
	(Annual Remuneration)			(Per Diem Remuneration)			
	1 st Term	2 nd Term	3 rd Term	1 st Term	2 nd Term	3 rd Term	*Prof & Labour
Executive Chairs	\$169,100	\$179,025	\$188,950	\$723			N/A
Chairs	\$146,700	\$157,175	\$167,650	\$627			\$664
Associate-Chairs	\$146,700	\$157,175	\$167,650	\$627			\$664
Vice-Chairs	\$115,000	\$123,225	\$131,450	\$491			\$664
Members	\$93,050	\$99,700	\$106,350	\$398			\$664

*Persons appointed in their professional capacity as required by statute or on a labour-related Board.