

Building Together: Conference on Commonality of Administrative Justice Issues

**– Plenary Session –
Agency Modernization
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Purpose

- To provide an overview of the role of the Public Appointments Secretariat in the Government of Ontario
- To review briefly the reforms we have implemented since 2003
- To outline structural reforms we are currently implementing
- To outline themes and principles for proposed Legislative change

Public Appointments Secretariat

- Public Appointments Secretariat (PAS) is responsible for the management, coordination and recruitment of the Order-in-Council (Cabinet) appointments to Ontario's 600+ agencies, boards and commissions (ABC)
- Ontario's ABCs consist of 283 Classified Agencies:
 - 121 Advisory Boards
 - 21 Regulatory and 40 Adjudicative Boards & Tribunals
 - 74 Operational Agencies (better known as Crown Corporations)
 - 27 Crown Foundations and Trusts
- And 329 Un-Classified Agencies:
 - 159 Police Services Boards
 - 24 Professional Self-Regulating Organizations
 - 77 Health and Post-Secondary Education Boards
 - 43 Advisory Boards, Trusts & special purpose boards
 - 25 arms-length local service management boards (airports, ports etc.)

Public Appointments Secretariat

Structure and Responsibilities

- Part of MGS and staffed by public servants with political oversight and direction from OPO
- Sets policy for ABC operations and ensures Legislative Compliance
- Processes Applications to support Premier & Ministers in administering the appointments process
- Answers queries from Agencies, Ministries & Public
- Since 2003 we have made over 9,200 appointments almost evenly split between new appointees and re-appointments

Process Reforms Made to Date

- Redeveloped website so that it now provides more information on the appointments process and upcoming vacancies
- Created the ability for applicants to apply online thus broadening in a very real way the access to these opportunities
- We believe in transparency and accountability. So today we post information on all new appointees
- Now advertise for Chair and full-time positions
- Now we conduct security checks on all new appointees and require candidates to declare potential conflicts of interest

Appointment Reforms - Merit

- To ensure that qualifications can be objectively assessed panel interviews for full-time and Chair positions are now held
- We believe that Chairs are uniquely situated to understand the needs of their agencies so we have formalized their role in the appointment and re-appointment process
- Adjudicative and Regulatory appointees are professional, non-partisan public servants whose service is valued, respected and honoured by this Government
- Our government focuses on merit and quality which is why we have re-appointed professionals originally selected by Governments of other parties
 - Of the current members of adjudicative and regulatory boards in Ontario more than 30% were initially appointed by previous governments

Appointment Reforms - Recognizing Diversity

- To make ABCs look like the “face of Ontario” we have worked diligently to improve the representation of women and increase cultural and geographic diversity

Appointment Reforms – Terms and Compensation

- Policy inertia had created a recruitment and retention crisis among regulatory and adjudicative agencies
- New policy governing appointment terms and compensation came into effect in 2006
- Acted to enhance our ability to recruit and retain the best appointees because compensation rates were no longer competitive
- Old policy also led to an acute lack of consistency across agencies provoking “second-class” agencies

Governance Reforms

- To enhance excellence and good governance we created the Agency Advisory Council chaired by Henry Pankratz
- Composed of an equal mix of appointees and agency staff from regulatory and adjudicative agencies as well as operational agencies
- The council provided advice and identified best practices found in our agency sector
- Generic governance tools were developed to assist prospective appointees understand the requirements of the position and inform new appointees about their role and clarify expectations
- The suite of new tools include:
 - Position Descriptions
 - Core Competencies
 - Codes of Conduct
 - Learning and Development Maps and Board Questionnaires

Structural Reforms - Clustering

- Kevin Whitaker, Chair of the Ontario Labour Relations Board, served as the Facilitator of the Environment and Land Use Planning Cluster Project and reported in August 2007
- Kevin worked with internal and external stakeholders of:
 - Assessment Review Board;
 - Board of Negotiation;
 - Conservation Review Board;
 - Environmental Review Tribunal; and
 - Ontario Municipal Board.
- The purpose of clustering is to help agencies come together to better offer streamlined services and enhance consistency in tribunal practices, procedures and decision making
- Clusters better enable the tribunal system to respond quickly and effectively to shifts in demand and emerging policy issues

Structural Reforms - Clustering

- The Environment and Land Tribunals have been moved to report to the same Minister – the Attorney General
- Michael Gottheil has been nominated to serve as the new cross-appointed Chair who will ultimately oversee all 5 boards
- Current Chairs will oversee the operations of their particular boards serving as “Vice Chairs with operational responsibilities”
- The new cross-appointed Chair will exercise the accountabilities and responsibilities of Chief Executive Officer for all tribunals and a detailed Memorandum of Understanding with the Minister will govern the management of the cluster

Proposed Legislative Reform

- It is proposed that legislation be developed for possible introduction in the Fall 2009 session
- In the same way that structural reforms through Service Ontario served to streamline the delivery of Government services, a new Act could create the legal basis for the desired position changes to the Environment and Land Use Planning Boards

and also

- provide the statutory basis to facilitate future “clusters” without the need to seek legislative change for each proposed instance

Proposed Legislative Reform

- Proposed legislation could also codify certain key accountability/governance provisions for adjudicative tribunals that currently exist in other forms:
 - Management Board Directives & MGS guidelines currently set out key accountability and governance rules for all types of government agencies
 - Legislation could reinforce existing rules by giving them high level statutory authority for adjudicative tribunals
- Details of the accountability provisions set out in a statute could be fleshed out by way of regulation and/or directive
- Alberta has recently taken a similar approach with the *Alberta Public Agencies Governance Act*, S.A. 2009

Proposed Legislative Reform

Mandatory Public Accountability Documents

Mandate and Mission Statement:

- Chair could be required to describe the tribunal's legislative mandate and develop a mission statement for the tribunal

Stakeholder Consultation and Engagement Policy:

- Chair could be required to develop a stakeholder consultation and engagement policy for use in the development or changes to the tribunal's rules or policies

Client Service Standard:

- Chair could be required to develop and operationalize a formal process for responding to complaints about the quality of service received by customers/clients of the agency

Ethics Plan:

- Chair could be required to develop an ethics plan that would have to be approved by the Conflict of Interest Commissioner. The ethics plan would have to comply with the minimum standards set out in PSOA and its regulations

Proposed Legislative Reform

Member Accountability Framework:

Code of Conduct:

- Chair could be required to develop a code of conduct for tribunal members. Code would have to be public

Role and Position Descriptions:

- Chair could be required to develop a description of roles and positions of OIC appointees at the tribunal. Would be subject to ministerial approval

Recruitment /Appointment and Reappointment:

- Could require an open, merit-based competitive recruitment/appointment process based on objective, identifiable criteria for appointment

Member Core Competencies:

- Chair could be required to develop a set of member's core competencies, assess member's performance for purposes of reappointment

Proposed Legislative Reform

Mandatory Governance and Reporting Documents:

Memorandum of Understanding:

- Legislation could require that every five years, an MOU (covering financial, staffing, administrative matters, etc.) be entered into between the EC/Chair and the responsible minister

Business Plan:

- Legislation could require a business plan annually (subject to ministerial approval) to cover a set period of upcoming fiscal years

Annual Reports:

- Legislation could require that annual report for submission to the Minister be required

Review of Adjudicative Tribunals:

- Ministers responsible for tribunals could be required or empowered to direct that reviews of adjudicative tribunals be undertaken at set intervals such as every 5 years