

Workshop #1

Unlocking the Doors to Excellence: Keys for Modern Tribunals

Moderator: Dr. Lilian Ma, Landlord and Tenant Board
Speakers: Catherine Barker-Hoyes, Ontario Energy Board
Murray Graham, Landlord and Tenant Board
Donna Johansen, Public Appointments Secretariat
Toby Vigod, Environmental Review Tribunal
Kevin Whitaker, Ontario Labour Relations Board and Facilitator, Agency Cluster Program
S. Ronald Ellis (Guest Speaker)

This workshop discussed what agency governance tools are and how various Boards and Tribunals implement them. The focus of the discussion was not on the success or challenges of certain tools.

Donna Johansen commenced the workshop by explaining what agency governance tools are available to help agencies enhance good governance. The goal behind the creation and implementation of the tools was to decrease risk and to increase public trust. The tools are an ongoing development but seek to establish structures and procedures to develop agency knowledge, commitment, understanding, objectives and satisfactory performance. Of course, depending on the needs of certain agencies, the most appropriate tools will be different.

Next, Toby Vigod shared her experience with the Environmental Review Tribunal and its agency governance tools. Ms. Vigod explained that “not one size fits all” and the Environmental Review Tribunal is unique compared to others. Twelve (12) environmental statutes bind the Tribunal yet the Tribunal is relatively small. The Tribunal also reports to different Ministers. To enhance good governance, the Environmental Review Tribunal established agency tools which attempt to foster a culture of excellence, well-reasoned decisions and well-run hearings. Appointments are based on merit and orientation and training are provided. Also, rules of practice have been established.

Murray Graham then shared his experience with the Landlord and Tenant Board. He began by explaining the structure of the Board and focused on the fact that there is a high volume of applications being filed on a daily basis and they are heard and decided at a rapid pace. In 2005, the Landlord and Tenant Board established governance tools. The tools focused, not unlike the Environmental Review Tribunal, on recruitment, training and retention of staff. Guidelines for conflicts of interest were created and member performance appraisals were commenced. Going forward, the Landlord and Tenant Board hopes to continue to focus on member accountability.

Catherine Barker-Hoyes spoke about the Ontario Energy Board. The Ontario Energy Board regulates the electricity and natural gas sector and statutes have established its governance structure. Not unlike the other Boards and Tribunals, the Ontario Energy Board’s agency governance tools focus on a performance appraisal process and professional standards including competency, measures of success and annual learning objectives.

Kevin Whitaker from the Ontario Labour Relations Board spoke generally about organizing principles of administrative justice. The five principles are as follows:

1. Expertise that will allow and encourage deference;
2. Create and structure discretion;
3. Consistency;
4. Tailored processes; and
5. Collaboration between other Ministries.

Mr. Whitaker discussed these principles in relation to the Ontario Labour Relations Board and reasoned that it makes good sense for courts to give highly specialized agencies deference. This is especially true when an

agency ensures that its discretion is consistent and strives to make sound decisions. Going forward, it would be useful to increase collaboration between Ministries. Such collaboration would strengthen consistency in decision-making as well as further the administration of justice from a tribunal or agency perspective.

Ron Ellis (Guest Speaker) concluded the workshop by referencing the danger of focusing on achieving measurable goals and losing sight of justice. Soft values are just as, if not more, important than tangible ones. For example, in a Quebec pilot project, the performance of justice was measured by surveying advocates.