

SESSION #1

Accountability and Governance: What Does it Mean to Me?

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Governance and Accountability: Two Government Directives

Carol Pauker:

The *Agency Establishment and Accountability Directive* and the *Travel, Meal and Hospitality Expense Directive* offer two examples of how government accountability may be reflected in policy directives. Negative media attention and scandal help frame the context for the development of these types of policy directives. The *Agency Establishment and Accountability Directive* and the *Travel, Meal and Hospitality Expense Directive* are among a variety of measures taken in recent history to help increase accountability.

Other measures to increase accountability include:

- *Public Service of Ontario Act, 2007*
 - o Established an ethical framework for all public servants (public bodies prescribed in regulation).
 - o Addressed the government's and the public's expectation for consistent standards and behaviour.
- *Public Sector Expenses Review Act, 2009 (PSERA)*
 - o Obligates designated individuals in 22 of Ontario's largest agencies and organizations to submit their expenses to the Integrity Commissioner for review.
- Public Disclosure of Expenses Website
- *Adjudicative Tribunals, Accountability, Governance and Appointments Act*

Agency Establishment and Accountability Directive (AEAD), revised: January 2010

- Explicitly states that classified agencies are part of the Ontario government.

AEAD – Guiding Principles

- General Standards of Government Directives:
 - o The government is accountable for protecting the public interest.
 - o Value for money is expected when spending taxpayer dollars – the public trusts that delivering services through agencies is cost-effective and financially responsible.
 - o If there is a high risk identified for a classified agency, then the risk will be monitored and mitigated through greater oversight.

- AEAD Specific Principles:
 - o Ministries and agencies respect their different roles and responsibilities in the delivery of public services through agencies.
 - o Ministries provide the appropriate amount of operational flexibility for each agency and also support Ministers who are accountable for agencies.
 - o A risk-based approach is used to manage agencies. Agencies employ a risk framework when making operational decisions.
 - o Transparency guides good governance and accountability practices for ministries and agencies.

AEAD – Accountability to the Legislature and Mandatory Reporting Requirements

- The Chair of a classified agency is accountable to the Minister for the mandate and conduct of the agency. Responsibilities include: keeping the Minister informed, providing leadership, complying with legislative/policy obligations, protecting integrity/public interest through the appropriate degree of autonomy.
- The Minister is accountable to the Legislature, representing the public. Responsibilities include reporting/responding to the Legislature on performance, making recommendations.
- AEAD includes increased mandatory reporting requirements for ministries and agencies:
 - o risk assessment evaluation by ministries
 - o new requirements for inclusion in an agency's Memorandum of Understanding
 - o transparency with regard to applicable government directives

AEAD – Applicable Directives and Attestation

- In addition to the AEAD, all classified agencies must adhere to several directives including:
 - o Accountability Directive
 - o Advertising Content Directive
 - o Delegation of Authority Key Directive (MOF)
 - o Government Appointees Directive
 - o Procurement Directive
 - o Travel, Meal and Hospitality Expenses Directive
- Ministers and deputy ministers will be required to attest to compliance with the AEAD's various mandatory requirements.
- The AEAD now includes explicit consequences for non-compliance. Consequences include:
 - report-backs, and
 - hold-backs of allocated agency funding until the ministry/agency is in compliance.

Travel, Meal and Hospitality Expenses Directive

- Purpose:
 - o Sets out rules and principles for the reimbursement of expenses to ensure fair and reasonable practices.
 - o Provides a framework of accountability to guide the effective oversight of public resources in the reimbursement of expenses.
 - o Sets the parameters for the public disclosure of information about expenses.

- Applies to all:
 - o ministries and their employees
 - o classified agencies, their employees and appointees
 - o consultants and persons under contract to government ministries or to agencies
 - o agencies and organizations prescribed by regulation under the *Public Sector Expenses Review Act*

- Travel Directive Principles:
 - o Taxpayer dollars are used prudently and responsibly with a focus on accountability and transparency.
 - o Expenses support government objectives.
 - o Expenses are necessary and economical with due regard for health and safety.
 - o Legitimate expenses are reimbursed.
 - o Best practices are in place, including: obtaining approval before incurring expenses, considering alternatives, etc.

- Mandatory Requirements:
 - o Written approval required before any arrangements are made for international travel, and hospitality events involving alcohol.
 - o Alcohol - cannot be claimed and will not be reimbursed as part of a travel or meal expense.
 - o Hospitality - only when the event involves people from outside the government.
 - o Good record-keeping practices must be maintained for verification and audit purposes.

- Accountability Framework
 - o The Directive sets out the approval authority for:
 - what can be claimed,
 - what can be reimbursed, and
 - what approval level is required prior to incurring expenses
 - o The Directive often specifies whether the authority can be delegated, and to what level.
 - o Managerial Discretion: If no level is identified, the ministry or agency/organization decides what is appropriate. Silence builds in the flexibility to exercise managerial discretion.

- Examples:
 - o Transportation: choose the most practical and economical way to travel.
 - Economy fare is the standard.
 - Rental cars should be compact models.
 - Personal cars may be used if more economical than a rental car.
 - o Accommodation: choose the most practical and economical place to stay.
 - Single accommodation is standard.

- Meals: reimbursements for restaurant or prepared food.
 - Alcohol cannot be claimed and will not be reimbursed as part of a travel or meal expense. No exceptions.
- Hospitality: the provision of food, beverage, accommodation, transportation and other amenities at public expense to people who are not engaged in work for the government of Ontario.
 - Alcohol can be claimed and reimbursed as a hospitality expense, in specific situations with appropriate approval.
- Consultants/Contractors: these are covered under the directive and can claim some expenses. Expenses that are not allowed include: meals, snacks, beverages, gratuities, laundry services, valet service, dependent care, personal telephone calls, etc.

The Public Service of Ontario Act, 2006

Daman Thable:

The Public Service of Ontario Act, 2006 (PSOA) sets out the ethical framework for public servants in Ontario. Ms. Thable provided a brief overview of the PSOA, the political activity rules, the conflict of interest rules and the role of the ethics executive.

Overview of the PSOA

- Expands the definition of 'public servant' to include:
 1. Every employee of a public body (including part-time employees); and
 2. Every person appointed to a public body.
- Establishes a Conflict of Interest Commissioner
- Identifies an ethics executive in each Ministry and public body.

Political Activity Rules

- What is political activity:
 - Supporting or opposing a political party;
 - Supporting or opposing a federal, provincial or municipal candidate;
 - Being or seeking to be a candidate; or
 - Commenting publicly and outside the scope of duties on matters directly related to those duties and that are dealt with in the policies/position of a political party/candidate.
- All Public Servants are prohibited from engaging in political activity:
 1. in the work place;
 2. while wearing a uniform associated with public service of Ontario;
 3. using government premises, equipment or supplies; and
 4. by associating his/her position with political activity.
- 'Most' Public Servants:
 1. may engage in political activity that is not restricted. Restricted activities are set out in section 79(1) of the PSOA.

- 2. must be on a leave of absence to engage in restricted political activity.
- Specially-Restricted Public Servants:
 - o may only engage in political activity that is specifically permitted under sections 89 and 90 of the PSOA
 - o part-time specially restricted public servants may seek authorization from COIC to engage in some additional activities

Conflict of Interest Rules

- Set out in Ontario Regulation 381/07 (applicable 'across the board')
- In-service rules:
 - o Benefiting self, spouse or children (s. 3);
 - o Accepting gifts (s. 4);
 - o Disclosing confidential information (s. 5);
 - o Giving preferential treatment (s. 6);
 - o Hiring family members (s. 7);
 - o Engaging in business or undertakings (s. 8);
 - o Participating in decision-making (s. 9);
 - o Disclosure of financial interests (s. 10 and 11); and
 - o Prohibition on certain purchases (s. 12)
- Post-service rules:
 - o Seeking preferential treatment (s. 16);
 - o Disclosing confidential information (s. 17);
 - o Lobbying (s. 18);
 - o Employment (s. 19);
 - o Certain transaction (s. 20)

Role of the Ethics Executive

- When a conflict of interest or political activity issue arises, the ethics executive may intervene in the matter.
- Three Options:
 - o Option 1: Ethics executive conducts inquiries, makes determination and provides advice.
 - o Option 2: Ethics executive seeks advice from the Conflict of Interest Commissioner. This advice is designed to assist the ethics executive in making his/her own decision.
 - o Option 3: Ethics executive refers the matter to the Conflict of Interest Commissioner. The Commissioner will then make inquiries and issue decisions that are binding on public servants.

Adjudicative Tribunal Accountability Governance and Appointments Act, 2009

Mike Uhlmann:

Overview

- In 2009, Cabinet approved the development of an Act to give legislative form to key governance and accountability reforms and rules that were largely in the form of Directives and Guidelines.
- Purpose of the ATAGAA:
 - o Enable structural changes necessary to “cluster” tribunals where the matters dealt with by them “are such that they can operate more effectively and efficiently as part of a cluster than alone.”
 - o Ensure that appointments to tribunals would be based on an open, competitive, merit-based process and that no appointments could be made without the recommendation of the Chair.
- Royal Assent received on December 15, 2009.
- Proclaimed into force in two phases:
 - o Phase 1 – Completed in April
 - Regulation prescribing the tribunals to be covered by the Act, and designating the five Environment and Land tribunals to be a cluster.
 - OIC proclaiming the clustering provisions of the Act into force.
 - o Phase 2 – Spring 2011 (target)
 - The balance of the Act to be proclaimed into force including all Public Accountability, Member Accountability and Governance/Reporting document requirements.
- The accountability provisions and requirements of the Act are set out in three main sections: Public Accountability Documents, Member Accountability Framework and Governance and Reporting Documents.
 - o This seminar only reviewed Member Accountability Framework.

Member Accountability Framework (s.7)

7.(1) Every adjudicative tribunal shall develop a member accountability framework.

7.(2) The member accountability framework must contain,

- (a) a description of the functions of the members, the chairs and the vice-chairs, if any, of the tribunal;
- (b) a description of the skills, knowledge, experience, other attributes and specific qualifications required of a person to be appointed as a member of the tribunal;
- (c) a code of conduct for the members of the tribunal;

- In 2007, the Public Appointments Secretariat developed a series of generic *Governance Tools*. It is anticipated that these tools will be used as the compliance guidelines for s. 7.
- The Tools include:
 1. Generic **Position Descriptions** for chairs, vice-chairs and members, setting out the purpose of the position, key duties and qualifications;
 2. Generic **Core Competencies**, setting out the key skills, abilities and behaviours needed for effective performance in these positions;
 3. Generic **Code of Conduct**, setting out the standards of ethical and professional conduct expected of an appointee.

Next Steps

- Draft regulations are currently being developed to support proclamation and rollout of Phase 2. Corresponding Directives and Guideline enhancements are also being reviewed and considered to further assist Tribunals in compliance.
- Tribunals will be consulted on the drafts for input/comment.
 - o Consultation with the tribunal community with respect to the content of the framework is expected to begin in January.
- The balance of the Act is expected to be proclaimed into force in Spring 2011.