



ACCOUNTABILITY IN ADMINISTRATIVE JUSTICE

Professor & Dean Lorne Sossin

Outline

- 1) The Elusive Search for Accountability
- 2) The COAT “Framework for Excellence”
- 3) Where we go from here?
- 4) Questions that remain

Admin Justice Accountability Legislation

- 2009: *Adjudicative Tribunals Accountability, Governance and Appointments Act* – establishes framework for MOUs, business plans, service standards, ethics documents/policies, etc
- 2009 *Public Sector Expenses Review Act* (PSERA) - Integrity Commissioner empowered to review expenses for senior executives at 22 of Ontario's largest agencies and organizations; these agencies/organizations must publicly post expense claim information.
- 2010: *Public Sector Compensation Restraint to Protect Public Services Act, 2010* Act establishes restraint measures with respect to the compensation plans of certain public sector employers and employers who receive significant funding from the Government of Ontario,.
- 2010 *Broader Public Sector Accountability Act, 2010* (BPSAA) prohibition of the use of public funds for consultant lobbyists came into force, BPS Procurement Directive and BPS Expenses Directive.

Accountability: The Dilemma

- The legislation addressing “accountability” appears disconnected from any broader articulation of the goals and objectives – eg. the BPP;
- The legislation was developed in response to crises and scandals rather than as part of a coherent accountability strategy;
- The legislation equates public accountability largely with expenditures of public funds rather than service to the public and/or quality assurance; and
- The legislation reflects an “oversight” rather than “collaborative” approach

Accountability: The Choices

- Different approaches to accountability:
 - Legal authority;
 - Institutional governance;
 - Mission statement/strategic planning;
 - Institutional and sector-wide performance measurement/information;
 - Financial management, 3rd party audit and assessment;
 - Transparent disclosure, reporting and review
 - Cultivating accountability relationships with all stakeholders; and
 - Ranking and evaluation by Gov't, NGOs or 3rd parties

COAT Framework for Excellence

- ▣ The *Framework* provides a *methodology for continuous* evaluation and improvement that is specifically designed for use by tribunals.
- ▣ The *Framework is predicated on Core Tribunal Values* (fairness, integrity, efficiency, accessibility, etc) These shared values are embedded into the eight individual areas of measurement specified in the Framework.
- ▣ The *Framework takes a whole of tribunal approach to* achieving tribunal excellence rather than simply relying on a limited range of performance measures which only capture aspects of tribunal activity.

COAT Framework for Excellence

- 8 Areas for Tribunal Excellence:
 - 1. Independence
 - 2. Leadership and Effective Management
 - 3. Fair treatment
 - 4. Accessibility
 - 5. Professionalism and Integrity
 - 6. Accountability
 - 7. Efficiency
 - 8. Client needs and satisfaction

COAT Framework for Excellence

- Same Self-Assessment Questionnaire
- 71. Is there a system to monitor the effective utilisation of each member?
- 72. Is there the flexibility to assign members to particular areas of the tribunal's jurisdiction in order to meet changes in demand?
- 73. Is there a system for measuring whether tribunal proceedings start in time?
- 74. Have the parties the opportunity to request priority treatment of the case if there are legitimate reasons to do so?
- 75. Are measures taken to speed up delayed cases and to reduce the backlog?
- 76. Does the leadership group periodically evaluate tribunal performance?
- 77. Is it possible to determine the total number of incoming, pending and decided cases in a given period?
- 78. How do you rate the tribunal's overall efficiency?

COAT: Framework for Excellence

- Self-assessment questionnaire on 8 areas of measurement.
- Results to be measured against a benchmark for purposes of identifying gaps and addressing priorities for continuous improvement.
- Planning includes identifying needed allies, necessary resources, consultation, barriers, timelines and how success of changes will be evaluated.
- The VCAT Experience: Framework key “tool” in transformative process to establish and nurture culture of accountability

Where do we go from here?

- Accountability should be substantive and related to performance, not focused only on the expenditure of public resources;
- Accountability should flow from a clear articulation of goals and aspirations: eg. Framework for Excellence;
- Accountability should include qualitative and quantitative measures;
- Accountability flows from relationships, not stats; and
- Accountability should acknowledge the importance of innovation, risk-taking, and experimentation

Questions Remain

- Do all Tribunals have the capacity to implement Framework for Excellence?
- Does current accountability framework enhance or impede the adoption of the Framework?
- Has the new legislation led to a culture of mistrust?
- Is accountability about uncovering wrongdoing or stimulating excellence?
- Is accountability a one-size-fits-all framework or should it vary by sector or institution?
- What should be the consequences if accountability measures are not met?