

Opening Plenary: Charting The Course: Challenges Facing Agencies, Boards And Commissions

Moderator: Emanuela Heyninck, Pay Equity Commission

Speakers: Murray Segal, Murray D. Segal Professional Corporation (Former Deputy Attorney General for Ontario)

Dean Lorne Sossin, Osgoode Hall Law School – York University

Penny Wyger, Liquor Control Board of Ontario (Former Member of the Ontario Municipal Board)

Murray Segal

Murray Segal began the plenary and discussed the government perspective on accountability. He also discussed clustering and its relationship to accountability and also the Drummond Report.

Mr. Segal mentioned that for years, ministries have been asked to look at ways to increase efficiency due to an atmosphere of constraint. For administrative tribunals, clustering originated from an atmosphere where a desire to strengthen professionalism and independence was prevalent. Many looked at the independence between court services and the judiciary at the Ministry of the Attorney General which indicated a level of comfort with the court services model. There existed a memorandum of understanding between all of the ministries whereby the judiciary would have input on administrative issues.

Mr. Segal described how clustering as a concept was worked on some time ago in response to the issue of how to promote independence and also efficiency. Clustering had the potential to address these issues, specifically where cross-training of members of tribunals was concerned. It was seen as a method by which to improve efficiency but not necessarily to save money. If a by-product of clustering was that funds would be saved, that would be an added benefit. The overall goal was to ensure that costs did not grow.

The Drummond Report was also concerned with bending the curve of costs downward. In the portions of the Drummond Report where clustering is mentioned, Mr. Segal indicated that it is included as an acknowledgment of what has been working and an encouragement for Ministries and administrative agencies to do more. As such, clustering was seen as an attempt to indicate that the Ministry understood the concept of reflection and the need to look inward in order to reduce spending and had done so successfully on its own initiative.

Mr. Segal mentioned that the issue of promoting efficiency is tricky. He provided one example of a government initiative which also aimed to do so. Justice on Target – is an initiative of the Ministry of the Attorney General which is in its 50th year and aims to reduce the number of appearances of accused before the court thereby reducing the amount of time and money spent. At the outset of the project there was some discomfort from the judiciary in relation to concerns with the initiative and section 11(b) of the *Charter*. However, progress was made and after 20 years the number of appearances began to decrease from 9.5 in Ontario.

He concluded by indicating that so far, clustering has worked well and can be seen as a tremendous model for the over 600 board and agencies which exist in Ontario. In general, often measures which are taken to promote efficiency stem from external fiscal pressures and can create anxiety among public actors. There is and will be a constant re-evaluation of the efficiency, professionalism and independence of ministries and administrative agencies in the public interest.

Dean Lorne Sossin

With respect to accountability, Dean Sossin noted that the government has been more reactive than proactive. Increasingly, those administrative tribunals which have been proactive and take accountability as their main concern are the most effective and successful as their approach enhances their independence, service to the public, and an important part of building up the culture of the agency.

Dean Sossin then identified the existing pieces of accountability legislation in Ontario and argued that they all address accountability as being disconnected from any broader articulation of the goals and objectives of administrative bodies. He noted that a piece of accountability legislation has been enacted every year since 2009. This has happened for the wrong reasons. Instead of these pieces of legislation coming from a cogent accountability strategy and a vision to articulate an accountability movement, he argued that they arose from one-off, ad hoc, reactive, purpose-free places where the government was disconnected from a broader articulation of the goals and instead was more concerned with responding to crises and scandals.

Dean Sossin discussed the “gotcha” culture whereby the emphasis is placed on fixing problems as they arise, rather than engaging in an ongoing, constructive relationship. Accountability itself, when effective, is always about relationships, credibility and responsiveness to the needs of the public that administrative agencies interact with.

Dean Sossin identified several approaches to accountability:

- legal authority
- institutional governance
- mission statement/strategic planning
- institutional and sector-wide performance measurement/information
- financial management/audits
- transparent disclosure, reporting and review
- cultivating accountability relationships with all stakeholders; and
- ranking and evaluation by government, NGOs or 3rd parties

He further noted that none of these are accountability in themselves; rather they are but building blocks of a greater strategy.

Dean Sossin discussed the COAT Framework which is an international instrument from Australasia revised and used to evaluate administrative agencies. The Framework is predicated on the idea that it takes a whole tribunal approach in order to achieve accountability and the values identified are used to develop specific areas of measurement in the Framework. There are eight Areas for Tribunal Excellence under the Framework:

1. Independence
2. Leadership
3. Fair treatment
4. Accessibility
5. Professionalism and integrity
6. Accountability
7. Efficiency
8. Client needs and satisfaction

The Framework also includes a self-assessment questionnaire which focuses on 8 areas of measurement to be measured against a benchmark for the purposes of identifying gaps and addressing priorities for continuous improvement. Dean Sossin concluded by asking where we go from here. He questioned whether we are ready to take on the COAT approach and what we will do if gaps are found. He also questioned the mistrustful path the current culture of accountability is taking us down.

Penny Wyger

Penny Wyger was the last person to speak at the plenary. As Senior VP and General Counsel of the Liquor Control Board of Ontario (LCBO), and a former member of the Ontario Municipal Board, Ms. Wyger offered her perspective on accountability through the lens of someone who represents an operational enterprise.

Ms. Wyger described the unique features of operational enterprises. These are agencies that sell goods and services to the public in a private manner but not in competition with the private sector. Ms. Wyger mentioned GO Transit and Toronto Hydro as other examples of operational enterprises.

Ms. Wyger then discussed some of the differences between operational enterprises and traditional administrative tribunals. She noted that operational enterprise members are appointed by orders-in-council, and are usually aligned with the government of the day. Moreover, operational enterprises take the Minister's policy directions into account when conducting business. On the other hand, tribunals do not have a board of directors and are quite independent from the government.

Issues may arise out of the requirement that operational enterprises consider the broad policy directives of government. For example, Ms. Wyger noted that the LCBO is tasked with supporting the Ontario wine industry and at the same time strives to be a profitable enterprise. She explained that these goals could be in conflict if the Ontario wine industry was not profitable.

Ms. Wyger noted that operational enterprises have a direct ability to influence public policy. She cited the example of the LCBO, which has developed a series of initiatives aimed to promote socially responsible alcohol consumption. These initiatives include the "challenge and refusal" program, product testing, anti-drunk-driving initiatives, and the deposit return program.

Ms. Wyger added that an agency's level of independence from government varies depending on the circumstances. Profitable agencies like the LCBO are generally quite independent whereas agencies that compete for public funds are more reliant on the government and must take increased care to justify their budget requests.

Ms. Wyger then discussed the similarities between operational enterprises and traditional tribunals. She noted that both are accountable to the Minister, which results in similar accountability-related pressures. These include cost controls, financial reporting responsibilities, and disclosures to the Ministry. Ms. Wyger noted that these responsibilities become heightened whenever mistakes are made at the agency/tribunal level.

Question and Answers:

After hearing from the three panelists, the plenary proceeded to a question and answer session.

1. Dean Sossin asked Ms. Wyger about how politically involved agencies need to be in order to deliver their mandate.

Ms. Wyger explained that agencies have to be politically sensitive but she stressed that they themselves should not be "political". That is, as they are not politicians, members of agency boards should not be making political decisions.

Further, Ms. Wyger noted that agencies must exercise independence and state the facts as they see them. It is only in this way that they garner respect from elected officials.

Murray Segal added that it is vital that agencies maintain good relationships with the Minister, and stressed that this includes the entire Ministry and not just the Minister per se.

2. The plenary's moderator, Emanuela Heyninck, asked Mr. Segal whether he had any suggestions on how relationships between the Minister and agencies could be formalized.

Mr. Segal noted that one way to accomplish this is through memorandums of understanding between the Ministry and the agency. Mr. Segal noted that these relationships must be built on respect.

Ms. Wyger added that memorandums of understanding are already required in the case of operational enterprises. These MOUs set out protocols regarding communication, financial arrangements, and codes of conduct.

3. An audience member asked Mr. Segal about the design of tribunal clusters.

Mr. Segal stated that looking at clusters through the lens of access to justice is the most important part of the clustering exercise. This incorporates looking at cluster design with a view to increasing efficiency and improving the services offered to the public. Mr. Segal noted that the growth of clusters has been incremental.

Dean Sossin added that the ability of clusters to cross ministerial boundaries is also important.

4. An audience member asked Dean Sossin about the role of stakeholders in improving tribunal accountability and effectiveness.

Dean Sossin stated that boards and tribunals should own their accountability projects and not be the object of them. He noted that this can be achieved in part through the COAT questionnaire.