



Everyday Justice

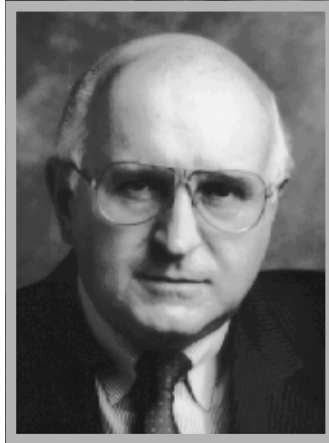
**Report of the Agency
Reform Commission on
Ontario's Regulatory &
Adjudicative Agencies**

April 1998

 **Ontario**

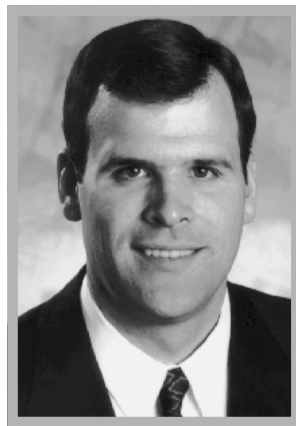


Agency Reform Commission



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MPP, Ottawa-Rideau

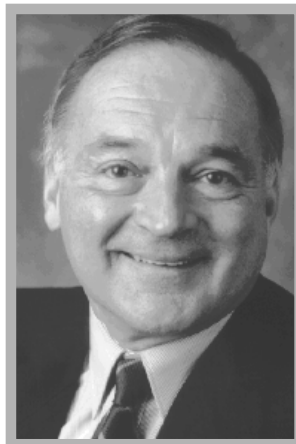
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**(commission member
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Hon. Jim Flaherty, MPP,
Durham Centre
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Message from the Chair

On behalf of the Agency Reform Commission, I'm pleased to present this report on ways to improve the services Ontario's regulatory and adjudicative agencies offer to the public.

If you pay for energy, care about the way the land in your community is developed, or take your children to the movies, you are affected by Ontario's regulatory and adjudicative agencies. These agencies, such as the Ontario Energy Board, Ontario Municipal Board, and Ontario Film Review Board, make decisions on a wide range of issues. They should provide everyday justice that is more specialized, generally quicker and less formal than the courts. More people seek justice through these provincial agencies than in the courts.

My commission set out to make sure these agencies deliver everyday justice. In our vision of the future, the people of Ontario will know their rights, and know when and how to approach an agency with a problem. They will also understand how the process works, what is expected of them and how much time and money, if any, it may cost to resolve the problem.

We consulted extensively with consumer and stakeholder groups, agencies, outside experts, and government ministries. Along with my fellow commissioners, Nepean MPP John Baird, Durham Centre MPP Jim Flaherty, Muskoka-Georgian Bay MPP Bill Grimmett, and Cambridge MPP Gerry Martiniuk, I would like to thank all those who participated in our consultation. Without their important contributions, this report would not have been possible.

What we found was a sector that is functioning well with dedicated, professional people. Some agencies are making changes — simplifying and modernizing their operations — to provide better, faster service. But the pace of change is uneven. Our recommendations are meant to build on the good work already done and to bring all agencies to a high standard of service and accountability, while safeguarding the integrity of agency decision making.

The recommendations presented in this report will help Ontario's regulatory and adjudicative agencies to excel in the delivery of everyday justice while preserving and improving the cornerstones of this sector — impartiality and fairness.



Garry Guzzo, MPP
Chair, Agency Reform Commission





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Introduction

Regulatory and adjudicative agencies are an important part of the justice system in Ontario. They make decisions on such matters as licensing, quotas, pricing, and marketplace standards. They resolve disputes in areas such as land use, taxes, labour relations, and benefits entitlements. Collectively, these agencies are the core of the administrative justice sector in Ontario.

They provide justice that is less expensive, less complex, and less formal than the courts, with more specialized knowledge of the legislation and sector in which they work. They often weigh matters of both public and private interest.

These agencies are part of our social and legal infrastructure, solving problems that vary from assessing the environmental impact of a government project to approving and classifying all films and videotapes for public exhibition and distribution. The decisions they make can profoundly affect people's lives and livelihood.

Historically, agencies were established individually, rather than as part of an overall plan. Agencies are created when government determines that an expert body is needed to resolve issues and the courts are not the appropriate forum. Adjudicative agencies are also often referred to as tribunals.

As regulators, these agencies make decisions and solve problems for the public at large. For example, the Ontario Board of Parole establishes terms and conditions for parole for adults serving short sentences in provincial institutions. The Alcohol and Gaming Commission of Ontario safeguards the public interest in relation to the conduct of gaming events, and regulates the manufacture, distribution and sale of alcohol.

As adjudicators they resolve disputes, both those that come before a decision maker for the first time — for instance, labour matters coming before the Ontario Labour Relations Board — as well as appeals of first level decisions made by ministries, other agencies, municipalities, or outside bodies — for instance, appeals to the Health Professions Board of professional registration decisions made by colleges such as the College of Physicians and Surgeons. Adjudicative agencies like the Assessment Review Board determine whether lands and property have been properly assessed for tax purposes, while the new Social Benefits Tribunal will hear appeals of people denied social assistance.

“The focus of (agencies) should be to have timely, quality decision-making, thereby reducing the need for court action.”

— Large Municipalities
Chief Building
Officials Group

The government spends about \$129 million (1997/98) annually to fund these agencies. In addition, most receive some administrative and legal support from ministries. The costs of a few agencies are recovered from the industry they regulate, as is the case with the Ontario Insurance Commission (now part of the Financial Services Commission of Ontario) and the Ontario Energy Board. The complexity and number of decisions made each year by agencies varies widely. For example, the Ontario Gaming Control Commission (now part of the Alcohol and Gaming Commission) handles about 12,000 annual licence and registration applications. The Ontario Labour Relations Board renders approximately 1,000 final decisions each year.

When the agency consolidations and changes currently under way are completed, there will be approximately 40 regulatory and adjudicative agencies delivering service to the public.

The Agency Reform Commission was impressed by the professionalism of agency appointees and staff, and values the work they do. A great deal of work has already been done by agencies, both individually and as a group, toward the goal of efficient and effective delivery of high quality administrative justice services for the people of Ontario.

In the past decade, agencies have worked together to bring greater order and coherence to their sector. The Society of Ontario Adjudicators and Regulators (SOAR) has worked to co-ordinate much of this work. The commission acknowledges and commends the steps individual agencies and their chairs and SOAR have taken to improve agency management, procedures and standards.

However, the march toward improved operation and service delivery has been uneven. For example, delays can mean that many months pass between the time a person files an application and the hearing is scheduled. The average person finds the system increasingly complicated, and feels disadvantaged without a lawyer to help resolve disputes before tribunals that were originally intended to be informal and easily accessible to the public. Delays and court-like complexity and procedures result in costs to individuals and businesses appearing before agencies, and to taxpayers.

The recommendations in this report build on the work done thus far by the agency sector to: improve service to the public; preserve fairness; increase accountability; and be cost effective. The Ontario government is committed to improving customer service delivery and accountability in all parts of the public sector. Agency reform is part of that commitment.

Why the Commission was Created

The Agency Reform Commission was set up by the Ontario government in May 1997 to advise the government on changes to the way all regulatory and adjudicative agencies in Ontario do business.

The work of the commission was based in part on recommendations contained in the February 1997 report of the Government Task Force on Agencies, Boards and Commissions (chaired by Bob Wood, MPP, London South). Following that report, the government announced an action plan to fix the problems identified in the report. The action plan laid out the consolidation of some agencies, alternative ways of delivering services of other agencies, and the elimination of agencies with obsolete mandates.

In addition to announcing changes to individual agencies, the action plan directed reform across the regulatory/adjudicative agency sector. It was for this role that the Agency Reform Commission was created — to advise the government on what specific changes should be implemented to achieve consistent reform across all agencies.

The commission's job is to ensure that agencies can fill the need for which they were created — to provide a forum that is more specialized, less costly and easier to use than the courts. The Criminal Injuries Compensation Board, for example, hears and makes decisions about claims for compensation and other forms of assistance for persons injured as a result of violent crimes.

In looking at what changes were needed sector wide, the commission consulted extensively with consumer and stakeholder groups, agencies and Ontario government ministries. In September 1997, the commission published a consultation paper and four background papers on the reform of the province's regulatory and adjudicative agencies, and encouraged feedback and submissions.

The commission sent the consultation paper to more than 800 people and invited them to take part in the consultation. Altogether, close to 200 groups and individuals took part in round table discussions, made written submissions, or met informally with the commission. (For a list of participants, see Appendix II).

The commission also received excellent advice and support from a joint government/agency working group and project teams.

Appointments Process Added to Commission Mandate

Throughout the consultations, the commission heard that the system is only as good as the people in it. At virtually all meetings, and in the majority of written submissions, the quality and training of adjudicators was raised as an issue. Most felt that, to ensure a high standard of administrative justice and credibility with clients and the public, changes are needed to the public appointments process. As a result of the consultations, the commission's mandate was expanded to include recommendations on improving the appointments process.

The Commission's Vision

The commission found stakeholders and agencies ready, even eager for change. There was strong consensus as to the specific actions the government needs to take to improve service. The commission believes agencies and stakeholders will embrace its vision of a regulatory/adjudicative agency sector in which:

- the cornerstones of impartiality and fairness are preserved and enhanced;
- everyone who comes to an agency finds it accessible and easy to use;
- disputes are resolved and problems solved quickly, efficiently and cost effectively;
- standards for service are set and agencies held accountable by government and the public for meeting them;
- tribunals are treated by government as a valued resource and important face of government;
- members and staff are valued and appreciated for their knowledge and professionalism and have the tools and training to do the job;
- agencies are well-managed with up-to-date technology and their resources are shared across the sector;
- government provides strategic co-ordination in improving service quality and efficiency in the sector and maintains momentum for these changes.

Realizing the Vision

The commission makes 31 recommendations in five areas. Included in the following discussion are the issues that were raised during the consultation process, the principles set out by the commission and recommendations in each key area.

The commission strongly believes that to realize its vision the government must enable agencies to make improvements by providing the necessary tools, setting performance standards, and investing in people and technology.

The commission's recommendations speak to five important areas.

- **The public face of agencies** looks at the ability of people to access agencies, including understanding their rights and knowing where to take a problem. This area also discusses improvements to the hearing process.
- **Behind the scenes** includes use of case management and the use of information technology to efficiently manage the administrative and decision-making process.
- **The people who make it work** seeks to address the public appointments process, as well as recommend ways for staff development and training to enhance service.
- **Accounting for results** looks at accountability and measuring performance to help achieve the government's commitment to increased monitoring, reporting and improved customer service.
- **Sharing and co-ordination** examines these activities across the agency sector for ways to improve efficiency and give smaller agencies access to a wider range of resources.

The Commission's Blueprint For Action

This action plan sets out the necessary ingredients to improve the standard of service to the public. The plan includes the steps needed to implement the changes with timetables for achieving them.

The Public Face of Agencies

The Ontario government is committed to better serving the public, individuals and businesses. The most important recommendations in this report outline improvements to the way agencies directly serve the people who appear before them. These recommendations are set out in two areas:

- Access — This covers not just how easily people can contact an agency but how they are treated and informed throughout their interaction with the agency.
- The hearing process — These recommendations address the steps used by agencies to resolve a case as quickly and fairly as possible from the point of application onwards.

Access

Improving service begins with improving public access to government services. Members of the public should be able to receive quality and timely services regardless of their familiarity with the system.

Government is moving to provide seamless and simple access to all government services in the future. Through government call centres, front desks, kiosks and on-line systems, the public and business will be able to access the areas of government they require. As this work develops, the agency sector should be included.

The commission heard that the type of clients appearing before agencies ranges from large corporations represented by sophisticated legal counsel to unrepresented citizens with little knowledge of the process. Large corporations or groups of employees appear before the Pension Commission of Ontario (now part of the new Financial Services Commission of Ontario), which ensures that employer sponsored pension plan benefits are protected and assets prudently invested. A very different

type of party appears before the Custody Review Board where custody placements for young offenders are reviewed. An agency such as the Ontario Municipal Board may deal with the complete range of clients — developers, municipalities, environmentalists and individual neighbours — all in one hearing. The challenge is for agencies to be: accessible to all people who may require their services; efficient for regular parties/representatives using the system frequently; and user-friendly for first-time participants.

Principles

Agencies must make sure that clients and potential clients:

- *understand their rights;*
- *know where to take a problem;*
- *know how to apply to have a problem addressed;*
- *understand the steps to work through a problem including what is expected of each party, how long it is likely to take to reach a decision, and how much, if anything, it is likely to cost; and*
- *are able to find out the status of their case at any point in the process.*

Agencies must determine:

- *if fees (such as an application or appeal filing fee) are appropriate to the work of their agency, and do not hinder access to administrative justice;*
- *when to award costs (where one party is required to pay the costs of another party or the agency), for example, to prevent a party from unduly delaying or prolonging a hearing.*

During its consultation, the commission found the practices and procedures in these areas varied from agency to agency. Providing timely responses to inquiries and communicating in plain language were key to customer service. Some agencies have made significant investments in improving everything from brochures to major tracking systems. For example, the Ontario Municipal Board has published a plain language Guide to Ontario Municipal Board Hearings, along with 12 practice directions that explain everything from how to file exhibits to how the board awards costs. Other agencies lack resources or have not given priority to this area of service.

“The Pay Equity Office agrees that clients need access to information that is appropriate to their needs, which may be different for different client groups.”

— Pay Equity Commission

Recommendations

- Agencies must have clear, streamlined processes, procedures and practices for dealing with cases.
- Agencies must provide clients, at the point of inquiry or application, with straightforward, clear information on: the role of the agency; the procedures that are used to resolve a case; what is expected of all parties; and how much time and money, if any, it will cost.
- Agencies should be included in the government's plans to make government information and services more accessible, for example in consolidated regional centres. This will make it easier for individuals and businesses to find and use government services. By fall 1998, pilot projects involving agencies should be part of these initiatives.
- Agencies should share innovations and best practices on improving access for the public. The government must establish a plan to help. Areas include:
 - allowing people to access agencies using online technology or video conferencing,
 - customer service training;
 - sharing resources to develop and publish plain language information, such as brochures.
- Where appropriate, agencies or groups of agencies should increase awareness of their role in the community so that people know where to take a problem for resolution.

The Hearing Process

The main way that agencies solve problems is through the hearing process. The hearing process begins when an application or notice is received and continues until the matter gets resolved whether by settlement, decision or withdrawal. Until relatively recently, each case would proceed the same way through the system to a formal hearing and written decision, regardless of the simplicity or complexity of the case.

When someone uses an agency to solve a problem or resolve a dispute, they should have their problem resolved fairly, at the earliest possible time, at the least possible cost. The costs to the parties are not just in dollars spent to participate in a hearing, but also in terms of opportunity costs such as lost time or resources and stress. In most cases, problems should be resolved without the time and expense of a full hearing.

In some agencies, all cases still go through a full hearing. Many agencies do not even have the authority or the policy and procedures in place to screen out cases that do not belong before them. Other agencies use various tools to resolve cases as quickly as possible without necessarily going to a full hearing. In some agencies, pre-hearing conferences are held to narrow the issues so that only the unresolved issue or issues are heard; or simple or urgent cases are sent to expedited hearings. Some matters are directed to mediation or other kinds of alternative dispute resolution.

For example: The Ontario Insurance Commission (OIC) (now part of the new Financial Services Commission of Ontario), which regulates insurance matters and protects consumers against unfair insurance business practices, has a three-stage dispute resolution process for cases relating to the automobile accidents benefits scheme. The three stages are mediation, neutral evaluation, and arbitration. OIC reports that 80 per cent of issues are resolved at the mediation stage.

The hearing process made up the largest, single topic of the consultation. The commission sought input on a number of methods for resolving disputes more quickly while preserving fairness. Participants examined options such as:

- screening applications that don't belong before the agency;
- streaming cases to expedited hearings or other alternatives to a full hearing;
- using mediation and other alternative dispute resolution techniques;
- holding pre-hearing conferences to narrow the issues in dispute;
- having written or electronic, as opposed to oral, hearings;
- having single member hearing panels;
- increasing agencies' powers to manage a hearing and reduce delays;
- providing faster oral decisions instead of written ones, where appropriate;
- ensuring that the basis for the right to appeal is more consistent among agencies;
- the awarding by the tribunal of legal costs in appropriate circumstances;
- charging a party with the tribunal's costs of the hearing in appropriate cases.

Many of these improvements were well supported during the consultation, particularly screening cases and using mediation, pre-hearing conferences and other steps to resolve disputes without necessarily holding a

full hearing. Improvements such as these should be put in place quickly to streamline the process and improve service to clients.

Feedback demonstrated that a “one size fits all” approach to reform will not work. Tribunals deal with a wide range of issues — horse racing to building codes. The parties appearing before them can include individuals, large or small corporations, or the Ontario government itself. The impact of the decisions can be minor or dramatically affect someone’s life or livelihood. What works for one agency might be inappropriate for another.

There was some support for agencies to be given the power to award costs, in appropriate cases. For example, when a party has unreasonably delayed the process it may be appropriate to require that party to pay costs. However, as a general rule, it is not appropriate for costs to be awarded to a successful party where this would deter people from seeking justice or where a key issue of public interest is being determined.

The commission heard that individual agencies can best determine which methods of providing faster, better service are best suited to their clients. Agencies need to have a full range of tools or options available so that they can use the most effective ones in their work.

There is one piece of general legislation that governs how agencies conduct hearings -- the Statutory Powers Procedure Act (SPPA). While this legislation already provides agencies with many powers, not all agencies have established rules and procedures to use tools, such as pre-hearing conferences and mediation. They may need help to use all the tools currently available.

Some changes are also needed to the SPPA to give all agencies the full range of powers needed to resolve problems as quickly as possible. Change may also be needed in some of the acts that govern individual agencies.

The commission believes that agencies need a more consistent approach to solving problems and disputes. Agencies need help utilizing the options available in current legislation combined with some legislative change. Any increase in tribunal powers must be accompanied by training for members and staff.

“It is important that agencies have flexibility in determining how and when to use ADR to fit the agencies’ particular issues, needs, resources and experience.”

— College of Psychologists of Ontario

Principles

The principles guiding changes to the hearing process are:

- all options should be explored to solve problems and resolve disputes as early as possible (time frames for decisions should be part of performance goals), and at minimum cost to all parties;
- fairness and impartiality must be maintained;
- the processes which agencies develop should be responsive to the range of clients who appear before them, especially unrepresented parties;
- the use of both in-house and private sector alternative dispute resolution, such as mediation, should be fully explored;
- with some exceptions, hearings should be held by a single agency member rather than a panel;
- parties who are able to pay and who benefit from the system should pay their fair share;
- fees or costs must not hinder access to administrative justice.

“The rule as to when costs are appropriately awarded should be left to the tribunal itself.”

— College of Physicians and Surgeons of Ontario

Recommendations

- That the Ministry of the Attorney General work with agencies to help determine what tools they can and should consider using under the current legislation, and the procedures and rules they need to translate this into practice
- That the Ministry of the Attorney General identify any gaps in the Statutory Powers Procedure Act and work with agencies and ministries to determine what strategic amendments are needed to fill those gaps, following appropriate consultations. Amendments should go forward by the winter 1998 session of the legislature.
- That ministries review the statutes governing their agencies to determine whether amendments are required. The Ministry of the Attorney General will provide assistance, as needed.
- That the government establish a process to review any proposed amendments or new legislation governing individual agencies. This will ensure the statutes governing agencies in individual ministries stay consistent with the reforms recommended in this report.

Behind The Scenes

In order to improve the face of the administrative justice system, where agencies deal directly with the public, it is important also to look at the operation of agencies “behind the scenes”. Changes in service to the public will only succeed if agencies have the basic infrastructure to run smoothly.

The commission recommends infrastructure improvements in two critical areas:

- case management; and
- information technology.

Case Management

From a person’s initial contact with the agency through resolution of the dispute, the case should be efficiently managed through the administrative and decision-making process. This can include: tracking, gathering documents, scheduling a pre-hearing conference, mediating issues, holding a hearing, and delivering the decision. When a case is properly managed, people can contact agencies at any point and easily find out the status of their case. Time lines are set for the various stages of a case and are followed. As a result, cases move through the system as quickly as possible.

Case management tracks and identifies the bottlenecks in the system so that agencies can allocate resources more wisely and efficiently. Agencies can then use the data gathered through case management to monitor performance.

Case management helps resolve the issue or dispute as quickly as possible at the least cost. There is a need for a consistent, high standard of case management across the sector. Some agencies manage cases extremely well, but this is not consistent. For example, the Ontario Human Rights Commission (OHRC) faced a substantial outstanding caseload. The OHRC improved the situation by introducing new business practices that focussed on early intervention in a case. With the new case management system in place, the OHRC will be able to significantly reduce the time to process cases. Their state-of-the-art information system is also linked to a call centre so staff can respond knowledgeably and immediately to client inquiries. If appropriate, files can be opened and the process started as a result of a telephone call.

“Any matters that can be dealt with in advance of the hearing date increases efficiency and reduces costs.”

— College of Psychologists of Ontario

Recommendation

- **Agencies should maintain up-to-date case management practices and share state-of-the-art work with other agencies.**

“If we can get to the point where this information (on past hearings) is organized and easily retrievable ... it will help to ensure that we maintain consistency and high quality in our recommendations.”

– Ontario Conservation Review Board

Information Technology

Many of the service improvements and procedural changes in this report cannot be done without the advantage of up-to-date technology.

As demonstrated in the preceding section, modern case management goes well beyond paper files to electronic case management systems that identify and track backlog and bottlenecks, assist with scheduling, alert agency members or staff of timely next steps, and provide information to clients. As well, technology is used to manage internal agency business, such as performance measurement. And, agencies can use information technology to share decisions and other important information — leading to more consistent decisions and greater efficiency. In the future, some agencies will want to be able to work on-line with their clients and/or representatives. Agencies will also need to communicate electronically with the courts for appeal or judicial review.

The commission found the level of information technology across agencies to be uneven. A number of agencies have recently updated their technology systems, while others continue to have limited computer capacity. This makes it difficult for agencies to share information or to benefit from co-ordinated purchase, training and maintenance of information technology. This could produce savings across the sector.

Ministries produce information technology plans annually to update and integrate their strategies. Technology solutions for agencies could be addressed through these plans.

Recommendations

- **Ministry information technology plans should give high priority to bringing their agencies up to the new government standards and policies, including common infrastructure.**
- **Agencies should be represented on the government’s Information Technology Standards Committee dealing with government-wide standards.**
- **Agencies should consider a uniform base application for case management. They should share best practices in data architecture and standards;**
- **The government has recently set out a governance and organization model for its information and information technology. Agencies should be part of this model in a way that ensures that common agency information needs are addressed and there is a more co-ordinated approach to cross-sector planning and standards.**

The People Who Make It Work

For the thousands of Ontarians who come in contact with the administrative justice sector, agencies are the face of the Ontario government. Agencies are a valuable public resource. Furthermore, the quality and competence of the people who work in these agencies, both appointees and staff, are critical to the sector's success.

The commission asked the people who use these agencies and those who work in the agencies:

- How do we make agencies serve people better?
- How do we make agencies more accountable?

The most frequent response was: Make sure you get and keep good people.

The commission did not originally plan to make recommendations about the way public appointments are made. However, throughout the commission's consultations, the operation of the appointments process and the qualifications and training of appointees were issues raised so often and so strongly that the commission added recommendations on these issues.

The commission was impressed by the range of skills and knowledge in the agency community. Many dedicated appointees and staff are, in large part, responsible for the progress that has been made so far in modernizing, simplifying, and streamlining the work of agencies.

However, the commission also heard that in order to continue to enjoy the confidence of stakeholders, vigilance is needed to ensure agencies consistently have qualified and credible decision makers. In turn, these decision makers need to know what is required and expected of them, and have the tools and training to do the job.

Independence

There has been a great deal of discussion and court consideration of the institutional independence and decision-making independence of tribunals. Both are regarded as necessary. In the judicial system, advisory committees qualify pools of candidates as part of ensuring independence and competence. A fixed term for an appointment is one element of independence. Conversely, 'at pleasure' appointments have been viewed as compromising independence. A recent decision of the Ontario Court of Appeal found that, for tribunals with court-like functions, "the image of independence is undermined when government commitments to fixed appointments are breached". The commission believes the government's policy on this aspect of appointments must be clarified, especially in light of this recent court decision.

Principles

In making its recommendations regarding appointments, the commission does so with the belief that it is important to ensure:

- *appointees are qualified and competent to do the job required of them;*
- *the process used to make appointments and reappointments is open and transparent;*
- *independent decision making is maintained; and*
- *appointees are treated with respect.*

“ If reform of the appointments process is made an integral part of agency reform, this will go a long way toward ensuring public confidence in the administrative justice system. ”

— Canadian Bar Association of Ontario

Recommendations

- That government review the public appointments process for chairs and members of agencies to ensure it meets the business needs of the sector.
- This review should consider:
 - a clear application process;
 - publishing functions and job requirements for each agency or related family of agencies;
 - selection criteria based on core competencies (skills judged to be necessary to effectively do the job);
 - training to support and expand core competencies and expert knowledge;
 - orientation for all appointees;
 - responsibility for communicating to an appointee: expectations, terms and conditions of appointment, termination provisions, notice provisions for renewal or expiry of appointment;
 - agency chairs notifying ministers regularly of the need for appointees;
 - minister consulting chairs about both appointments and reappointments.
- That the Public Appointments Secretariat bring recommendations for a public appointments policy based on this review to government for approval by March 1999.
- That a screening committee of recognized, reputable people be established by the government to evaluate all applicants for new appointments against selection criteria and create pools of qualified candidates.

In addition to addressing the appointments process, which relates specifically to chairs and members, the commission has recommendations about staff training and development.

Most agencies are not large enough to develop or run in-house staff training. Yet much agency work is common across the sector. Case management, scheduling, intake, and arranging hearings are a few examples. A sector-wide profile should be built for training needs and priorities.

In small agencies, few opportunities exist for promotions or developmental moves to broaden the expertise of staff. A sector-wide system for career development would allow staff to gain experience across agencies and ministries. This would better equip staff to hold more senior jobs.

The commission found there is a need to investigate training and development on a sector-wide basis.

Recommendations

- **Ministries should include agency staff in human resource plans.**
- **Agencies should have training plans for their staff.**
- **Common staff training and development should be co-ordinated for the entire agency sector. This will improve mobility and developmental opportunities for staff.**

Accounting For Results

The Ontario government is committed to increased monitoring and reporting and improving customer service. The commission believes it is crucial for agencies to set standards for service and for government and the public to hold agencies accountable for meeting these standards. To date, common performance goals that can be used to put performance measurement in place in the agency sector have not been established.

Performance measurement is fundamental to the government's effectiveness. It lets the public understand what value it gets for tax dollars. Performance measurement assesses the effectiveness, efficiency and quality of a service against stated objectives. For agencies, performance measurement can provide important information about such issues as

how well publications communicate information, how long it takes to do certain tasks, and how much activities cost.

The commission recognizes that it is important to separate independence of decision making from agency performance accountability. Performance accountability looks at how the agency performs its work, not what decision is made in any case or cases.

Eight common goals were identified by the commission as critical to effective and efficient performance and service quality.

- 1) **Fairness:** The provision of service and performance of statutory functions in an impartial, lawful, unbiased and just manner.
- 2) **Accessibility:** The ability to provide information and services that are simple and easy to use.
- 3) **Timeliness:** The performance of tasks within established time frames based on reasonable expectations.
- 4) **Quality and Consistency:** The production of accurate, relevant, dependable, understandable and predictable information and results, with no errors in law or fact.
- 5) **Transparency:** The use of policies and procedures that are clear and understandable to everyone involved.
- 6) **Expertise:** The possession and use of the skill, knowledge and technical competence required to discharge all statutory responsibilities and maintain public confidence.
- 7) **Optimum Cost:** The provision of services at a cost that is based on best practices and is cost effective for everyone involved.
- 8) **Courtesy:** The demonstration of respect to everyone who comes into contact with the agency.

In its consultations, the commission found broad support for these goals as the basis for performance measurement. At the same time, the commission recognizes that the work of agencies varies so that standards and measures must be tailored to each agency's business.

For instance, an agency such as the Consent and Capacity Board has tightly legislated time lines of hours or days to make decisions about a person's mental capacity, consent to treatment, committal to a psychiatric facility or access to their own medical records.

Another, such as the Ontario Municipal Board, might have hearings varying from hours for minor variances to several months for revised official plans. Equally, the time needed to reach complex decisions will differ from simple decisions. The standard for a specific goal such as timeliness

“Agencies should be required to publish the results of their performance measures. These publications should be readily available to the public.”

— Legal Clinics' Housing Issues Committee

may vary from one agency to another and for different types of cases, but each agency or a group of agencies should set a standard of excellence and measure its performance against it.

Recommendations

- That all agencies adopt these eight performance goals as the basis for performance measurement.
- That agencies develop specific standards and measures this year and put these in place by March 1999. Client satisfaction surveys should be part of annual performance measurement.
- That agencies report results annually to their ministers, and make these results public, including measures of client satisfaction.
- That the government's agency reform working group develops a template to help agencies measure quality and consistency. This template should be provided to agencies by spring 1998.
- That agencies and ministries use the Memorandum of Understanding (MOU) to clearly establish expectations of accountability. The MOU is a statement of relationship between the agency chair and the minister to whom he or she reports outlining the responsibilities of each in carrying out the mandate of the agency.
- That Management Board clearly articulates the statutory authority, powers, responsibilities and obligations of ministers, deputy ministers and chairs.
- That , to ensure the sector continues to provide high standards of service, a regular review is undertaken every three to five years. Stakeholders and the broader public should be involved in this review.

Sharing and Co-ordination

In its February 1997 report, the government Task Force on Agencies, Boards and Commissions promoted a new agency system — an integrated, commonly managed network of agencies delivering administrative justice with clear accountability.

As mentioned earlier, agencies were created one at a time, without planning each agency in the context of others and as part of an administrative justice sector. This has made it difficult for agencies to benefit from sharing resources. Co-ordination of changes across the sector has also been difficult and uneven.

The commission examined increased sharing of resources, and co-ordination and management of the changes recommended in this report.

Sharing Resources

Currently, most sharing of services in the agency sector is informal. Independently, some agency chairs or staff have set up sharing arrangements. For example: the Ontario Energy Board has developed a partnership with the federal National Energy Board, with financial backing from industry and major clients, to set up an electronic regulatory filing system. Results will include instantaneous transcripts, improved research capability, minimal use of paper and reduced overall costs. In another example, nine tribunals in the agriculture and food sector — which collectively handle licensing, complaints, disputes, settlements, and compliance with safety standards — all share administrative staff and resources. Efforts such as these have produced excellent examples of the benefits that can be gained, as well as highlighting some of the pitfalls to be avoided.

During its consultations, the commission found that a need exists to apply more broadly the sharing of services across agencies.

The commission identified three different levels of sharing that could improve efficiency and provide smaller agencies with access to a wider range of resources.

First, both agencies and ministries need a common set of basic support services, such as finance and human resources. The commission wants to tap into the government's internal administration project, which is developing ways of delivering administrative services across the government, to better meet agencies' needs for basic finance, human resources and other administrative services.

Second, some services are not needed by ministries but are common to regulatory and adjudicative agencies. These could include: orientation programs and other training, interpretation services, the use of hearing rooms, and the systems, support, and standards needed for case management. This sharing should be part of the sector co-ordination role described below, or a part of the preceding administrative services. Consideration should be given to tendering some of these services to get the best possible result at the best price.

Some central services for the justice system are useful to agencies and should be available to them. For instance, the Ministry of the Attorney General maintains a list of qualified, trained court interpreters and is also developing a list of private mediators.

Third, there are specialized services or resources that are can be shared within families or groupings of agencies, such as health agencies. Much of the legislation, knowledge and experience applied in one health agency could be shared with other health agencies. Skills and expertise in adjudication, mediation and legal services could be shared. This type of sharing is already happening through agency consolidations and should be expanded into groups of agencies and continue beyond. Contractual arrangements within a family of agencies could be used to commonly fund or share staff or systems. Private sector service providers should be considered. This sharing could offer a greater range of resources to all agencies, especially smaller ones.

Principles

The commission envisions agencies sharing well managed resources: expertise, facilities and services. This sharing achieves maximum efficiency and provides a wider range of services to all agencies, particularly smaller ones.

Sector Co-ordination

This sector is ready for change, but requires careful co-ordination to reap the full benefits of the changes recommended in this report. The functions identified for central co-ordination are ones that cannot be taken on by individual agencies and go beyond sharing services.

The kind of sector-wide initiatives that should be co-ordinated include:

- a central library and database for sharing decisions and other information;
- identifying key skills and expertise requirements;
- common education and training in adjudication and decision writing for members;

“A formal and ongoing training plan for all tribunal members should be established.”

— Legal Clinics' Housing Issues Committee

- developing business standards for the sector for areas such as case management;
- and developing public/private partnership and strategies for resource sharing.

Some of this work has been begun. For example, SOAR worked with government to develop an excellent introductory program for training adjudicators. More work is needed. The benefits of co-ordination are clear. For example, a central repository for decisions would be used by agencies to ensure more consistent decision making and by the public to determine the likely outcome of their cases. By not pursuing lost causes, individuals and the public save time and money.

In consultations with both agencies and stakeholders, the need for leadership right across the sector rang out loud and clear. Equally clear was the need to provide this in a way that does not compromise the decision making independence of agencies.

The recommendations below are designed to increase sharing and provide co-ordination across the agency sector.

Recommendations

- **Agencies should contract for basic administrative services such as finance and human resources through the mandatory government shared services bureau when it is implemented (part of the government's internal administration project).**
- **Specialized services such as mediation, adjudication and legal services should be shared within families of agencies (e.g. labour agencies). Government should develop a plan in 1998/99 to achieve this.**
- **In 1998/99 government should establish co-ordination and management mechanisms for this agency sector. Management Board Secretariat and the agency reform working group should work with ministries and set out timetables for co-ordination of access initiatives, training, information sharing, and setting business standards.**

Ensuring Success

The commission has set out an action plan to provide the people of Ontario with better, faster service in regulatory and adjudicative agencies. Everyday justice is justice that is accessible, efficient and, above all, fair and impartial. Government and its agencies can achieve these objectives by implementing the recommendations made in this report. The following are six steps that will ensure success.

1. Legislative Change in Fiscal Year 1998/99

The recommended changes to the Statutory Powers Procedure Act to streamline the hearing process used to solve problems and resolve disputes should be completed in fiscal year 1998/99 —with consultations taking place in the summer and amendments moving through the House in the winter session.

2. Sector Co-ordination and Management

Management Board Secretariat should immediately put in place a structure to co-ordinate this sector and manage the reforms set out in this report.

3. Investment

Investment must be made to achieve long-term service improvement and savings. This should begin with sector co-ordination, training and information technology investment in 1998/99.

4. Advice and Leadership

The Agency Reform Working Group, a joint agency/government group, should continued to provide leadership and advice. The working group should develop strategies to involve and consult with private and broader public sector partners in implementing reform.

5. Review Every Three to Five Years

To ensure that the sector continues to provide high standards of service there should be a regular review undertaken every three to five years. Stakeholders and the broader public should be involved in this review.

6. Clear Roles and Responsibilities

The commission heard very strongly that there is a need for government to clearly define the accountability of agencies to government. This delineation of roles and responsibilities will also be very important in

“We suggest that every five years, each agency be given a major review in terms of customer satisfaction, cost effectiveness ... and public satisfaction.”

— Ontario Association
of Medical Radiation
Technologists

implementing the recommendations in this report. The framework below outlines the key elements of accountability:

- Management Board must clearly articulate the statutory authority, powers, responsibilities and obligations of ministers, deputy ministers and chairs.
- All regulatory and adjudicative agencies should have signed Memoranda of Understanding setting out accountability and obligations. The agreements should be signed within a specified time frame.
- Chairs must be accountable to their minister, the government, and the public for the performance of their agencies. As of March 1999, agencies must complete business plans including performance measures and financial data annually. Agencies must conduct client surveys annually and report on the results.
- Agency chairs and members should have performance agreements.
- Agencies will require service agreements defining contractual arrangements with the government-wide shared services bureau and also with shared service providers within the agency sector. These agreements should afford protection to agencies and their service providers and set standards for optimum service.
- The Public Appointments Secretariat should put standards in place for the appointments process.
- Management Board Secretariat should continue to be responsible for:
 - overseeing accountability agreements between ministers and agencies;
 - co-ordinating the implementation of these reforms; and
 - undertaking the three to five year review of the sector.
- Management Board of Cabinet should continue to be responsible for the establishment of new agencies, as well as the consolidation or termination of agencies.

These six steps will maintain the momentum and enthusiasm in agencies and ministries for improving service in Ontario's administrative justice sector.

In conclusion, the commission was tremendously impressed by the co-operation and readiness for change in agencies and ministries. The commission is confident that the government and its agencies can continue to work together to ensure that everyone in Ontario has access to fair, fast, and cost-effective resolution of their problems and disputes. That is everyday justice.

Appendices

Regulatory & Adjudicative Agencies

*As of April 2, 1998.
Changes and
consolidations are still
under way.*

Agriculture, Food & Rural Affairs

Board of Negotiation
Farm Organization Accreditation Board
Farm Tax Rebate Appeal Tribunal
Farm Products Appeal Tribunal
Farm Practices Protection Board
Grain Financial Protection Board
Livestock Financial Protection Board
Ontario Drainage Tribunal and Crop Insurance Appeal Board
Ontario Farm Implements Board
Ontario Farm Products Marketing Commission

Attorney General

Assessment Review Board
Criminal Injuries Compensation Board

Citizenship, Culture & Recreation

Board of Inquiry (Human Rights)
Conservation Review Board
Ontario Human Rights Commission

Community & Social Services

Custody Review Board
Social Benefits Tribunal
Child and Family Services Review Board

Consumer & Commercial Relations

Alcohol and Gaming Commission
Commercial Registration Appeal Tribunal
Ontario Film Review Board
Ontario Racing Commission

Education & Training

Education Relations Commission
College Relations Commission
Languages of Instruction Commission of Ontario
Private Vocational Schools Review Board
Ontario Special Education Tribunals (English and French)
Ontario Student Assistance Program Appeal Board

Energy, Science & Technology

Ontario Energy Board

Environment

Environmental Appeal Board
Environmental Assessment Board

Finance

Financial Services Commission of Ontario/Financial Services Tribunal
Ontario Securities Commission

Health

Consent and Capacity Board
Review Committee - Chiropractic
Review Committee - Chiropody
Review Committee - Dentistry
Review Committee - Medicine
Review Committee - Osteopathy
Review Committee - Optometry
Health Facilities Appeal Board
Health Protection Appeal Board
Health Services Appeal Board
Laboratory Review Board
Medical Eligibility Committee
Nursing Homes Review Board
Ontario Review Board
Health Professions Board
Hospital Appeal Board

Labour

Crown Employees Grievance Settlement Board
Pay Equity Commission
Pay Equity Hearings Tribunal
Ontario Labour Relations Board
Workplace Safety and Insurance Appeals Tribunal

Management Board Secretariat

Civil Service Commission
Public Service Grievance Board

Municipal Affairs & Housing

Board of Negotiation (Expropriations Act)
Building Code Commission
Building Materials Evaluation Commission
Ontario Municipal Board

Natural Resources

Crown Timber Board of Examiners
Niagara Escarpment Commission

Solicitor General & Correctional Services

Animal Care Review Board
Fire Safety Commission
Ontario Police Arbitration Commission
Ontario Board of Parole
Ontario Civilian Commission on Police Services

Transportation

Licence Suspension Appeal Board

Overview of Consultation Process & Participants

The Agency Reform Commission designed a balanced, inclusive consultation process for participants to provide the commission with input and advice. In September 1997, a consolidated consultation paper and four background papers were published.

The process provided for both written and round table consultations. The consultation papers were posted on the Internet and were available through the government bookstore and on agency front desks. Written responses could be sent via Internet, fax or regular mail.

The commission invited more than 800 individuals to be involved in the consultation process. Approximately one quarter were directly involved in the administrative justice sector as agency adjudicators or staff and three quarters were external stakeholders. Over 110 stakeholder groups, 40 agencies and nine ministries participated directly.

Six stakeholder round table meetings and three agency round table meetings were held. The commission met twice with the Society of Ontario Adjudicators and Regulators, the umbrella organization of regulatory and adjudicative agency chairs, members and staff. In addition, commission members held a number of meetings with individuals and organizations outside the formal consultation process. Throughout the process the commission received a great deal of thoughtful input and advice.

The Agency Reform Commission would like to thank those who participated in the consultation process:

Alcohol and Gaming Commission

Anita Lyon - Association of Law Officers of the Crown

Arrell Youth Centre

Association of Ontario Chicken Processors

Association of Conservation Authorities

Beaudry, Harold P.

Board of Inquiry (Police Services Act)

Board of Inquiry (Human Rights Code) Tribunal's Office

Building Code Commission
Canadian Federation of Independent Businesses
Canadian Bar Association of Ontario
Certified and General Accountants Association
Chambers & Company New America Network
Children's Aid Society-Timiskaming
Chiropractic Review Committee
City of Ottawa - (Stuart Lazear)
City of Mississauga - (Bonnie Gibson)
City of Etobicoke - (Tony Chow)
City of Scarborough - Planning and Buildings Department
College of Psychologists of Ontario
College Relations Commission
College of Occupational Therapists of Ontario
College of Dental Hygienists of Ontario
College of Opticians of Ontario
College of Physiotherapists of Ontario
Commercial Registration Appeal Board
Consent and Capacity Board
Conservation Review Board
Consumers Association of Canada
Conway, Davis, and Gryski, Barristers and Solicitors
Cooper, Helen
Cornwall Legal Clinic
Criminal Injuries Compensation Board
Crown Law Office Civil - MAG
Custodian Review Board/Family Support Review Board
Custody Review Board

Report of the Agency Reform Commission

Daniel, Wilson - Barristers, Solicitors & Notaries
Dentistry Review Committee
Desmarais, Keenan
Dispute Resolution Group – Counsel Forum
Eastern Ontario Landlord Organization
Environmental Compensation Corporation
Environmental Appeal Board
Environmental Assessment Board
David J. Mullan, Faculty of Law, Queen’s University
Farm Products Appeal Tribunal
Farm Tax Rebate Appeal Board
Farm Organization Accreditation Tribunal
Federation of Ottawa-Carlton Tenants Association
Flemingdon Community Legal Services
Foster Parent Society of Ontario
Genest Murray DesBrisay Lamek
Guild Management Services
Hamilton Mountain Legal Community Services
Health Boards Secretariat
Health Professions Board
Health Services Appeal Board
Hicks, Morley, Hamilton Stewart Storie
HIV and AIDS Legal Clinic
Justice for Children and Youth
Kilgour, Goodman Inc.
Large Municipalities Chief Building Office
Learning Disabilities Association Ontario
Legal Clinics Housing Issues Committee

Licence Suspension Appeal Board
Medical Laboratory Technologies College of Ontario
Metropolitan Toronto West Detention Centre
Minister Noble A. Villeneuve, Ministry of Agriculture, Food and Rural Affairs
Minister's Advisory Council on Special Education
Ministry of Education and Training - (Bill Wyman)
Ministry of Consumer and Commercial Relations - (Beverly Wise)
Ministry of Health - (Rebecca Gotlieb)
Ministry of Finance - (William Vasiliou)
Ministry of Environment - (Jack Coop)
Ministry of Labour - Internal Administrative Services Division - (Adam Redish)
Neighbourhood Legal Services
Niagara Escarpment Commission
Nipissing Community Legal Clinic
Office of the Employer Adviser
Ombudsman Ontario
Ontario Association of Career Colleges
Ontario Association of Architects
Ontario Association of Medical Radiation Technologists
Ontario Association of Optometrists
Ontario Association for Family Mediation
Ontario Board of Parole
Ontario Civilian Commission on Police Services
Ontario College of Pharmacists
Ontario College of Nurses
Ontario Dairy Council
Ontario Dental Association

Report of the Agency Reform Commission

Ontario Drainage Tribunal
Ontario Energy Board
Ontario Farm Implements Board
Ontario Farm Products Marketing Commission
Ontario Federation of Native Friendship Centres
Ontario Federation of Labour
Ontario Food Processors Association
Ontario Horse Racing Industry Association
Ontario Human Rights Commission
Ontario Hydro
Ontario Insurance Commission
Ontario Massage Therapist Association
Ontario Motor Vehicle Industry Association
Ontario Municipal Board
Ontario Municipal Social Services Association
Ontario Mutual Insurance Association
Ontario New Home Warranty Program
Ontario Owned-Home Leased-Lot Federation
Ontario Police Arbitration Commission
Ontario Pork Producers Association
Ontario Public School Teachers' Federation
Ontario Public Service Employees' Union
Ontario Racing Commission
Ontario/Regional Special Education Tribunal
Ontario Restaurant Association
Ontario Review Board
Ontario Secondary School Teachers' Federation
Ontario Securities Commission

Ontario Society of Chiropractors
Ontario Society of Language Audiologists
Ontario Society of Medical Technologies
Ontario Vegetable Growers' Marketing Board
Optometrists College of Ontario
Pay Equity Commission
PEO Committee on Land Drainage
Peter Lambrick, Ontario Farm Implements Board
Police Association of Ontario
Private Adoption Practitioners
Probation Officers Association of Ontario
Public Accountants Council for the Province of Ontario
Public Interest Advocacy Centre
Regional Solicitors' Association
Regional Municipality of Halton - (Mark Meneray)
Regional Municipality of York - (Phyllis Carlyle)
Registered Nurses Association of Ontario
Registered Gaming Suppliers of Ontario
Registered Practical Nurses Association of Ontario
Rent Control Programs
Royal College of Dental Surgeons
SD&G Legal Clinic
Social Assistance Review Board
Society of Ontario Adjudicators and Regulators (SOAR)
South Etobicoke Community Legal Service
Steering Committee on Social Assistance
Sudbury District BCSS Board

Report of the Agency Reform Commission

The Ontario Association of Speech-Language Pathologists
and Audiologists

The College of Veterinarians of Ontario

The Advocates' Society

The Ontario Wheat Producers' Marketing Board

The College of Physicians and Surgeons of Ontario

Urban Alliance on Race Relations

Ursel & Wilkey

Victims of Violence

Waterloo Regional Community Legal Services

West End Legal Services

Windsor/Essex Bilingual Legal Clinic

Windsor Casino Limited

Workplace Safety and Insurance Appeals Tribunal
(formerly the Workers' Compensation Appeals Tribunal)







April 1998

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