

Memorandum of Understanding
Between
Minister of Health and Long-Term Care
and
Chair of the Ontario Review Board
2017-2021

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The parties to this Memorandum of Understanding agree to the following:

1. Purpose

- a. The purpose of this Memorandum of Understanding (MOU) is to:
 - Establish the accountability relationships between the Minister of Health and Long-Term Care and the Chair of the Ontario Review Board on behalf of the Board.
 - Clarify the roles and responsibilities of the Minister, the Chair, the Deputy Minister, and the Senior Administrator and Registrar.
 - Establish the expectations for the operational, administrative, financial, staffing, auditing and reporting arrangements between the Ontario Review Board and the Ministry of Health and Long-Term Care that support the accountability requirements within a framework, which recognized that the Board makes independent adjudicative decisions.
- b. This MOU should be read together with Part XX.1/Mental Disorder of the *Criminal Code*, RSC 1985, c C-46, in particular, section 672.38 which directs provinces to establish or designate a Review Board in each province under the laws of the province. This MOU does not affect, modify or limit the powers of the Board as set out in Part XX.1/Mental Disorder of the *Criminal Code*, or interfere with the responsibilities of any of its parties as established by law. In case of a conflict between this MOU and any act or regulation, the act or regulation prevails.
- c. This MOU replaces the Memorandum of Understanding between the parties dated September 17, 2013.

2. Definitions

In this MOU:

- a. "AAD" means the Treasury Board/Management Board of Cabinet Agencies & Appointments Directive;
- b. "Act" means Part XX.1/Mental Disorder of the *Criminal Code*, RSC 1985, c C-46 that governs the Board;

- c. "Annual Report" means the annual report described under article 10.2 of this MOU;
- d. "Applicable Government Directives" means the Government directives, policies, standards and guidelines that apply to the Board, as may be amended or replaced from time to time, which are listed in Appendix 2 to this MOU;
- e. "ATAGAA" means the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, SO 2009, c 33, Schedule 5, that applies to adjudicative tribunals prescribed under Ontario Regulation 126/10;
- f. "Board" means the Ontario Review Board;
- g. "Business Plan" means the business plan referred to in article 10.1 of this MOU;
- h. "CAO" means the Chief Administrative Officer and Assistant Deputy Minister, Corporate Services Division, Ministry of Health and Long-Term Care;
- i. "Chair" means the chair of the Ontario Review Board;
- j. "Constituting Instrument" means Part XX.1/Mental Disorder provisions of the *Criminal Code*, RSC 1985, c C-46, in particular section 672.38 that establishes the Board;
- k. "Deputy Minister" means the Deputy Minister of Health and Long-Term Care;
- l. "Executive Council Act" means the *Executive Council Act*, RSO 1990, c E-25, as amended;
- m. "Financial Administration Act" means the *Financial Administration Act*, RSO 1990, c F-12, as amended;
- n. "FIPPA" means the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F-31, as amended;
- o. "Fiscal Year" means the period from April 1 to March 31 of the following year;
- p. "Government" means the Government of Ontario;
- q. "MBC" means Management Board of Cabinet;

- r. "Member" means a member appointed to the Board by the Lieutenant Governor in Council on the recommendation of the Minister but does not mean an individual employed or appointed by the Board as staff;
- s. "Minister" means the Minister of Health and Long-Term Care or such other person who may be designated from time to time as the responsible Minister in relation to this MOU in accordance with the *Executive Council Act*;
- t. "Minister of Finance" means the Minister of Finance or such other person who may be designated from time to time under the *Executive Council Act*;
- u. "Ministry" means the Ministry of Health and Long-Term Care or any successor to the Ministry;
- v. "MOU" means this Memorandum of Understanding signed by the Minister and the Chair;
- w. "President of Treasury Board" means the President of Treasury Board or such other person who may be designated from time to time under the *Executive Council Act*;
- x. "PSC" means the Public Service Commission;
- y. "PSOA" means the *Public Service of Ontario Act, 2006*, SO 2006, c 35, Schedule A, as amended;
- z. "Senior Administrator and Registrar" means the senior public servant at the Ontario Review Board;
- aa. "TBS" means the Treasury Board Secretariat;
- bb. "TB/MBC" means the Treasury Board/Management Board of Cabinet;
- cc. "Unit" means the Agency Liaison and Public Appointments Unit.

3. Agency's Legal Authority and Mandate

- a. The legal authority of the Board is set out in the Act.
- b. The Board is an independent, adjudicative tribunal issuing decisions based upon the evidence presented and submissions made to it by the parties, and upon its interpretation and determination of the relevant legislation and jurisprudence. Because of the functions that it performs and the interests at stake, and also because the Crown may appear as parties before it, independence is required of the Board. Independence as used herein refers

to the independence of the Board and its Members in the management, administration and operations of the Board and in rendering adjudicative decisions.

- c. The Board's mandate is to hold hearings and make or review dispositions concerning the custody or release of an accused in respect of whom a verdict of not criminally responsible (NCR) on account of mental disorder or unfit (UF) to stand trial is rendered.

4. Agency Type and Public Body Status

- a. The Board is designated as an adjudicative tribunal, a non-board governed agency under the Agencies and Appointments Directive (AAD).
- b. The Board is prescribed as a public body and a Commission public body in accordance with Ontario Regulation 146/10 under the PSOA. It is not organizationally part of the Ministry, but it is considered to be within Government.

5. Corporate Status and Crown Agent Status

- a. The Board is not a Crown Agency within the meaning of the *Crown Agency Act*, RSO 1990, c C-48.
- b. The Board does not have the capacity, rights, power and privileges of a natural person for carrying out its objects, subject to the limitations placed upon it under the Act.

6. Guiding Principles

The parties agree to the following guiding principles:

- a. The Minister recognizes that the Board exercises powers and performs duties in accordance with its legal mandate under the Act.
- b. The Minister recognizes the independence of the Board in the management, administration and operations of the Board and in the rendering of its adjudicative decisions and further recognizes the need for the Board's adjudicative decisions to be made, and be seen by the public to be made, independently and impartially.
- c. The Minister recognizes that the Board plays a meaningful role in the development of the policies and programs of the Government, as well as in the implementation of those policies and delivery of programs.
- d. The Chair acknowledges that it is accountable, through the Minister, to the Legislative Assembly in exercising its mandate. Accountability is a fundamental principle to be observed in the management, administration and operations of the Board.
- e. As an agency of the Government, the Board conducts itself according to the management principles of the Government. These principles include ethical behaviour; prudent, effective and lawful use of public resources; fairness; high quality service to the public; and openness and transparency to the extent allowed under law.
- f. The Minister and the Chair are committed to a strong Board that is empowered to fulfill its statutory mandate efficiently and effectively. They share the goal of establishing and maintaining a co-operative relationship that facilitates the efficient administration of the Board and fulfillment of its statutory responsibilities.
- g. The Board and the Ministry agree to avoid duplication of services wherever possible subject to observance of the principle of independence in decision-making, which may in some cases limit or preclude the joint delivery of some services by the Board and the Ministry.
- h. The Board and the Ministry will work together in a mutually respectful manner.

7. Accountability Relationships

7.1 Minister

The Minister is accountable:

- a. To Cabinet and the Legislative Assembly for the Board's fulfillment of its mandate, and its compliance with Government policies, and for reporting to the Legislative Assembly on the Board's affairs.
- b. For reporting and responding to TB/MBC on the Board's performance and compliance with Applicable Government Directives and operational policies.
- c. To Cabinet for the performance of the Board and its compliance with the Government's operational policies and broad policy directions.
- d. For receiving and tabling the Board's Annual Report in the Legislative Assembly within 60 days of receiving it.
- e. For ensuring that the Board's Annual Report is made available to the public within 30 days of tabling it in the Legislative Assembly.
- f. For approving and tabling the Annual Report within 60 days of receipt of the annual report from the provincial agency.

7.2 Chair

The Chair is accountable:

- a. To the Minister for the Board's performance in fulfilling its mandate and for carrying out the roles and responsibilities assigned to the Chair by the Act and other applicable legislation, this MOU, and Applicable Government Directives.
- b. For reporting to the Minister, as requested, on the Board's activities.
- c. For ensuring timely communications with the Minister regarding any issue that affects, or can reasonably be expected to affect, the Minister's responsibilities for the Board.

7.3 Deputy Minister

The Deputy Minister is accountable:

- a. To the Secretary of Cabinet and the Minister for the performance of the Ministry in providing administrative and organizational support to the Board and for carrying out the roles and responsibilities assigned by the Minister, the Act, this MOU, and Applicable Government Directives.
- b. The Deputy Minister is also accountable for attesting to TB/MBC on the Board's compliance with Applicable Government Directives. .

7.4 Senior Administrator and Registrar

Where the Senior Administrator and Registrar is employed under Part III of the PSOA:

- a. The Senior Administrator and Registrar works under the direction of the Chair to implement policies and operational decisions, and report the Board's performance to the Chair.
- b. The Senior Administrator and Registrar is also accountable to the Chair for ensuring the Board's compliance with Government and Ministry directives, guidelines, policies and procedures that relate to the administration and operation of the Board.
- c. The Senior Administrator and Registrar is accountable to the Deputy Minister or designate for any exercise of authority delegated from the Deputy Minister in accordance with the PSOA, Applicable Government Directives and the Ministry's signing authority limits.
- d. The Senior Administrator and Registrar is accountable to the Chair for the management of the Board's operations and staff. The Board's staff report to, and are accountable to the Senior Administrator and Registrar for their performance.

8. Roles and Responsibilities

8.1 Minister

The Minister is responsible for:

- a. Reporting and responding to the Legislative Assembly on the affairs of the Board.
- b. Reporting and responding to TB/MBC on the Board's performance and compliance with Applicable Government Directives.
- c. Recommending to TB/MBC, where required, a merger, any change to the mandate, or dissolution of the Board.
- d. Recommending to TB/MBC the powers to be given to, or revoked from, the Board when a change to the Board's mandate that is consistent with the Board's Constituting Instrument is being proposed.
- e. Meeting with the Chair to discuss issues relating to the fulfilment of the Board's mandate.
- f. Working with the Chair to develop appropriate measures and mechanisms related to the performance of the Board.
- g. Making recommendations to Cabinet and the Lieutenant Governor in Council for appointments and reappointments to the Board, pursuant to the process for Board appointments established by legislation and/or by MBC through the AAD, after consulting with and receiving the recommendation of the Chair.
- h. Reviewing the advice or recommendation of the Chair on candidates for appointment or re-appointment to the Board.
- i. Determining at any time the need for a review or audit of the Board, directing the Chair to undertake reviews of the Board on a periodic basis, and recommending to TB/MBC any change(s) to the governance or administration of the Board resulting from any such review or audit.
- j. Directing a review of the Board, at least once every six (6) years and directing any additional reviews of the Board, in accordance with the ATAGAA and the AAD, and making recommendations to TB/MBC as may be required after such reviews are completed.

- k. When appropriate or necessary, taking action or directing that the Board take corrective action with respect to the Board's administration or operations.
- l. Receiving the Board's Annual Report and ensuring that the Annual Report is made available to the public within 30 days of tabling it in the Legislative Assembly.
- m. Informing the Chair of the Government's priorities and broad policy directions for the Board.
- n. Consulting, as appropriate, with the Chair (and others) on significant new directions or when the Government is considering regulatory or legislative changes for the Board.
- o. Developing the Board's MOU with the Chair, as well as any amendments to it, and signing the MOU into effect after it has been signed by the Chair.
- p. Reviewing and approving the Board's annual Business Plan.
- q. Recommending to TB/MBC any provincial funding to be allocated to the Board.

8.2 Chair

The Chair is responsible for:

- a. Providing leadership to the Board by setting the goals, objectives, processes and strategic directions for the Board within its mandate as defined by the Act.
- b. Directing the affairs of the Board so as to fulfill its mandate as defined by the Act.
- c. Reviewing and approving claims for per diems and travel expenses for Members.
- d. Ensuring the implementation of actions that support the goals, objectives, and strategic direction of the Board, and otherwise directing the affairs of the Board so as to fulfill its mandate.
- e. Seeking strategic policy direction for the Board from the Minister.

- f. Ensuring timely communications with the Minister regarding any issues or events that may concern, or can reasonably be expected to concern the Minister in the exercise of his or her responsibilities relating to the Board.
- g. Consulting with the Minister in advance regarding any activity which may have an impact on the Government and Ministry's policies, directives or procedures or on the Board's mandate, powers or responsibilities as set out in the Board's Constituting Instrument.
- h. Developing a performance measurement system for the Board, including targets, for assessing the Board's performance.
- i. Monitoring and evaluating the performance of the Board, including the performance of Members, as appropriate.
- j. Identifying the required skills, experience and capacity required for the Board to meet its mandate.
- k. Working with the Ministry to oversee the recruitment of Members, and providing recommendations to the Minister on appointments and reappointments, as applicable, pursuant to the process for appointment to adjudicative tribunals established by the ATAGAA and by MBC through the AAD, and that respect and promote the principles of equity, diversity, quality, merit and regional representation.
- l. Reporting to the Minister as requested on the Board's activities within agreed upon timelines, including an annual letter confirming the Board's compliance with all applicable legislation, Applicable Government Directives, and accounting and financial policies.
- m. Preparing the Board's Annual Report for submission to the Minister within 90 days of the Board's Fiscal Year-end.
- n. Making decisions consistent with the Business Plan approved for the Board.
- o. Ensuring that the Board operates within its approved budget allocation in fulfilling its mandate, and that public funds are used for the purpose intended with integrity and honesty.
- p. Developing the Board's MOU with the Minister and signing it on behalf of the Board.

- q. Reviewing and approving the Board's Business Plan, budget, Annual Report and financial reports, and submitting them to the Minister in accordance with the timelines specified in the Applicable Government Directives and this MOU.
- r. Providing both the Minister and the Minister of Finance and the President of Treasury Board with a copy of every audit report, a copy of the Board's response to each report, and any recommendation in the report.
- s. Advising the Minister annually on any outstanding audit recommendations.
- t. Ensuring that Members are informed of their responsibilities under the PSOA with regard to the rules of ethical conduct, including political activity rules.
- u. Making sure that appropriate management systems are in place (financial, information technology, human resources and records management) for the effective administration of the Board.
- v. Ensuring that there is a timely, effective and efficient caseload management system.
- w. Directing that corrective action be taken relating to the Board's operations, if needed.
- x. Making sure that an appropriate framework is in place for Board staff and Members to receive adequate orientation and training with respect to the business and operations of the Board and their particular responsibilities.
- y. Making sure that Board staff and Members are aware of and comply with Applicable Government Directives, and all applicable legislation.
- z. Making sure a process for responding to and resolving complaints from public and parties to the Board's proceedings is in place.
- aa. Carrying out effective public communications and stakeholder relations for the Board as its chief spokesperson.
- bb. Co-operating with any review or audit of the Board directed by the Minister or TB/MBC.
- cc. Fulfilling the role of ethics executive for public servants who are government appointees to the Board, promoting ethical conduct and ensuring that all Members are familiar with the ethical requirements of the PSOA, and the

regulations and the directives made under the PSOA, including in respect of conflict of interest, political activity and the protected disclosure of wrongdoing.

- dd. Consulting with the Deputy Minister in the evaluation of the Senior Administrator and Registrar's performance pursuant to the performance criteria established by the Deputy Minister and the Chair.
- ee. Ensuring that the responsibilities for the institution head are carried out as set out in Regulation 460 for the purposes of FIPPA.

8.3 Deputy Minister

The Deputy Minister is responsible for:

- a. Advising and assisting the Minister regarding the Minister's responsibilities for the Board, including informing the Minister of policy direction, policies and priorities of relevance to the Board's mandate.
- b. Advising the Minister on the requirements of the AAD, and other directives that apply to the Board.
- c. Recommending to the Minister, as may be necessary, the evaluation or review, including a risk-based review, of the Board or any of its programs, or changes to the management framework or operations of the Board.
- d. Facilitating regular briefings and consultations between the Chair and the Minister, and between the Ministry staff and the Board as needed.
- e. Attesting to TB/MBC on the Board's compliance with the mandatory accountability requirements as set out in the AAD and other applicable TB/MBC directives, the Government's operational policies and policy directions based on the annual letter of compliance from the Chair to the Minister.
- f. Ensuring that the Ministry and the Board have the capacity and systems in place for on-going risk-based management, including appropriate oversight of the Board.
- g. Ensuring that the Board has an appropriate risk management framework and a risk management plan in place for managing risks that the agency may encounter in meeting its program or service delivery objectives.

- h. Undertaking timely risk-based reviews of the Board, its management or operations, as may be directed by the Minister or TB/MBC.
- i. Establishing a framework for reviewing and assessing the Board's Business Plans and other reports.
- j. Supporting the Minister in reviewing the performance targets, measures and results of the Board.
- k. Advising the Minister on documents submitted by the Board to the Minister for review or approval, or both.
- l. Submitting to the Minister, as part of the annual planning process, a risk assessment and management plan for each risk category.
- m. Undertaking reviews of the Board as may be directed by the Minister.
- n. Cooperating with any review of the Board as directed by the Minister, TB/MBC or the Ontario Auditor General.
- o. Monitoring the Board, on behalf of the Minister while respecting the Board's authority, identifying needs for corrective action where warranted, and recommending to the Minister ways of resolving any issues that may arise from time to time.
- p. Negotiating a draft MOU with the Chair, as well as any amendments to the MOU, as directed by the Minister.
- q. Consulting with the Chair, as needed, on matters of mutual importance including services provided by the Ministry and compliance with Applicable Government Directives and Ministry policies.
- r. Meeting with the Chair as needed or as directed by the Minister, or on the request of the Chair.
- s. Arranging for administrative, financial and other support to the Board, as specified in this MOU.
- t. Informing the Chair, in writing, of new Government directives and any exceptions to, or exemptions in whole or in part from TB/MBC directives, Government policies, or Ministry administrative policies.

- u. When required, submitting a report to the Secretary of TB/MBC on the wind-down of the Board, following the disposition of any assets, completion of any outstanding responsibilities by the Board, and the termination of any appointments.
- v. Consult with the Chair on the performance evaluation of the Senior Administrator and Registrar.

8.4 Senior Administrator and Registrar

The Senior Administrator and Registrar is responsible for:

- a. Managing the day-to-day financial, analytical and administrative affairs of the Board in accordance with the Board's mandate, Applicable Government Directives, accepted business and financial practices, and this MOU.
- b. Advising the Chair on the requirements of the Board's compliance with the AAD, as well as other TB/MBC and Government directives and policies, and Board by-laws and policies, including annually attesting to the Chair on the Board's compliance with mandatory requirements.
- c. Applying policies and procedures so that public funds are used with integrity and honesty.
- d. Providing leadership and management to the Board staff, including human and financial resources management, in accordance with the approved Business Plan, accepted business and financial practices and standards, the Board's Constituting Instrument, and Applicable Government Directives.
- e. Preparing the Board's annual Business Plan to be approved by the Chair prior to submission to the Minister.
- f. Assisting in the preparation of the Board's Annual Report as directed by the Chair.
- g. Preparing financial reports.
- h. Ensuring that, at a minimum, annual audited financial statements are prepared for public release and posting on the Board's website after submission to the Minister, and tabling in the Legislative Assembly as part of the Board's Annual Report.

- i. Establishing and applying a financial management framework for the Board in accordance with applicable Minister of Finance/Treasury Board controllership directives, policies and guidelines.
- j. Translating the goals, objectives and strategic directions of the Chair into operational plans and activities in accordance with the Board's approved Business Plan.
- k. Ensuring that the Board has the oversight capacity and an effective oversight framework in place for monitoring its management and operations.
- l. Keeping the Chair informed with respect to the implementation of policy and the operations of the Board.
- m. Establishing systems to ensure that the Board operates within its approved Business Plan.
- n. Ensuring that the Board has an appropriate risk management framework and risk management plan in place, as directed by the Board.
- o. Supporting the Chair in meeting his or her responsibilities, including compliance with all applicable legislation, directives, policies, procedures and guidelines.
- p. Carrying out in-year monitoring of the Board's performance and reporting on results to the Chair.
- q. Keeping the Ministry and the Chair advised on issues or events that may concern the Minister, the Deputy Minister and the Chair in the exercise of their responsibilities.
- r. Seeking support and advice from the Ministry, as appropriate, on Board management issues.
- s. Establishing a system for the retention of Board documents and for making such documents publicly available when appropriate, for complying with the FIPPA and the *Archives and Recordkeeping Act*, 2006, SO 2006, c 34, Schedule A, where applicable.
- t. Undertaking timely risk-based reviews of the Board's management and operations.

- u. Consulting with the Deputy Minister as needed, on matters of mutual importance, including services provided by the Ministry, and on TB/MBC and Government directives and Ministry policies.
- v. Keeping the Deputy Minister informed about operational matters.
- w. Cooperating with a periodic review directed by the Minister or TB/MBC.
- x. Coordinating with the Ministry, the development of a performance measurement system for Board staff and implementing the system.

9. Ethical Framework

- a. The Members who are appointed by the Lieutenant Governor in Council are subject to the conflict of interest provisions of the AAD and the conflict of interest provisions of the PSOA and its regulations.
- b. Members shall not use any information gained as a result of their appointment to or membership on the Board for personal gain or benefit. A Member who has reasonable grounds to believe that he or she has a conflict of interest in a matter before the Board, or a committee of the Board, shall disclose the nature of the conflict to the Chair at the first opportunity and shall refrain from further participation in consideration of the matter. The Chair shall cause to be recorded in the minutes of the meeting of the Board any declared conflict of interest.
- c. The Chair, as the Ethics Executive for the Board, is responsible for ensuring that Members and staff of the Board are informed of the ethical rules to which they are subject, including the rules on conflict of interest, political activity and protected disclosure of wrongdoing that apply to the Board.
- d. The Chair will ensure that an ethics plan is developed for the Board, and that the ethics plan be approved by the Conflict of Interest Commissioner.

10. Reporting Requirements

10.1 Business Plan

- a. The Chair will ensure that the Minister is provided annually with the Board's Business Plan covering a minimum of three (3) years from the current Fiscal Year including a financial budget and a risk assessment and management plan, for approval by the Minister. The annual Business Plan shall be in accordance with the requirements set out in the AAD and the ATAGAA, including any related regulations.
- b. The annual Business Plan is to be submitted to the Ministry's CAO or designated equivalent within three (3) months prior to the Board's Fiscal Year-end.
- c. The Chair is responsible for ensuring that the Board's Business Plan includes a system of performance measures and reporting on the achievement of the objectives set out in the Business Plan. The system must include performance goals, how they will be achieved, and targeted results and timeframes.
- d. The Chair will ensure that the Business Plan includes a risk assessment and risk management plan to assist the Ministry in developing its risk assessment and risk management plan information in accordance with the requirements of the AAD to assess risks, develop and maintain necessary records and report to TB/MBC.
- e. The Chair will ensure that any Business Plan to be publicly posted does not disclose: personal information, sensitive employment and labour relations information, solicitor-client privileged information, Cabinet confidential information, trade secrets, information that would prejudice the financial or commercial interests of the Board in the marketplace, and information that would otherwise pose a risk to the security of the facilities and/or operations of the Board.
- f. The Minister will review the Board's annual Business Plan and will promptly advise the Chair whether or not he concurs with the directions proposed by the Board. The Minister may advise the Chair where and in what manner the Board's plan varies from Government or Ministry policy or priorities as may be required, and the Chair will revise the Board's plan accordingly.

- g. In addition, TB/MBC may require the Minister to submit the Board's Business Plan to TB/MBC for review at any time.
- h. The Board will ensure that its Business Plan is made available to the public in an accessible format, in both official languages, on the Board's website within 30 days of Minister's approval of the plan.

10.2 Annual Report

- a. The Chair is responsible for ensuring that the Board's Annual Report is prepared and submitted to the Minister for approval within 90 days of the Board's Fiscal Year-end. The Annual Report shall be in accordance with the requirements set out in the AAD.
- b. The Chair will ensure that any Annual Report to be publicly posted does not disclose: personal information, sensitive employment and labour relations information, solicitor-client privileged information, Cabinet confidential information, trade secrets, information that would prejudice the financial or commercial interests of the Board in the marketplace, and information that would otherwise pose a risk to the security of the facilities and/or operations of the Board.
- c. The Minister will receive, review and approve the Board's Annual Report.
- d. The Minister will submit the Annual Report to the Lieutenant Governor in Council, and within 60 days after the day that the Minister receives the report, will table the report in the Legislative Assembly.
- e. The Board will ensure that its Annual Report is publicly posted in an accessible format, in both official languages, on the Board's website within 30 days of tabling in the Legislative Assembly.

10.3 Other Reports

The Chair is responsible for:

- a. Ensuring that the reports and documents set out in Appendix 1 to this MOU are submitted for review to and approval by the Minister in accordance with the prescribed timelines.
- b. Supplying specific data and other information, at the request of the Minister or Deputy Minister, that may be required from time-to-time for the purpose of the Ministry's administration, subject to any restrictions which may interfere or

conflict with the integrity of adjudicative, assessment, decision-making or investigative process, or natural justice rights of the parties.

11. Public Posting Requirements

- a. The Board, through the Chair, will ensure that the following approved governance documents are posted in an accessible format, in both official languages, on the Board's website within the specified timelines:
 - Memorandum of Understanding and any Letter of Affirmation – 30 days of signing by both parties.
 - Annual Business Plan – 30 days of Minister's approval.
 - Annual Report – 30 days of tabling in the Legislature.
- b. Posted governance documents should not disclose: personal information, sensitive employment and labour relations information, solicitor-client privileged information, Cabinet confidential information, trade secrets, information that would prejudice the financial or commercial interests of the Board in the marketplace, and information that would otherwise pose a risk to the security of the facilities and/or operations of the Board.
- c. The Board, through the Chair, will ensure that the expense information for Members and senior management staff are posted on the Board or the Ministry website, in accordance with the requirements of the MBC Travel, Meal and Hospitality Expenses Directive.
- d. The Board, through the Chair, will ensure that any other applicable public posting requirements are met.

12. Communications and Issues Management

The parties to this MOU recognize that the timely exchange of information on the operations and administration of the Board is essential for the Minister to meet his or her responsibilities for reporting and responding to the Legislative Assembly on the affairs of the Board. The parties also recognize that it is

essential for the Chair to be kept informed of the Government initiatives and broad policy directions that may affect the Board's mandate and functions.

The Minister and the Chair, therefore, agree that:

- a. "Communications" shall not include discussion or exchanging of information between Board personnel and the Minister, the Deputy Minister, or Ministry staff about specific cases that have been, are or will be subject of adjudicative or regulatory decision making by the Board.
- b. Inquiries received by the Minister's office regarding a case in progress at the Board must be re-directed to the Board without comment. Any response made by the Minister's office to the inquiring party will indicate that the inquiry has been forwarded to the Board and that the Minister cannot comment on an adjudicative proceeding, assessment, decision, investigation, or resolution.
- c. The Chair will keep the Minister advised, in a timely manner, of all planned events or issues, including contentious matters that concern or can be reasonably expected to concern the Minister in the exercise of the Minister's responsibilities.
- d. The Minister will consult with the Chair in a timely manner, as appropriate, on broad Government policy initiatives or legislation being considered by the Government that may impact on the Board's mandate or functions, or which otherwise will have a significant impact on the Board.
- e. The Minister and the Chair will consult with each other on public communications strategies and publications. They will keep each other informed of the results of stakeholder and other public consultations and discussions.
- f. The Minister and the Chair will meet at least annually, or as requested by either party, to discuss issues relating to the fulfillment of the Board's mandate, management and operations, and to review matters provided for in this MOU.
- g. The Deputy Minister and the Chair will meet as required to discuss issues relating to the delivery of the Board's mandate and the efficient operation of the Board and to review matters provided for in this MOU. The Deputy Minister and the Senior Administrator and Registrar shall provide timely information and advice to each other concerning significant matters affecting the Board's management or operations.

- h. The Board and the Ministry will adhere to the Public Communications Protocol set out in Appendix 3 to this MOU for ongoing issues management.

13. Administrative Arrangements

13.1 Applicable Government Directives

- a. The Chair is responsible for ensuring that the Board operates in accordance with all Applicable Government Directives that are applicable to adjudicative agencies, former Schedule 1 agencies or Commission public bodies, whether or not a directive is specifically listed in Appendix 2, as well as applicable Ministry financial and administrative policies and procedures. Appendix 2 to this MOU provides a list of applicable directives and policies.
- b. The Ministry will inform the Board of amendments or additions to directives, policies and guidelines that apply to the Board; however, the Board is responsible for complying with all directives, policies and guidelines to which it is subject.
- c. In addition to complying with the MBC Realty Directive, the Board shall comply with the Ministry of Infrastructure Realty Policy including any appendices to this policy when acquiring space for accommodation and program purposes. The Ministry will ensure that the Board is provided with any updates to this policy.

13.2 Administrative and Organizational Support Services

- a. The Deputy Minister is responsible for providing the Board with the administrative and organizational support services listed in Appendix 4 to this MOU, and for negotiating with Ontario Shared Services concerning these services, as appropriate.
- b. Appendix 4 may be reviewed at any time at the request of either party.
- c. The Deputy Minister will ensure that the support or services provided to the Board are of the same quality as those provided to the Ministry's own divisions and branches.

13.3 Agreements with Third-Parties

Procurement required to support the programs and services of the Board will be done in a clear manner, consistent with applicable policies and directive, including but not limited to, the MBC Procurement Directive.

13.4 Legal Services

- a. The Board may request outside legal services when it requires expertise which is unavailable within the Ministry of the Attorney General or when the use of a law office of the Crown would result in any conflict of interest.
- b. Outside legal services will be in accordance with the Ministry of the Attorney General's Operating Policy on Acquiring and Using Legal Services.

13.5 Creation, Collection, Maintenance and Disposition of Records

- a. The Chair is responsible for ensuring that a system is in place for the creation, collection, maintenance and disposal of records.
- b. The Chair is responsible for ensuring that the Board complies with all Government legislation, directives and policies related to information and records management.
- c. The Registrar and the Chair shall protect the legal, fiscal and other interests of the Board by implementing reasonable measures to ensure the ongoing viability, integrity, preservation and security of all official records created, commissioned or acquired by the Board. This includes, but is not limited to, all electronic records, such as emails, information posted on the Board's website, database data sets, and all records stored on personal computers and shared drives.
- d. The Chair is responsible for ensuring measures are implemented requiring the Board's employees to create full, accurate and reliable records that document and support significant business transactions, decisions, events, policies and programs.
- e. The Chair is responsible for ensuring that the Board complies with the TB/MBC Management and Use of Information and Information Technology (I&IT) Directive, in conjunction with the Corporate Policy on Recordkeeping, as applicable.
- f. The Chair is responsible for ensuring that the Board complies with the *Archives and Recordkeeping Act, 2006*, SO 2006, Chapter 34, Schedule A.

13.6 Intellectual Property

- a. The Chair is responsible for ensuring that the legal, financial and other interests of the Government in intellectual property are protected in any contract that the Board may enter into with a third party that involves the creation of intellectual property.

13.7 Freedom of Information and Protection of Privacy

- a. The Chair and the Minister acknowledge that the Board is to follow the requirements set out FIPPA in relation to the collection, retention, security, use, distribution and disposal of records.
- b. The Chair is designated as the institution head in Ontario Regulation 460 under FIPPA for the purposes of FIPPA.
- c. The Chair is responsible for ensuring that the Ministry is notified of any significant contentious information requests under the FIPPA.

13.8 Service Standards

- a. The Board shall establish service and quality standards that are consistent with the appropriate standards of the Government, the Ministry and the Ontario Public Service (OPS).
- b. The Chair will ensure that the Board delivers its services at a quality standard that reflects the principles and requirements of the OPS Service Directive.
- c. The Board has in place a formal process for responding to complaints about the quality of services provided by the Board consistent with the Government's service quality standards. The Board's process for responding to complaints about the quality of services is separate from any statute provisions about re-consideration, appeals, etc. of the Board's adjudicative decisions.
- d. The Board's annual Business Plan will include performance measures and targets for services provided and the Board's response to complaints.
- e. The Board shall comply with the *Accessibility for Ontarians with Disabilities Act, 2005*, SO 2005, c 11.

14. Financial Arrangements

14.1 General

- a. All financial procedures for the Board shall be in accordance with applicable TB/MBC and Ministry of Finance directives and guidelines, Ministry corporate financial and administrative policies and procedures, and other Government guidelines, directives and policies and set out in Appendix 2 of this MOU.
- b. When ordered to do so by the Minister of Finance and/or the President of Treasury Board, pursuant to Section 16.4 of the *Financial Administration Act*, the Board shall pay into the Consolidated Revenue Fund any money that the Minister of Finance and/or the President of Treasury Board determines is surplus to its requirements.
- c. Pursuant to Section 28 of the *Financial Administration Act*, the Board shall not enter into any financial arrangement or commitment, guarantee, indemnity or similar transaction that may increase, directly or indirectly, the indebtedness or contingent liabilities of the Government without the written approval of the Minister of Finance and/or the President of Treasury Board. The Minister's approval is required before seeking statutory approval from the Minister of Finance.
- d. The Board's approved operating and capital allocations may be adjusted in a given year if in-year fiscal constraints are ordered by Cabinet or the Minister. The Board will be provided with notice of changes to its allocation as soon as is reasonably possible. Where the Board must reallocate resources as a result of operating and/or capital allocations being adjusted, the Board shall inform and discuss with the Ministry before making such changes.
- e. The Senior Administrator and Registrar shall be responsible for providing the Ministry with the necessary documentation to support the Board's expenditures.

14.2 Funding

- a. The Board is funded by the Government, out of the Consolidated Revenue Fund (CRF) pursuant to an appropriation authorized by the Legislative Assembly, and is subject to adjustments made by the Minister, TB/MBC or the Legislative Assembly.

- b. The Chair will prepare estimates of the Board's expenditures for inclusion in the Ministry's Business Plan for presentation to the Legislative Assembly. The Chair will deliver these estimates to the Minister in sufficient time to be analyzed and approved by the Minister.
- c. The estimates provided by the Chair may, after appropriate consultation with the Chair, be altered as required. The parties acknowledge that TB/MBC has final decision-making authority.
- d. Financial procedures of the Board must be in accordance with TB/MBC and Ministry of Finance directives and guidelines and other applicable Government direction.

14.3 Financial Reports

- a. The Chair will provide annual financial statements to the Minister, and will include them as part of the Board's Annual Report. The statements will be provided in a format that is in accordance with the province's stated accounting policies issued by the Office of the Provincial Controller.
- b. The Board will submit its salary information to the Minister of Finance and/or the President of Treasury Board, through the Ministry, in accordance with the *Public Sector Salary Disclosure Act, 1996*.

14.4 Taxation Status: Harmonized Sales Tax (HST)

- a. With the harmonization of the Goods and Services Tax and the Provincial Sales Tax, some agencies receive a CVAT rebate under the Comprehensive Integrated Tax Coordination Agreement. This is applicable to the Ontario Review Board.
- b. The Board is responsible for paying HST where applicable, in accordance with the federal *Excise Tax Act*.

15. Audit and Review Arrangements

15.1 Audits

- a. The Board is subject to periodic review and value-for-money audit by the Auditor General of Ontario under the *Auditor General Act*, RSO 1990, c A-35, or by the Ontario Internal Audit Division of TBS.
- b. The Ontario Internal Audit Division may also carry out an internal audit, if approved to do so by the Ministry's Audit Committee or by the Corporate Audit Committee.
- c. Regardless of any previous or annual external audit, the Minister may direct that the Board be audited at any time.
- d. The Board will promptly provide a copy of every report from an audit to the Minister and the Minister of Finance and/or the President of Treasury Board. The Board will also provide a copy of its response to the audit report and any recommendations therein. The Board will advise the Minister annually on any outstanding audit recommendations.
- e. The Chair may request an external audit of the financial transactions or management controls of the Board at the Board's expense.

15.2 Other Reviews

- a. The Board is subject to periodic review initiated at the discretion and direction of TB/MBC or the Minister. The review may cover such matters relating to the Board that are determined by TB/MBC or the Minister, and may include the Board's mandate, powers, governance structure and/or operations of the Board.
- b. In requiring a periodic review, the Minister or TB/MBC shall determine the timing and responsibility for conducting the review, the roles of the Chair and the Minister, and how any other parties are involved.
- c. A mandate review of the Board will be conducted at least once every seven (7) years. The date of the next review will be 2017-2018. (By 2021/22 for agencies that have not yet been reviewed; otherwise, 7 years from the date of the last review).

- d. The Minister will direct a review of the Board at least once every six (6) years in accordance with subsections 21(1) and (2) of the ATAGAA.
- e. The Minister will consult the Chair as appropriate during any such review.
- f. The Chair and the Senior Administrator and Registrar will cooperate in any review.
- g. In the event of a review initiated at the direction of the Minister, the Minister shall submit any recommendations for change that are developed from the results of the review regarding the Board to TB/MBC for consideration.

16. Staffing and Appointments

16.1 Delegation of Human Resources Management Authority

- a. Where the PSC has delegated its powers, duties and functions in relation to human resources management to the Deputy Minister, the Chair or prescribed individual under Ontario Regulation 148/10, that person is accountable for exercising that authority in compliance with any relevant legislation, directives or policies in accordance with the mandate of the Board, and within the parameters of the delegated authority.

16.2 Staffing

- a. The Board is staffed by persons employed under the Part III of the PSOA. Such persons are eligible for all the rights and benefits accorded under the PSOA and relevant collective agreements.
- b. The Board, in its dealings with staff employed under the PSOA is subject to MBC human resources directives and PSC directives under the PSOA.

16.3 Appointments

- a. The Chair is appointed by the Lieutenant Governor in Council on the recommendation of the Minister pursuant to sections 672.38(1) and 672.4(1) of the Act.

- b. Members are appointed by the Lieutenant Governor in Council on the recommendation of the Minister pursuant to sections 672.38 (1) and 672.39 of the Act.
- c. Members are selected for appointment through a competitive, merit-based process that assesses candidates based on experience, knowledge or training in the subject matter and legal issues dealt with by the tribunal; aptitude for impartial adjudication; and aptitude for applying alternative adjudicative practices and procedures that may be set out in the tribunal's rules.
- d. Pursuant to section 14(4) of the ATAGAA, no person shall be appointed or reappointed unless the Chair after being consulted as to his or her assessment of the person's qualifications under the ATAGAA and, in the case of reappointment, of the Member's performance of his/her duties on the tribunal, recommends that the person be appointed or reappointed.

16.4 Remuneration

- a. Remuneration is set by the Lieutenant Governor in Council.
- b. The Board's full-time and part-time Members will be remunerated pursuant to rates identified in Schedule B of the AAD.
- c. Travel expenses of Members must comply with the MBC Travel, Meal and Hospitality Expenses Directive. Reasonable expenses shall be reimbursed.

17. Risk Management, Liability Protection and Insurance

17.1 Risk Management

- a. The Chair is responsible for ensuring that a risk management strategy is developed for the Board, in accordance with the OPS Risk Management process.
- b. The Board shall ensure that the risks it faces are deal with in an appropriate manner.

17.2 Liability Protection and Insurance

- a. Pursuant to section 672.38(3) of the Act, no Member is personally liable for any act done in good faith in the exercise of the Member's powers or the performance of the Member's duties and functions or for any default or neglect in good faith in the exercise of those powers or the performance of those duties and functions.
- b. The Board is included in the Government's Commercial General Liability Protection Program.

18. Effective Date, Duration and Periodic Review of the MOU

- a. This MOU becomes effective on the date it is signed by the Minister as the last party to execute it ("Original Effective Date") and continues in effect until it is revoked or replaced by a subsequent MOU signed by the parties.
- b. This MOU expires five (5) years after the effective date and may be renewed before that date for another five (5) years. This MOU continues in force after its expiry until it is replaced or renewed.
- c. A copy of this signed MOU and any successor MOU must be provided to the Secretary, Treasury Board/Management Board of Cabinet.
- d. The Minister and the Chair will review the MOU within six (6) months after there is a change in the responsible Minister or the Chair and, in any event, at least once before it expires.
- e. Without affecting the effective date of this MOU, either the Minister or the Chair may initiate a review of this MOU by written request to the other.
- f. After any review of this MOU, the Minister and the Chair may affirm by letter that the MOU will continue in force without amendments or alternatively, they may agree to revise it.
- g. A copy of the letter of affirmation, or a new MOU between the Minister and Chair must be provided to the Secretary, Treasury Board/Management Board of Cabinet, within six (6) months of the affirmation or revision.

- h. If either of the parties deems it expedient to amend this MOU, they may do so only in writing. Any amendment shall only be effective after approval by the parties.
- i. A full review and replacement of this MOU will be conducted prior to its expiry not more than five (5) years following the date it came into effect, or immediately in the event of a significant change to the Board's mandate, powers or governance structure as a result of an amendment to the Act and any other applicable legislation.
- j. Subject to any further written agreements or updates, the parties agree that this MOU entered into between them will satisfy the requirements of section 11 of the ATAGAA.

Signatures



The Hon. Mr. Justice Richard D. Schneider
Chair, Ontario Review Board

Nov 20 / 17
Date



The Hon. Dr. Eric Hoskins
Minister, Ministry of Health and Long-Term Care

NOV 28 2017
Date

Appendix 1: Summary of Board Reporting Requirements

DUE DATE	REPORT/DOCUMENT	NAMES OF RESPONSIBLE OFFICIALS
Fall	The Board will prepare estimates of the Board's expenditures for inclusion in the Ministry's business plan	<ul style="list-style-type: none"> • Senior Administrator and Registrar • Senior Manager and Chair
Submitted annually within three (3) months prior to the Board's Fiscal Year-end – Spring	Board Business Plan a. Prepares b. Approves c. Provides to Minister	<ul style="list-style-type: none"> • Senior Administrator and Registrar • Senior Manager and Chair • Chair and Minister • Chair
Submitted annually within 90 days of the Board's Fiscal Year-end – June 30	Annual Report a. Prepares b. Approves c. Provides to Minister	<ul style="list-style-type: none"> • Senior Administrator and Registrar • Senior Manager and Chair • Chair and Minister • Chair
Annually	Auditing	<ul style="list-style-type: none"> • Chair and Minister
Annually	Financial Statements Financial Reports	
Expires five (5) years from the effective date	Memorandum of Understanding	<ul style="list-style-type: none"> • Chair

Appendix 2: Applicable Government Directives

1. The following TB/MBC and Government directives, guidelines and policies apply to the Board:
 - Accountability Directive
 - Advertising Content Directive
 - Agencies and Appointments Directive
 - Delegation of Authority Key Directive
 - Disclosure of Wrongdoing Directive
 - Freedom of Information and Protection of Privacy Directive
 - Government Members Directive
 - Government Publications Directive
 - Management of Recorded Information Directive
 - Open Data Directive
 - Prerequisites Directive
 - Procurement Directive, as it applies in whole or in part
 - Procurement Directive on Advertising, Public and Media Relations and Creative Communications Service
 - Realty Directive
 - Travel, Meal and Hospitality Expenses Directive
 - Visual Identity Directive
 - All MBC and PSC Human Resource Directives
 - All Information Technology Directives
 - All Business Planning and Financial Management Directives

2. The Board is responsible for complying with all directives, policies and guidelines to which it is subject, irrespective of whether it is included on the list above.

3. The Ministry will inform the Board of amendments or additions to directives, policies and guidelines that apply to the Board.

Appendix 3: Public Communications Protocol

Purpose:

- I. To establish clear guidelines pertaining to communication between the Minister and the Board.
- II. To set out a process for handling specific case/hearing related inquiries and requests pursuant for information pursuant to FIPPA received by the Minister and the Ministry.
- III. To set out a process for dealing with information requests from Ministry staff to the Board on legal, policy, administrative and other issues.
- IV. To set out the process for handling public communications/contentious issue inquiries.

The following procedures shall be adhered to with respect to communication between the Minister, the Ministry, and the Board:

- I. Communication between the Minister, the Parliamentary Assistants' Offices, and the Ontario Review Board**
 - a) The staff of the Minister shall not contact the Board, including Members or staff, to inquire about specific hearings or cases before the Board. This may include any inquiries relating to the subject-matter of a specific case or the process by which a case before the Board is being handled.
 - b) Information requests related to specific cases and received by the Parliamentary Assistant's Office will be forwarded to the Minister and the Minister will then refer such requests to the Agency Liaison and Public Appointments Unit (Unit). This Unit will communicate with the Board to determine an appropriate response to each request. Requests for information about specific cases will be handled in a manner that is consistent with the terms set out in this Protocol.
- II. Process for handling specific case/hearing related inquiries**
 - a) Parties who contact the Minister or the Ministry with an inquiry, issue, or complaint concerning a specific case or hearing before the Board will be referred by the Unit to the Senior Administrator and Registrar.

- b) Any party with a matter previously referred to the Board requesting to discuss a specific case/hearing with the Minister's Office or with Ministry staff, shall be referred to the Unit. The Unit will ensure that an appropriate response is communicated to the party. The Ministry's response will advise the party of the independent nature of the Board's relationship with the Ministry and the Minister.
- c) Requests for information pursuant to the FIPPA received by the Minister or the Ministry will be referred to the Unit. The Unit will communicate with the Senior Administrator and Registrar who in turn will determine an appropriate response to each request in consultation with the Chair.
- d) The Ministry will ensure that all inquiries referred by the Minister are addressed in a manner that is consistent with the FIPPA.
- e) The Board will ensure that all inquiries referred by the Minister's Office via the Ministry are addressed in a manner which is consistent with the FIPPA.

III. Process for dealing with information requests from Ministry staff to the Board

Ministry staff contact and communication with the Board shall be handled in a manner that is consistent with the terms and conditions agreed to under the MOU.

- a) *Legal Issues:* staff of the Civil Law Division may contact the Board counsel where appropriate legal discourse is required between the Board and the Ministry.
- b) *Policy and Legislation:* staff of the Health Systems Strategy Division may have contact with the Board on matters pertaining to policy and legislation.
- c) *Administrative and other Issues:* The Unit, as a designate of the Assistant Deputy Minister, Corporate Services Division, is the primary contact in the Ministry for the Chair and/or the Board's Senior Administrator and Registrar. The Unit is responsible for day-to-day liaison with the Board and the overall co-ordination of Ministry and Board issues including: issues management, briefing materials, reviewing performance measures and Business Plans, reviewing and

tabling of Annual Reports, drafting and negotiating MOUs with the Board, liaising with central agencies, and monitoring Board compliance with the Applicable Government Directives.

IV. Process for handling public communications/contentious issue inquiries

- a) “public communications” means any material in:
 - a. oral form, such as a speech or public presentation;
 - b. printed form, such as a hardcopy report; or
 - c. electronic form, such as a posting to a website that is communicated to the public either directly or through the media.
- b) “Contentious issue” is a matter that is, or may reasonably be expected to be, of concern to the Legislative Assembly or is likely to result in inquiries being directed to the Minister or Government.
- c) The Board will comply with the TB/MBC Visual Identity Directive and identify itself in all media responses and news releases and on its website [<http://www.orb.on.ca/scripts/en/>] as an Adjudicative Agency of the Government of Ontario.
- d) With regards to media responses or news releases related to the day-to-day business of the Board that do not have direct implications for either the Ministry or the Government:
 - a. The Board should communicate their media responses or news releases to the Ministry, who will circulate it to other individuals within the Ministry.
- e) Contentious issues, media responses, and news releases that may have direct implications for either the Ministry or the Government, or are likely to result in inquiries being directed to the Minister or Government:
 - a. For all contentious issues, the Board will notify the Ministry lead (Manager, the Unit) immediately upon becoming aware of the issue and will notify the Minister simultaneously. The Ministry may also advise the Unit of contentious issues that require attention. The Board will provide all required background information on the issue to the Ministry, who will prepare a Contentious Issues Note.

Appendix 4: Administrative or Organizational Support Services

The Deputy Minister is responsible for ensuring that the Ministry program areas or the Ontario Shared Services, as appropriate provide the following administrative support services to the Board:

- a. Financial administration: pay and benefits administration, accounts payable and technical advice, purchasing, central mail and printing services and records and form advisory services.
- b. Human resources services: classification, advice and consultation regarding recruitment procedures and staff relations, job description writing, career counseling and staff development, and advice and consultation regarding corporate initiatives such as occupational health and safety.
- c. Corporate educational opportunities and career planning services: are available and open to Board staff and the Ministry must assist the Senior Administrator and Registrar in ensuring that these are communicated effectively to Board staff.
- d. Information technology and telecommunications services: advice, consultation and support.
- e. Internal audit: financial compliance, management, human resources and information systems audits, operational reviews and special investigations as required.
- f. Accommodation: facilities planning and relocation services, including AODA compliance and lease renewals.
- g. Freedom of information and protection of privacy program services.
- h. Archives and Recordkeeping program services.
- i. French language services translation and interpretation services.
- j. Business Planning.
- k. Performance measurement and program evaluation.