Purpose

- Provide an overview of public appointments in Ontario
- Review your functions, roles and responsibilities as a public appointee
- Examine oversight tools, appointee fiduciary duties and ethical obligations as a public appointee
- Consider the keys to success in your new role
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Premier’s Statement

Thank you for putting yourself forward to serve the people of Ontario. Like you, there are over 3,000 other Ontarians who are also serving the people of Ontario through a public appointment. Like you, they are highly qualified, representative of our great province, committed to the principles and values of public service, and perform their duties with integrity.

Your public appointment gives you the opportunity to use your skills, experience, and expertise for the benefit of the people of Ontario. You can help influence government policy and contribute to the delivery of high quality public services.

Once again, thank you for your service.

Doug Ford
Premier of Ontario
What are Public Appointments?
Public Appointments in Ontario

The Ontario government appoints over 3,000 individuals to different agencies and entities to perform a variety of roles, including:

- Overseeing the management of an agency
- Setting the strategic direction of an agency
- Ensuring the agency is operating in the public interest
- Making quasi-judicial decisions that must be made at arms length of government
- Providing the minister with expert advice

- Public appointees serve on organizations that are either “provincial agencies” or “other entities”
- Names of public appointees are posted on the Public Appointment Secretariat website
Provincial Agencies

- Provincial agencies are government entities established to perform a range of services and functions and range from large commercial enterprises like the LCBO to small advisory agencies like the Rabies Advisory Committee.

- Examples of their functions include delivering a service, adjudicating disputes, providing advice or expertise, regulating an industry or operating a commercial business.

- Provincial agencies are part of government and have the following characteristics:

  **Establishment** - Established by government through a constituting instrument (statute, Order in Council or regulation) but are not part of a ministry.

  **Authority** - Has authority and responsibility to perform an ongoing public function or service that involved adjudicative or regulatory decision-making, operational activity, or an advisory function.

  **Accountability** - Accountable to a minister for fulfilling its legislative obligations, management of its resources, and ensuring standards for any services it provides.

  **Appointments** - Government makes the majority of the appointments to boards of provincial agencies.
Other Entities

- Other entities are organizations whose constituting instrument requires at least one provincial appointment on the board. They may be established under government authority, but are not part of the Ontario government. They may have authority and responsibilities for a particular area of government business, public service or service delivery.

- Provincial appointees on “other entities” have two main functions: 1) represent the Ontario government 2) represent the public interest.

- Other entities are found in almost every community, vary in size, and impact the lives of Ontarians in different ways. There are over 350 entities to which the government makes at least one appointment.

Some examples of other entities include:

- **Board of Governors of Universities and Colleges** - Responsible for governing and managing the affairs of the institution, including financial oversight and setting the strategic direction

- **Police Service Boards** - Govern the municipal police force, establish priorities and objectives, and monitor the performance of the police service

- **Colleges of Regulated Professions** - Ensure that Ontarians who access services provided by the regulated professions and members of the public are treated with sensitivity & respect

- **Administrative Authorities** - Responsible for ensuring that a number of Ontario’s consumer protection and public safety laws are applied and enforced.
Types of Positions

- Public appointee positions can be either part-time or full-time as defined by the needs of the organization.

- Part-time appointees account for almost 90 per cent of all appointments. Appointees in these positions meet periodically as required by an organization’s mandate and are remunerated on a per diem basis.

- Full-time appointees are primarily appointed to adjudicative agencies, are remunerated at an annual rate, are eligible for benefits and may participate in the Ontario Public Service Pension Plan.

- The types of positions that public appointees fill vary depending on the agency/entity and may include Chairs, Vice-Chairs, Members, Presidents, Chief Executive Officers, Directors etc.
Appointee Renumeration

- There is no requirement that appointees receive remuneration. Where remuneration is provided, it is not necessarily competitive with the marketplace. There is an element of public service in being a public appointee.

- For provincial agencies, the [Agencies and Appointments Directive (AAD)](https://www.ontario.ca/content/dam/ontariogov/content/gov/minister-office/auditor-general/pend/pending-agenda/2022-oag-pend-agenda-q001.pdf) provides the remuneration framework for appointees.

- For “other entities”, appointees are remunerated at a rate set by the board and therefore may be outside of the remuneration schedules in the AAD.
Roles and Responsibilities
What Appointees Do

- As an appointee of the Government of Ontario, you are expected to act reasonably, prudently, with integrity, in good faith, and in the best interests of the organization.

- An appointee’s duties and responsibilities are set out in various ways, including the organization’s enabling legislation, appointment instrument (i.e. appointment letter), memorandum of understanding, terms of reference, by-laws of the organization, and applicable agency position descriptions.
What Appointees Do (cont’d)

Some of the duties you will need to perform as a public appointee include:

- Coming to meetings prepared
- Participating in meetings and asking constructive questions
- Thinking strategically by aligning provincial agency / other entity goals with the government’s goals and objectives
- Acting sensibly and with the public’s interest in mind
- Supporting the interests of the provincial agency or other entity as a whole
- Help to ensure the organization is compliant with all applicable directives and legislation, for example, the *French Language Services Act*; the *Financial Administration Act*; the *Accessibility for Ontarians with Disabilities Act, 2005*; and the *Travel, Meal, and Hospitality Expenses Directive*
- Clarify accountability relationships
- Work towards achieving consensus and results
What Appointees Do (cont’d)

As an appointee, you should be aware of the government’s key priorities, particularly those that may impact your agency. Government’s key priorities can be found in the:

- Speech from the Throne
- Budget
- Fall Economic Statement
- Ministry Priorities

You will also want to become familiar with any relevant reports issued by Officers of the Legislative Assembly, such as the Integrity Commissioner, Auditor General and the Ombudsman.
Role of the Provincial Agency Chair

- The Chair of a provincial agency is accountable to the minister for the mandate and conduct of the agency.

- The duties of the Chair will differ depending on the type and function of the provincial agency.
  - In a board-governed provincial agency, the Chair for example will preside over meetings of the board and “may be first among equals” in a group providing strategic, but not operational oversight.
  - In a non-board-governed agency, depending on the function of the agency, the Chair may have a more active ongoing role in the agency decision making.
  - In an advisory agency, the Chair will not have corporate governance or operational responsibilities, but will provide leadership at meetings of the advisory agency and will be the first point of contact for the Minister.
Roles and responsibilities will differ depending on the type and function of the agency, and may include duties such as:

- Being spokesperson for the Board
- Keeping the Minister informed
- Leading the board in providing the strategic leadership to the provincial agency, including setting strategic direction
- Recommending appointments and reappointments
- Ensuring compliance with legislative and TB/MBC policy obligations and attesting to that in the annual compliance attestation process.
Role of the Board

The Board plays a key role in providing strategic leadership to the enterprise and ensuring accountability.

**Strategic Leadership**

- Establishing the strategic direction and governing the affairs of the agency within its mandate according to the minister’s agency mandate letter, agency’s proposed business plan, and the agency’s annual report.
- Ensuring that the agency is governed with integrity and efficiency, within its budget allocation, based on the principle of value for money, in compliance with applicable legislation and directives.
- Ensuring the agency has performance measures, targets and management systems for monitoring and assessing the agency’s performance and directing corrective action if needed.
- Providing advice to government through the Chair.

**Accountability**

- Approving the agency’s accountability documents (Business Plan, Annual Report, Memorandum of Understanding) in accordance with the required timelines.
- Approving other agency reports and reviews that may be requested by the Minister from time to time within agreed timelines.
- Ensuring that conflict of interest rules and processes are in place, understood, and followed by board and employees.
- Directing the development of an appropriate risk management framework.
Financial Administration

As a public appointee, you should understand:

- The role and responsibilities of the board, management and the auditor in financial reporting
- The concepts and terminology of financial reporting in the provincial agency sector
- The ways in which contributions (i.e. donations) to the organization can be accounted for
- The various financial statements you will encounter in your role
Financial Administration (cont’d)

Under the Financial Administration Act:

- Agency heads are responsible for ensuring proper conduct of financial business
- Minister of Finance / President of Treasury Board has statutory right to all information regarding an agency’s financial transactions and business methods
- Section 28 of the Financial Administration Act is a key statutory provision regarding oversight of potential liabilities to the province
- Requires ministries and agencies to seek approval before entering into a transaction that could increase the indebtedness or contingent liabilities of the province
- This provision helps the government monitor and manage potential risks to its fiscal plan
Risk and Risk Management Best Practices

- Risk is the chance of something happening that will affect the achievement of objectives. It is the uncertainty that surrounds future events and outcomes.
- Risk is an expression of the likelihood, impact and timing of an event with the potential to influence the achievement of an organization’s objectives.
- Your role as an appointee is to promote and comply with an active risk management program within your agency/entity.
- The Ontario government has a risk management policy that ministries and provincial agencies are required to follow.
- The policy includes integrating risk management practices into informed decision-making and priority setting, cultivating a corporate philosophy that encourages everyone to manage and communicate openly, and supporting the development of risk management competencies through training and other learning opportunities.
- Other entities are encouraged to adopt similar best practices on risk management.
Governance and Oversight
What is Governance?

- Governance is about who has the authority to make decisions, how decisions are made, and how the organization is accountable to its stakeholders. Governance helps an organization to achieve its mandate, goals, and objectives.

- In the broader context, governance is about serving the public interest and achieving results.

- An organization’s constituting instrument (legislation, regulation, or Order in Council) will set out the specific governance structure that helps the agency/other entity meet its goals, support oversight, and monitor program and service delivery.

- The Memorandum of Understanding or Terms of Reference will further clarify roles and responsibilities.
Principles of Good Governance

- Legitimacy and Voice: All people have a say and responding to community needs and priorities
- Direction and Purpose: Common vision and strategic framework
- Effective Performance: Making a difference in quality, accessibility and outcomes
- Accountability and Transparency: Confirming clear responsibilities for funding, capital funding and operations. Information flows freely and is accessible to those concerned
- Fairness and Ethical Behaviour: Reconciliation of interests, recourse and public sector standards. Ethical frameworks are enforced impartially
## Governance: Public vs. Private

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<th>Ownership</th>
<th>Private Sector</th>
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<td>Ownership</td>
<td>Often widely held</td>
<td>Sole shareholder represented by ministry</td>
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<tr>
<th>Direct Authorities of Shareholder</th>
<th>Private Sector</th>
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<tr>
<td>Direct Authorities of Shareholder</td>
<td>Annual general meeting, voting and various shareholder remedies</td>
<td>Direct authorities: - Appointments - Regulation and policies - Directives - Formal reviews - Oversight bodies</td>
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<th>Mandate</th>
<th>Private Sector</th>
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<tr>
<td>Mandate</td>
<td>Primarily financial</td>
<td>Instruments of public policy: mixed financial and public purpose</td>
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<th>Conduct Norms</th>
<th>Private Sector</th>
<th>Public Sector</th>
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<td>Conduct Norms</td>
<td>Conflict of Interest, insider trading, etc.</td>
<td>Comprehensive public sector values and ethical framework under Public Service of Ontario Act</td>
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<th>Accountability</th>
<th>Private Sector</th>
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<td>Accountability</td>
<td>Shareholders (and Corporation)</td>
<td>Shareholder (Minister) as public trustee with accountability to legislature</td>
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Agency’s Autonomy and Control

The level of autonomy and control that an agency and/or other entity has can be determined by a number of things:

- Mandate, scope, and policy control
- Operational and managerial autonomy
- Number of government appointments
- Reporting oversight
- Legal personality - corporate and agency status
- Governance framework

Consider how the level of autonomy and control is measured in your agency.
Principles of Oversight

Transparency
There is a public expectation that agencies and government operate in a transparent manner. We achieve this through open collaborative relationships between ministries and agencies and by requiring governance documents to be posted for the public to review. Open communication between provincial agencies and their responsible ministry helps to ensure expectations are clearly understood and prevent and manage risks and issues as they arise.

Accountability
Agencies are accountable to the government. However, ministries need to balance the agencies’ need for operational flexibility (and impartial decision-making for adjudicative and regulatory) with the Minister’s accountability for the agency to Cabinet and the Legislative Assembly. Agencies are accountable to the government through the responsible Minister. Agency oversight activities can be delegated to appropriate ministry officials.

Effectiveness
Agencies are expected to use public resources efficiently and operate effectively. To do this, they are given the power they need to operate in this manner.
Legislative Roles and Responsibilities

- In your role as an appointee, you should be aware of legislative oversight.
- Legislative oversight is concerned with accountability and responsibility. The responsible Minister is accountable for ensuring that all agencies/entities in their portfolio fulfill their mandates.
- Legislative Branch has the power and responsibilities to debate, amend, and make laws. It consists of the Legislative Assembly of elected representatives.
Legislative Roles and Responsibilities (cont’d)

Executive Branch operates, implements and enforces all the laws created by the Legislative Branch. It is comprised of the following:

- Lieutenant Governor is the provincial representative to the Queen and provides Royal Assent so that bills can become law, approves Orders in Council and convenes/prorogues/dissolves Parliament.
- Premier is the First Minister and Leader of the Government, forms and assigns mandates to ministers and sets the shape, scope and functioning of government.
- Cabinet approves policy, holds specific statutory authority, and recommends Orders in Council (including appointments) and regulations to the Lieutenant Governor in Council.
- Minister sets the overall direction and expectations of outcomes and has accountability for the ministry and agencies. The Minister may make policy decisions that reflect his or her mandate and your agency.

Judicial Branch administers justice by interpreting and applying laws.
Accountability Framework

- The Legislative Assembly discharges its duties in a number of ways – members ask the Minister/government questions, reviews and votes on any legislation that changes or establishes an agency. In addition, the Standing Committee on Government Agencies has the power to review new intended appointees to an agency as well as conduct public reviews of agencies.
- Minister and Cabinet are accountable to the Legislature, and the Ministers’ accountability cannot be delegated.
- All agencies and other entities have an accountability framework.
Legislative Roles and Responsibilities (cont’d)

Here is how the accountability framework works for provincial agencies.

1. Cabinet is accountable to the Legislature.
2. A Minister is accountable to the Legislature and ultimately to the public. A Minister’s accountability cannot be delegated, but oversight can be delegated to appropriate ministry officials.
3. An agency Chair is accountable to a Minister and is responsible for the mandate and conduct of the agency.
4. The agency Board is accountable to the Minister through the Chair.
5. The CEO is accountable to the Board.
6. Board governed agencies operate under a detailed memorandum of understanding, which must contain an accountability framework outlining the key roles of the minister, Deputy Minister, Chair, Board and CEO/Executive Officer.
Relevant Acts

Agencies are required to follow core accountability and service delivery standards legislation such as:

- **Public Service of Ontario Act (PSOA), 2006** - Sets out rules for employment by the Crown, framework for ethical conduct, and whistleblowing regime. PSOA applies to all public servants in ministries, Minister’s offices and in designated public bodies including staff and appointees. The PSOA sets out the Human Resources Management (HRM) framework for public servants in ministries and commission public bodies (appointees are not subject to the HRM framework).

- **Accessibility for Ontarians with Disabilities Act (AODA), 2005** - Lays the framework for the development of province-wide mandatory standards on accessibility in all areas of daily life.

- **Public Sector and MPP Accountability and Transparency Act, 2014** – Amended the **Public Sector Expenses Review Act, 2010** which gives the Integrity Commissioner the authority to select which public entities must, in a given time period, submit their expenses for review.

- **French Language Services Act (FLSA)** - Section 5(1) of the French Language Services Act guarantees a person’s right to communicate in French and to receive services in French from Government of Ontario ministries and agencies located in or serving the 25 designated areas of the province.

- **Archives and Recordkeeping Act, 2006** - Public bodies are required to manage their records to ensure that complete and authoritative accounts of broader public service decision-making are available to the public.

- Other Acts include **Financial Administration Act** and the **Freedom of Information and Protection of Privacy Act**.
Relevant Directives

- The Agencies and Appointments Directive (AAD) introduced in 2015, sets out the rules for provincial agencies and appointees. The AAD takes a “risk-based” approach to agency oversight. This means that board-governed agencies are subject to the most stringent accountability requirements. Advisory agencies, given their low level of risk and lack of operational decision making responsibilities, are excluded from many compliance requirements. It includes:
  - Requirements for establishing agencies and short-term bodies
  - Accountability and risk management framework
  - Requirements for all government appointments
  - Rates of remuneration for appointees
Relevant Directives (cont’d)

- **Travel, Meal and Hospitality Expenses Directive**
  
  o Applies to all provincial agencies and serves as a best practice for other entities
  o Make sure you have all appropriate approvals **before** making any travel, meal and hospitality arrangements
  o Make sure that travel is necessary and choose the most practical and economical way to travel
  o Consider other non-travel options such as teleconference and video conferencing
  o Other travel expenses, such as accommodations and meals may be reimbursed if they are reasonable, appropriate, and necessary.
  o All expenses must be supported by an original, itemized receipt.
Fiduciary Duty and Ethical Requirements
Ethical Requirements

- Ethics refers to principles by which behaviour can be evaluated as right or wrong, good or bad.

- The ethics of public service are based on five basic values:
  - Fairness
  - Transparency
  - Responsibility
  - Efficient use of public sector resources
  - Conflict of interest avoidance/management

- Appointees are expected to serve the public interest in a rational and efficient way. They should not pursue any personal interests that could compromise their public duties.
Conflict of Interest

- Conflict of interest rules in Ontario Regulation 381/07 apply to individuals appointed to public bodies. Appointees to public bodies must advise their ethics executive (Chair) who will determine if a conflict exists.

- A conflict of interest is any situation where an appointee’s private interests may clash with the responsibilities of their appointment.

- Examples of conflicts of interest include:
  - Participating in decision-making or an action that benefits the appointee, and/or the appointee’s spouse, family, or friends
  - Accepting gifts
  - Using or disclosing confidential information
  - Giving preferential treatment
Conflict of Interest (cont’d)

- As an appointee you were required to declare potential conflicts of interest when you completed the Personal and Conflict of Interest Disclosure Statement prior to your appointment.

- A government appointee must declare any matter(s) that could raise a conflict of interest concern at the earliest opportunity to the Chair or to the responsible Minister or Minister’s designate in the case of a Chair.

- Appointees to other entities should discuss with the Chair and follow their organization’s rules, if they think they have an actual or potential conflict of interest. The entity may have established a code of conduct, code of ethics, or other ethical framework for its board members and volunteers.
Ethical Framework

- Avoid perceived as well as actual conflicts of interest in the public sector.
- Ask if a situation could appear to a reasonable person to be a conflict of interest.
- If in doubt speak with your ethics executive.
- Most designated public bodies are subject to ethics rules established by PSOA relating to general conflicts of interest, political activity, whistle blowing and financial declarations.
- Public bodies may develop their own rules, provided they are approved in advance and published by the Integrity Commissioner. Otherwise, the rules under the PSOA apply.
- Separate conflict of interest rules exist for both in-service and post-service contexts.
- Conflict of Interest rules are especially critical in the public sector because of the high level of trust expected by the public.

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<th>WHO IS YOUR ETHICS EXECUTIVE?</th>
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### Political Activity

- Most appointees are entitled to participate in political activity subject to restrictions (e.g. no political activity in the workplace).
- If you are appointed to a public body, you must follow the rules of the *Public Service of Ontario Act, 2006*.
- Certain appointees (e.g. appointees to tribunals) have additional restrictions to ensure impartial decision-making is maintained.
- Political activity is not permitted where it could interfere with the appointee’s duties as a public servant or conflict with the interests of the provincial agency.
- Prior to engaging in political activity, appointees should consult the applicable rules and discuss the issue with the Chair as appropriate.

### Lobbying

- Appointees should be aware of lobbying restrictions and potential conflict rules that may apply.
- As an appointee, you may also be contacted by lobbyists who wish to articulate their interests and influence the determination of government policy. Such matters should be referred to the Chair.
- **Provincial Agencies** - Appointees who wish to act as a lobbyist need to declare their intentions to their Chair to rule out any potential conflict. They should also register, as appropriate, with the Lobbyist Registrar in accordance with the *Lobbyists Registration Act, 1998*.
- **Other Entities** - Appointees should consult with their entities’ code of conduct and discuss with their Chair.
Key to Success
The Appointee Relationship

- As a public appointee, there are many audiences that you will have a connection with, including the Ministry, citizens, other directors, the CEO, and even other agencies, ministries, and boards.

- These audiences are comprised of people with whom a board should create professional and productive relationships, capable of taking on new and innovative ideas.

- All relationships are important, but it is more important to understand that the expectations of each relationship needs to be managed.

- Clarity needs to be reached on who is managing each key relationship and what the objectives of these relationships are.
Transparency and Openness

Key values for success as a public appointee include transparency and a culture of openness.

- **Transparency**: There is an expectation that appointees and government bodies will do the right thing and be seen as doing the right thing. While outcome matters, so does the method of reaching it. Optics can have a real impact on the organization.

- **Openness**: Maintaining a culture of openness means an appointee and the provincial agency/other entity should be open and transparent. Avoid secretive behaviour and act with due respect for the law and ethical standards. As a public appointee, you have an obligation to act as an effective steward of the provincial agency/other entity in the public interest.
Transparency and Openness (cont’d)

• The public expects that any expenses incurred by an appointee will be appropriately modest and commensurate with the public trust held by decision-makers.

• In certain circumstances, the obligation to act with caution is part of a director’s obligation under Canadian corporate statutes. This may apply to your appointment.

• This includes a fiduciary duty to act honestly, in good faith, and in the best interests of the provincial agency.

• It also includes a standard of care which requires directors to exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances.
Navigating the Environment

Consideration of the following best practices may help in navigating the provincial agency / other entity environment in order to make the most of your appointment:

- Political context
- Decision cycles

- Formal mandates
- Terms of Reference/
  Memoranda of Understanding
- Business Plans

- Timely exchange of information and consultation are essential
- Build a “no surprises” environment
- Agree on when and how to raise issues

Understand the Big Picture
Seek Guidance and Clarify Objective
Communicate Proactively
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