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Public Appointments in Ontario

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Summary

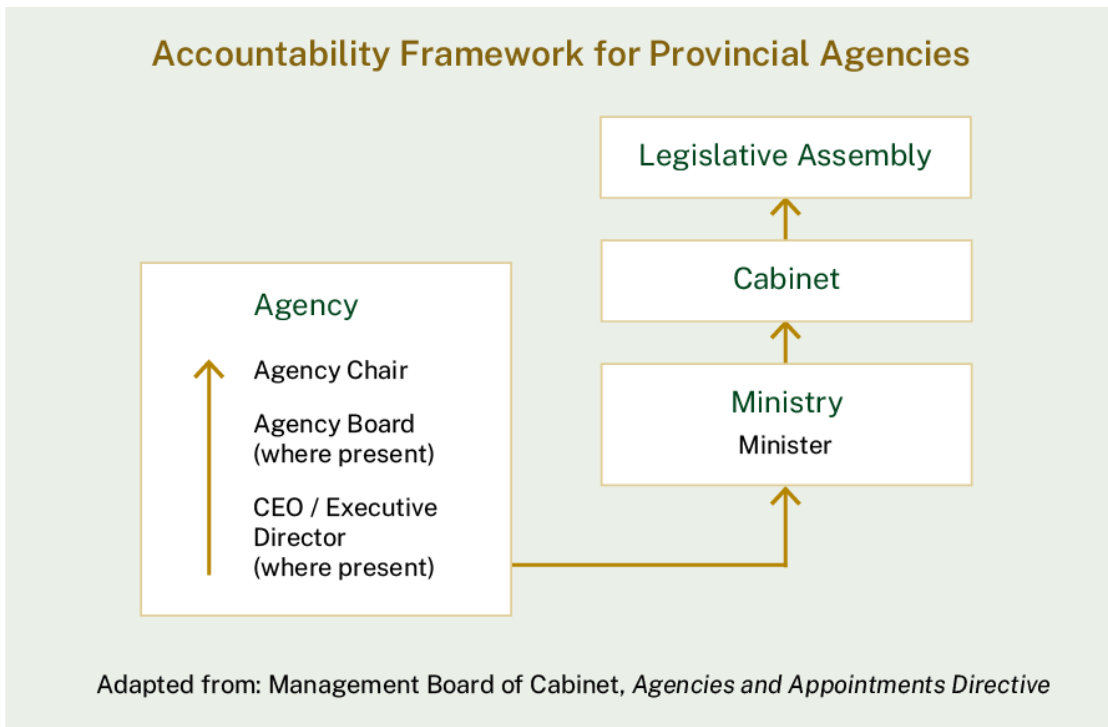
This paper provides an overview of the public appointments process in Ontario, including the respective roles of the Office of the Premier, the ministries, and the Public Appointments Secretariat. It also explores the role of the Legislative Assembly's Standing Committee on Government Agencies in reviewing appointments and provides a short history of this aspect of the Committee's mandate.

What are public appointments?

Public appointments are appointments made by the government to provincial agencies and other public entities. A public appointee's responsibilities may include overseeing and providing strategic direction to the agency, providing advice to ministers, and/or resolving disputes (in the case of tribunal adjudicators).¹ The provincial government makes approximately 1,500 appointments to 191 provincial agencies and 360 other public entities annually.²

Provincial agencies are organizations created by government to provide, manage, or advise on public services, and to which the majority of board members are appointed by the government.³ Organizationally, they are not part of a ministry, but are considered part of the Ontario government. The LCBO is one example of a provincial agency; it is a Crown corporation whose Board of Directors is appointed by Cabinet. The Human Rights Tribunal is another example; it is an adjudicative tribunal whose adjudicators are appointed by Cabinet.

Although they are created by the government, provincial agencies generally operate at arm's length from the government of the day. They are responsible to the government, and ultimately, the Legislative Assembly, through the Minister responsible for the entity's enabling legislation.⁴ For example, the LCBO reports to the Ministry of Finance, while the Human Rights Tribunal reports to the Ministry of the Attorney General.⁵ Provincial agencies must comply with the accountability framework set out in the [Agencies and Appointments Directive](#), issued by the Management Board of Cabinet.



The government also makes appointments to other public entities, such as university boards, police services boards, and public health units. These organizations do not have to follow the requirements for provincial agencies set by the Management Board of Cabinet and are not part of the Ontario government. However, they are considered public entities because the government makes at least one appointment to them.⁶

The Public Appointments Process

In Ontario, as in other jurisdictions with Westminster-style parliaments, appointments to government agencies have traditionally been the prerogative of the executive branch of government (i.e., the Premier and Cabinet). Unlike in the American congressional system, appointments in Westminster systems do not typically require confirmation by a legislative committee.⁷ Instead, agencies are accountable to the Legislature through the responsible Minister. However, in Ontario, the Standing Committee on Government Agencies has played a role in the appointments process since 1990 (outlined further below).

Today in Ontario, the government makes public appointments in one of three ways:

- by Order-in-Council on recommendation of the Premier;
- by Order-in-Council on recommendation of a Minister; or,
- by ministerial letter.⁸

While the Premier or the relevant Minister is responsible for deciding who is appointed, the Public Appointments Secretariat (PAS) coordinates the process and provides administrative support to the Office of the Premier and the ministries.⁹ Broadly speaking, the process unfolds as follows.

Candidate Application, Vetting and Interview Process

The PAS maintains a website that contains, among other things, an inventory of all appointment positions.¹⁰ It reports to the ministries on current and upcoming vacancies and advertises open positions on its website. Interested candidates apply directly to the PAS, which forwards applications to the appropriate ministry.

For most appointments, the Minister's office is responsible for determining the specifics of the recruitment process, identifying candidates, and vetting them. However, the level of a Minister's involvement varies somewhat by ministry. In those ministries with a large number of appointments, ministry staff may be more involved in the selection process and may recommend candidates to the Minister. In other ministries, the Minister's office may be directly involved in interviewing candidates.¹¹

Adjudicative tribunals, such as the Human Rights Tribunal and the Landlord and Tenant Board, follow a slightly different process. The executive chair of the tribunal identifies, vets, and interviews candidates. In accordance with the [*Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*](#), the chair then recommends candidates to the Minister.¹²

Formal Approval: Order-in-Council Appointments

For Order-in-Council (OIC) appointments, once a candidate is chosen the PAS prepares an OIC for the Premier or Minister to sign. Once signed, the PAS reviews it and the rest of the appointment documents, and sends them to Cabinet. The PAS then works with the Premier's Office to schedule time for Cabinet to review and approve the appointment.¹³

Review by the Standing Committee on Government Agencies

Certain OIC appointments may be reviewed by the Standing Committee on Government Agencies before they are finalized. Standing Order 111(f) sets out two criteria that make an appointment to an agency reviewable by the Committee:

1. the Lieutenant Governor in Council (Cabinet) makes some or all of the appointments to the agency; or,
2. the agency is a corporation in which the Province is a majority shareholder.

The Standing Order explicitly excludes the review of re-appointments and appointments for a term of one year or less. Further, appointments made by Ministerial letter cannot be reviewed by the Committee, unless the appointment is to a corporation in which the Province is a majority shareholder. At time of writing, two corporations appeared to fit this category: [Ontario Power Generation](#) and [Owen Sound Transportation Company](#).

The Committee Review Process

The Committee review process typically proceeds as follows. After a Cabinet meeting, the Premier's Office issues a certificate of intended appointments, which is referred to the Committee. The Clerk of the Committee circulates the certificate to a subcommittee consisting of Committee Chair and one Member from each party. The subcommittee is responsible for selecting candidates for review.

The Committee then has 14 days to select intended appointees for review, and 30 days to report on the intended appointees. After that 30-day deadline, Committee is deemed to have made a report that it will not review an intended appointment (thus, it is sometimes said that the certificate "expires" after 30 days). However, the Committee can extend these deadlines by unanimous agreement.¹⁴

Only a small percentage of overall OIC appointments are reviewed by the Committee. For instance, between 2011 and 2015, the Committee reviewed 125 out of a total of 2,014 OIC appointments (about 6%).¹⁵ Generally speaking, the Committee reviews two appointments per week when the House is sitting.

The review itself involves calling the candidate before the Committee, with Members from each recognized party asking the candidate questions. In advance of the meeting, Committee Members are provided with a backgrounder on the agency from Legislative Research as well as information about the candidate from the PAS and the Premier's Office.

Following the Members' questions, the Committee votes on concurrence (i.e., whether or not it agrees) with the appointment. While the review process gives the Committee an

opportunity to question appointees and express its opinion, the Committee does not have the power to veto an appointment.¹⁶

Once the Committee's review has been completed, waived, or the 30-day deadline has passed, the Lieutenant Governor signs the OIC, which completes the OIC appointments process.¹⁷

Formal Approval: Appointment by Ministerial Letter

Appointments by Ministerial letter do not require Cabinet approval and, as noted above, most cannot be reviewed by the Standing Committee on Government Agencies. Instead, once a candidate is selected, Ministry staff prepare an official appointment letter for the Minister to sign, which completes the appointments process.¹⁸

History of Committee Review of Appointments

The Standing Committee on Government Agencies was first given a mandate to review intended appointments in December 1990. This updated mandate followed a 1986 report from an all-party legislative committee that reviewed the public appointments process. As part of its review, the Committee held public hearings in Ontario and visited the United States Senate as well as state legislatures in New York and California.¹⁹

The Committee found that the principles of openness and accountability should guide the appointments process, and recommended, among other things, that a legislative committee be given the opportunity to scrutinize OIC appointments. However, the Committee also accepted that in a Westminster-style system the governing party should have the power to make appointments.²⁰ As a result, rather than recommending a US-style veto, the Committee recommended that a legislative committee (or committees) be given 30 days to review an intended appointment, with the OIC automatically taking effect after that period.

The Committee also recommended that the reviewing committee's report to the House be a simple statement on whether or not it concurs with the appointment. Rather than abrogate the government's prerogative to make appointments, the Committee felt that this approach would strengthen the fairness and openness of the appointments process.²¹

In 1990, the government largely adopted the Committee's recommendations and made a series of reforms to the appointments process. Amendments were made to the Standing Orders to empower the Standing Committee on Government Agencies to review appointments. The Public Appointments Secretariat was also established at this time, as a central agency to coordinate the appointments process.²²

While the committee review process brought greater transparency to public appointments, maintaining an appointments system that is sometimes partisan was not without controversy. Media reports from the time indicate that some MPPs and commentators were disappointed with the scope of the committee review and the inability to veto appointments.²³ In some respects, the committee can be seen as a forum to debate the appropriate limits on patronage in public appointments, rather than a mechanism to eliminate them.²⁴ David Pond, in his 2008 study of the committee, wrote that a view consistently expressed by both government and opposition caucuses is that patronage is “an acceptable manifestation of party in government,” as long as appointees with political connections are also qualified.²⁵

Conclusion and Further Reading

This paper has provided an overview of the public appointments process in Ontario, including the respective roles of the Office of the Premier, the ministries, and the Public Appointments Secretariat. It has also reviewed the mandate, role, and history of the Standing Committee on Government Agencies.

For further reading, please see the following:

- Auditor General of Ontario, “[The Provincial Public Appointment Process](#),” Section 4.2, *2016 Annual Report*;
- Auditor General of Ontario, “[The Provincial Public Appointment Process: Follow-up Report](#),” Section 1.4, *2018 Annual Report*;
- David Pond, “[Legislative Control of Cabinet Appointments to the Public Service: A Canadian Case-Study in the Political Limits to Parliamentary Reform](#),” *Parliamentary Affairs*, 61.1 (January 2008), pp. 52-72.

Notes

- ¹ Ontario, "[Public Appointments.](#)"
- ² Auditor General of Ontario, "[The Provincial Public Appointment Process: Follow-up Report,](#)" Section 1.4, *2018 Annual Report*, vol. 2, p. 216.
- ³ Auditor General of Ontario, "[The Provincial Public Appointment Process,](#)" *2016 Annual Report*, pp. 695-696.
- ⁴ Treasury Board Secretariat, *Public Appointee Role and Governance Overview*, 2021 (slide deck), slide 14 (retrieved from Public Appointments Secretariat, "[Public Appointee role overview.](#)")
- ⁵ Auditor General of Ontario, "[Toward Better Accountability,](#)" ch. 5, *2015 Annual Report*, p. 696.
- ⁶ Auditor General of Ontario, "The Provincial Public Appointment Process," p. 697.
- ⁷ Standing Committee on the Legislative Assembly, [Report on Appointments in the Public Sector](#), June 1986, pp. 6-7.
- ⁸ Auditor General of Ontario, "The Provincial Public Appointment Process," pp. 695-696.
- ⁹ Ontario, Employee and Organization Directory (INFO-GO), "[Public Appointments.](#)"
- ¹⁰ Auditor General of Ontario, "The Provincial Public Appointment Process," p. 693.
- ¹¹ *Ibid.*, p. 699-700.
- ¹² *Ibid.* *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, S.O. 2009, c. 33, Sched. 5, s. 14(4).
- ¹³ Auditor General of Ontario, "The Provincial Public Appointment Process," p. 700.
- ¹⁴ Standing Order 111(f) paras. 1, 2, and 10.
- ¹⁵ Auditor General of Ontario, "The Provincial Public Appointment Process," p. 700.
- ¹⁶ *Ibid.*
- ¹⁷ *Ibid.*
- ¹⁸ *Ibid.*, p. 701.
- ¹⁹ Standing Committee on the Legislative Assembly, *Report on Appointments in the Public Sector*, p. 1; David Pond, "[Legislative Control of Cabinet Appointments to the Public Service: A Canadian Case-Study in the Political Limits to Parliamentary Reform,](#)" *Parliamentary Affairs*, 61.1 (January 2008), p. 55.
- ²⁰ Standing Committee on the Legislative Assembly, *Report on Appointments in the Public Sector*, p. 8.
- ²¹ *Ibid.*, p. 23.
- ²² *Ibid.*, p. 56.
- ²³ See, for instance, Margaret Polanyi, "Appointment system assailed: Review process 'little more than facade,' MPP says," *Globe and Mail*, April 1991; Jim Coyle, "Appointment reviews sham taints some worthy nominations," *Ottawa Citizen*, May 14, 1991; and Kevin Ward, "Queen of Ontario patronage: Phillips reigns in handing out government jobs," *Kitchener-Waterloo Record*, April 8, 1991.
- ²⁴ David Pond, "Legislative Control of Cabinet Appointments to the Public Service: A Canadian Case-Study in the Political Limits to Parliamentary Reform," p. 70.
- ²⁵ *Ibid.*

