

MEMORANDUM OF UNDERSTANDING

Between

THE PRESIDENT OF THE TREASURY BOARD

-and-

**THE CHAIR
PUBLIC SERVICE GRIEVANCE BOARD (PSGB)**

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

1. PURPOSE

- a. The purpose of this Memorandum of Understanding ("MOU") is to:
 - Set out the accountability relationships between the Minister and the Chair of the Public Service Grievance Board.
 - Clarify the roles and responsibilities of the Minister, the Chair, the Deputy Minister, the Secretary.
 - Set out the expectations for the operational, administrative, financial, auditing and working relationships between the PSGB and Treasury Board Secretariat that support the accountability requirements within a framework which recognizes that the Board makes independent, adjudicative decisions.
- b. This MOU should be read together with the *Public Service of Ontario Act, 2006* and the regulations made under it. This MOU does not affect, modify or limit the powers of the agency as set out under the *Public Service of Ontario Act, 2006*, or interfere with the responsibilities 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.

2. DEFINITIONS

In this MOU,

- a. "Act" means the *Public Service of Ontario Act, 2006* and its regulations;
- b. "Agency" means the Public Service Grievance Board;
- c. "AAD" means the Treasury Board/Management Board of Cabinet Agencies &

Appointments Directive;

- d. "Appointee" means a member appointed to the agency by the Lieutenant Governor in Council, but does not mean an individual appointed by the agency as staff;
- e. "Chair" means the Chair of the PSGB;
- f. "Deputy Minister" means the Deputy Minister, Treasury Board;
- g. "Government" means the Government of Ontario;
- h. "MBC" means the Management Board of Cabinet;
- i. "Members" means the Members of the PSGB;
- j. "Minister" means the President of the Treasury Board;
- k. "Ministry" means the Treasury Board Secretariat;
- l. "TB" means the Treasury Board.

3. AGENCY'S LEGAL AUTHORITY AND MANDATE

- a. The PSGB is continued pursuant to subsection 21(1) of the *Public Service of Ontario Act, 2006 (PSOA)*. The PSGB exercises the powers and performs the duties conferred upon it under the *PSOA*.
- b. The PSGB is an independent, adjudicative tribunal that provides dispute resolution services by assisting the parties in reaching agreement on disputes or by 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.
- c. In exercising its role the PSGB seeks to encourage harmonious relations between employees and employers by dealing with matters before it in a fair, impartial, and expeditious manner.

4. CROWN AGENT STATUS

- a. The PSGB is prescribed as a public body and a Commission public body under the *Public Service of Ontario Act, 2006*, and classified as an adjudicative agency under the *MBC Agencies and Appointments Directive*. It operates at arm's length from the government.
- b. The PSGB is an administrative entity of the Crown. While the PSGB does not have

separate legal personality for civil, private law purposes that would be required for it to be a Crown agency in law, the PSGB has its own legal personality for certain administrative, public law purposes. The PSGB may be referred to as a Crown agency when that term is used to distinguish between ministries and other administrative entities of the Crown.

5. GUIDING PRINCIPLES

The Minister acknowledges the independence of the PSGB in the rendering of its adjudicative decisions and further acknowledges the need for the agency's adjudicative decisions to be made, and be seen by the public to be made, independently and impartially.

- a. The Minister acknowledges that the agency exercises powers and performs duties in accordance with its legal mandate.
- b. The Chair acknowledges that accountability is a fundamental principle to be observed in the management, administration and operations of the agency.
- c. As an agency of the government, the agency conducts itself according to the management principles of the Government of Ontario. These principles include ethical behaviour; prudent; efficient and lawful use of public resources; fairness; high quality service to the public; and openness and transparency to the extent allowed under law.
- d. The agency and ministry agree to avoid duplication of services wherever possible.

6. ACCOUNTABILITY RELATIONSHIPS

6.1 Minister

The Minister is accountable:

- a. To Cabinet and the Legislative Assembly for reporting and responding to the Legislative Assembly on the affairs of the agency.
- b. For reporting and responding to Treasury Board/Management Board of Cabinet on the agency's performance and compliance with government's applicable directives and operational policies.
- c. To the Cabinet for the performance of the agency and its compliance with the government's operational policies and broad policy directions.

- d. For receiving and ensuring that the agency's annual report is made available to the public.

6.2 Chair

- a. The Chair is accountable to the Minister for the performance of the agency in fulfilling its mandate, and for carrying out the roles and responsibilities assigned to the Chair by the *Public Service of Ontario Act, 2006*, this MOU, and applicable TB/MBC, Public Service Commission and Government directives.

6.3 Deputy Minister

- a. The Deputy Minister is accountable to the Secretary of Cabinet and the Minister for the performance of the Ministry in providing administrative and organizational support to the agency and for carrying out the roles and responsibilities assigned by the Minister, the *Public Service of Ontario Act, 2006*, applicable TB/MBC and Government directives, and this MOU.

7. CONFLICT OF INTEREST

- a. The Chair is responsible for ensuring that appointees of the agency 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 agency.

8. ROLES AND RESPONSIBILITIES

8.1 MINISTER

The Minister is accountable to Cabinet and to the Legislative Assembly for:

- a. Reporting and responding to the Legislative Assembly on the affairs of the agency.
- b. Reporting and responding to TB/MBC on the agency's performance, compliance with applicable TB/MBC directives, the government's operational policies and policy directions.
- c. Where required, recommending to Treasury Board/Management Board of Cabinet the merger, any change to the agency's mandate or dissolution of the agency.
- d. Recommending to TB/MBC the powers to be given to, or revoked from, the agency when a change to the mandate of the agency is being proposed.

- e. Determining at any time the need for a review or audit of the agency, and recommending to TB/MBC any changes to the governance or administration of the agency resulting from any such review or audit.
- f. When appropriate or necessary, taking action or directing that corrective action be taken with respect to the agency's administration or operations.
- g. Receiving the agency's annual report and ensuring that the annual report is made available to the public. Informing the Chair of the government's priorities and broad policy directions for the agency.
- h. Consulting, with the Chair on significant new directions or when the government is considering regulatory or legislative changes for the agency. This includes consultation with the Ministry of Labour about any changes that Ministry may be contemplating for the Grievance Settlement Board which might affect the Public Service Grievance Board.
- i. Developing the agency's MOU with the Chair and signing it into effect after it has been signed by the Chair.
- j. Reviewing and approving the agency's annual business plan.
- k. Recommending to TB/MBC any provincial funding to be allocated to the agency.
- l. Directing the Chair to undertake reviews of the agency on a periodic basis, and making recommendations to TB/MBC as may be required after such reviews are completed.

8.2 CHAIR

The Chair is responsible for:

- a. Setting the goals, objectives, and strategic directions for the agency within its mandate as defined by *PSOA* and its regulations.
- b. Directing the affairs of the agency so as to fulfill its mandate as defined by *PSOA*.
- c. Developing performance measures and targets for the agency.
- d. Approving the agency's annual business plan for submission to the Minister.
- e. Ensuring that public funds are used for the purpose intended with integrity and honesty.

- f. Directing that corrective action relating to the operations of the agency be taken, if needed.
- g. Making decisions consistent with the business plan approved for the agency.
- h. Preparing the agency's annual report for submission to the Minister in a manner timely enough to allow the Minister to meet the requirements for tabling of the report in the Legislative Assembly.
- i. Providing leadership to the agency.
- j. Ensuring the implementation of actions that support the goals, objectives, and strategic direction of the agency.
- k. Seeking strategic policy direction for the agency from the Minister. Strategic policy direction is understood to exclude direction in relation to dispute resolution procedure or the adjudication of any matter before the Board.
- l. 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/her responsibilities relating to the agency.
- m. 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 agency's mandate, powers or responsibilities as set out in the agency's constituting instrument.
- n. Monitoring and evaluating the performance of the agency.
- o. Reporting to the Minister as requested on the agency's activities within agreed upon timelines including a letter confirming the agency's compliance with legislation, directive and accounting and financial policies.
- p. Ensuring that the agency operates within a fiscally responsible manner in fulfilling its mandate.
- q. Developing the agency's MOU with the Minister and signing it on behalf of the board.
- r. Reviewing and approving the agency's business plan, budget, annual report and financial reports, and submitting them to the Minister in accordance with the time lines specified in the applicable TB/MBC and Government directives, and this MOU.
- s. Providing both the Minister and the Minister of Finance with a copy of every audit report, a copy of the agency's response to each report, and any recommendations in the report.
- t. Advising the Minister annually on any outstanding audit recommendations.

- u. Ensuring that members are informed of their responsibilities under the *PSOA* with regard to the rules of ethical conduct (Part IV of the *PSOA*), including the political activity rules (Part V of the *PSOA*).
- v. Making sure that appropriate management systems are in place (financial, information technology, human resource) for the effective administration of the agency.
- w. Making sure that an appropriate framework is in place for agency staff to receive adequate orientation and training.
- x. Making sure that agency staff are aware of and comply with applicable TB/MBC and Government directives.
- y. Ensuring that the agency complies with applicable legislation, including the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*.
- z. Making sure a process for responding to and resolving complaints from agency clients/customers is in place.
- aa. Carrying out effective public communications and relations for the agency as its chief spokesperson.
- bb. Cooperating with any review or audit of the agency directed by the Minister or TB/MBC.
- cc. Fulfilling the role of ethics executive for members of PSGB.
- dd. Promoting ethical conduct and ensuring that all members and staff of the agency are familiar with the ethical requirements of the *PSOA* and the regulations and the directives made under that Act, including in respect of conflict of interest, political activity and the protected disclosure of wrongdoing.

8.3 Secretary

The Secretary is responsible for:

- a. Fulfilling the role of ethics executive for public servants, other than members, of PSGB.

8.4 Deputy Minister

The Deputy Minister is responsible for:

- a. Advising and assisting the Minister regarding the Minister's responsibilities for the

PSGB.

- b. Advising the Minister on the requirements of the Agencies & Appointments Directive and other directives that apply to the PSGB.
- c. Recommending to the Minister, as may be necessary, the evaluation or review, including a risk-based review, of the PSGB or any of its programs, or changes to the management framework or operations of the Agency.
- d. Facilitating regular briefings and consultations between the Chair and Minister, and between Ministry staff and agency staff as needed.
- e. Attesting to Treasury Board/Management Board of Cabinet as required, to the PSGB's compliance with the mandatory accountability requirements set out in the Agencies & Appointments Directive based on the letter of compliance from the Chair to the Minister.
- f. Ensuring that the ministry and the PSGB have the capacity and systems in place for on-going risk-based management, including appropriate oversight of the PSGB.
- g. Ensuring that the agency 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 PSGB, its management or operations, as may be directed by the Minister or TB/MBC.
- i. Establishing a framework for reviewing and assessing the agency's business plans and other reports.
- j. Supporting the Minister in reviewing the performance targets, measures and results of the PSGB.
- k. Advising the Minister on documents submitted by the agency 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 agency as may be directed by the Minister.
- n. Cooperating with any review of the agency as directed by the Minister or TB/MBC.
- o. Monitoring the agency on behalf of the Minister while respecting the agency's authority, identifying needs for corrective action where warranted, and recommending to the Minister ways of resolving any issues that might arise from time to time.

- p. Negotiating a draft MOU with the Chair of the agency as directed by the Minister.
- q. Consulting with the agency's Chair, as needed, on matters of mutual importance including services provided by the ministry and compliance with TB/MBC directives and ministry policies as well as any initiatives by the Ministry of Labour in respect of the Grievance Settlement Board which might affect the PSGB.
- r. Meeting with the Chair as needed, as directed by the Minister, or on request of the Chair.
- s. Arranging for administrative, financial and other support to the agency 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 or Ministry administrative policies.
- u. When required, submitting a report to the secretaries of TB/MBC on the wind-down of the agency, disposition of any assets, completion of any outstanding responsibilities by the agency, and the termination of any appointments.

9. REPORTING REQUIREMENTS

9.1 Business Plan

- a. The Chair will ensure that the Minister is provided annually with the agency's business plan covering a minimum of three years from the current fiscal year, that includes a financial budget and a risk management plan, for approval within the timelines established by the Minister for this purpose.
- b. The Chair is responsible for ensuring that the agency's annual business plan meets the requirements of the Agencies & Appointments Directive.
- c. 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 requirement of the Agencies & Appointments Directive, to assess risks, develop and maintain necessary records and report to TB/MBC.
- d. The Minister will review the agency's annual business plan and will promptly advise the Chair whether or not he/she concurs with the directions proposed by the agency. The Minister may advise the Chair where and in what manner the agency's plans vary from government or ministry policy or priorities as may be required, and the

agency will revise its plan accordingly.

- e. The Chair is responsible for ensuring that the agency'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 target results and time frames.
- f. In addition, TB/MBC may require the Minister to submit the agency's business plan to TB/MBC for review at any time.

9.2 Annual Reports

- a. The Chair is responsible for ensuring that the agency's annual report is submitted to the Minister within 90 days of the agency's fiscal year end.
- b. At the request of the Minister or Deputy Minister, the Chair is responsible for supplying specific data and other information that may be required from time to time for the purpose of ministry administration to the extent appropriate to an independent adjudicative tribunal.

10. COMMUNICATIONS

The parties to this MOU recognize that the timely exchange of information on the operations and administration of the agency is essential for the Minister to meet his/her responsibilities for reporting and responding to the Legislative Assembly on the affairs of the agency. The parties also recognize that it is essential for the Chair to be kept informed of government initiatives and broad policy directions that may affect the agency's mandate and functions. The parties, therefore, agree as follows:

- a. The Chair will keep the Minister advised, in a timely manner, of all planned events and issues that concern or can be reasonably expected to concern the Minister in the exercise of the Minister's responsibilities.
- b. The Minister will consult with the Chair, as appropriate, on broad government policy initiatives or legislation being considered by the government that may impact on the agency's mandate, management and operations.
- c. 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.
- d. The Minister and the Chair will meet as needed, or as requested by either party, to discuss issues related to the fulfillment of the agency's mandate (excluding any issue in relation to an adjudicated decision by the agency).

- e. The Chair will meet with the Deputy Minister or the Deputy Minister's delegate at least annually or as requested by either party, to discuss issues relating to the delivery of the Board's mandate and the efficient operation of the agency.
- f. "Communications" shall not include discussion or exchanging of information between agency personnel and the Minister, Deputy Minister or Ministry staff about specific cases that are or will be the subject of adjudicative or regulatory decision-making by the agency.
- g. Inquiries received by the Minister's office regarding a case in progress at the agency must be re-directed to the agency without comment. Any response made by the Minister's office to the inquiring party will indicate that the inquiry has been forwarded to the agency and that the Minister cannot comment on an adjudicative proceeding.

11. ADMINISTRATIVE ARRANGEMENTS

11.1 Applicable Treasury Board/Management Board of Cabinet and Government Directives

- a. The Chair is responsible for ensuring that the agency operates in accordance with all applicable TB/MBC and Government directives, as well as applicable ministry financial and administrative policies and procedures. These Directives include, but are not limited to the following:
 - Agencies & Appointments Directive
 - Accountability Directive
 - Advertising Content Directive
 - Procurement Directive
 - Travel, Meal & Hospitality Expenses Directive
 - Procurement Directive on Advertising, Public and Media Relations and Creative Communications Services
 - Management and Use of Information & Information Technology (I&IT) Directive
 - Visual Identity Directive
 - Perquisites Directive
- b. The ministry will inform the agency of amendments or additions to directives, policies and guidelines that apply to the agency; however, the agency is responsible for complying with all directives, policies and guidelines to which it is subject.
- c. 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 agency

may enter into with a third party that involves the creation of intellectual property.

11.2 Administrative and Organizational Support Services

In order to achieve their mutual goals, the parties to this MOU agree as follows:

- a. The Ministry is committed to providing the Agency with such administrative, financial, actuarial and other services as it may require either directly or through a third party (including another ministry or agency).
- b. The Ministry may enter into agreements for the administrative and other support services listed in subsection (a) to be provided by one or more third party service providers.
- c. The Ministry and the Chair will be parties to any service agreement entered into pursuant to subsection (b).
- d. Any service agreement entered into will include provisions that will:
 - i. ensure the timely and effective provision of the support services to be provided under it;
 - ii. include the processes and standards to be applied to the administrative and support services to be provided by the service provider to the Agency; and
 - iii. be reviewed annually or at the request of the Minister or Chair.

11.3 Legal Services

- a. The agency will be provided with required legal services. The PSGB may request external legal services, particularly when the use of a law officer of the Crown would result in any conflict of interest or when it requires expertise which is unavailable within the Ministry of the Attorney General. Such services will be provided in accordance with the Ministry of the Attorney General's Operating Policy on Acquiring and Using Legal Services and the retention of external legal counsel.

11.4 Freedom of Information and Protection of Privacy

- a. The Minister is the institution head for the purposes of the *Freedom of Information and Protection of Privacy Act (FIPPA)*. The Minister has delegated all of his or her powers and duties under the *FIPPA* to the Chair with respect to the Agency pursuant to a delegation document dated January 20, 2008, as amended from time to time. The Chair recognizes that the Minister is ultimately responsible and accountable to the Legislature for ensuring compliance with the *FIPPA*.

11.5 Records Management

- 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 agency complies with the TB/MBC Management and Use of Information and Information Technology Directive, in conjunction with the Corporate Policy of Recordkeeping, as applicable.
- c. The Chair is responsible for ensuring that the agency complies with the *Archives and Recordkeeping Act, 2006*, S.O. 2006, Schedule A.

11.6 Client/Customer Service

- a. The agency's process for responding to complaints about the quality of services is separate from any statute provision about re-consideration, appeals, etc. of the agency's adjudicative decisions.
- b. The agency has in place a formal process for responding to complaints about the quality of services received by clients/customers of the agency consistent with the government's service quality standards.
- c. The agency's annual business plan will include performance measure and targets for client/customer service and the agency's response to complaints.

12. FINANCIAL ARRANGEMENTS

12.1 Funding

- a. The agency is funded by filing fees and recovery of costs assessed against each ministry.
- b. The agency agrees that revenues, if any, are paid as received to the Consolidated Revenue Fund and may not be applied to administrative expenditures of the agency unless otherwise provided by law.
- c. Pursuant to Section 28 of the *Financial Administration Act*, the agency 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 of Ontario without the written approval of the Minister of Finance and/or the President of the Treasury Board. The Minister's approval is required before seeking the Minister of Finance's statutory approval.
- d. When ordered to do so by the Minister of Finance and/or the President of the Treasury Board, pursuant to Section 16.4 of the *Financial Administration Act*, the agency shall pay into the Consolidated Revenue Fund any money that the Minister of Finance determines is surplus to its requirements.

12.2 Harmonized Sales Tax

The agency is responsible for paying HST where applicable, in accordance with the *Federal Excise Tax Act*. HST paid to suppliers is recovered through a centrally administered account maintained by the Office of the Provincial Controller.

13. AUDIT AND REVIEW ARRANGEMENTS

13.1 Audits

- a. The agency is subject to periodic review and value-for-money audit by the Auditor General of Ontario under the *Auditor General Act*.
- b. Regardless of any external audit, the Minister may direct that the agency be audited.
- c. 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.
- d. The agency will promptly provide a copy of every report from an audit to the Minister and the Minister of Finance. The agency will also provide a copy of its response to the audit report and any recommendations therein. The agency 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 agency at the agency's expense.

14. STAFFING AND APPOINTMENTS

14.1 Staffing

- a. The agency is staffed by persons employed under Part III of the *Public Service of Ontario Act, 2006*.
- b. The agency, in its dealings with staff employed under Part III of the *Public Service of Ontario Act, 2006*, is subject to TB/MBC human resource directives and the Public Service Commission directives under the *PSOA*.

14.2 Appointments

- a. The Chair is appointed by the Lieutenant Governor In Council on the recommendation of the Minister pursuant to subsection 21 (2) of the *Public Service of Ontario Act, 2006*.

- b. The members of the agency are appointed by the Lieutenant Governor In Council on the recommendation of the Minister pursuant to section 21 (2) of the *Public Service of Ontario Act, 2006*.

15. LIABILITY PROTECTION AND INSURANCE

- a. The agency is covered under the Government of Ontario General & Road Liability Protection Program covering third party liability where bodily or personal injury, death, or property damage including loss of use thereof is caused.

16. EFFECTIVE DATE AND DURATION AND PERIODIC REVIEW OF MOU

16.1 Effective Date of MOU

- a. This MOU becomes effective on the date of its signature by the parties and continues in effect until it is revoked or a new MOU is signed by the parties.
- a. Upon a change in the Minister or Chair, the parties must either sign a letter of affirmation that is attached to the MOU or sign a new MOU within 6 months of the change. Without affecting the effective date of this MOU, either the Minister or Chair may initiate a review of this MOU by written request to the other.
- b. A full review and replacement of this MOU will be conducted immediately in the event of a significant change to the agency's mandate, powers or governance structure as a result of an amendment to the *Public Service of Ontario Act*, and as required by the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*.

16.2 Reviews

- a. The Public Service Grievance Board may be subject to a periodic review at the discretion of TB/MBC or the Minister. The review may cover such matters relating to the agency that are determined by TB/MBC or the Minister, and may include the mandate, powers, governance structure and/or operations of the agency.
- b. The Minister will consult the Chair as appropriate during any such review.
- c. The Chair will cooperate in any review.

SIGNATURES

Original Signed By

Kathleen O'Neil
Chair, Public Service Grievance Board

Date

Original Signed By

The Hon. Deb Matthews
President of the Treasury Board

Date