

MEMORANDUM OF UNDERSTANDING

Between:

The MINISTER OF LABOUR
(hereinafter referred to as the "Minister")

and

The CHAIR,
ONTARIO LABOUR RELATIONS BOARD
(hereinafter referred to as the "Chair")



Charles Sousa
Minister of Labour

March 30 '2011

Date



Bernard Fishbein
Chair
Ontario Labour Relations Board

March 31/11

Date

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1. LEGISLATIVE AUTHORITY AND MANDATE

- 1.1 The Ontario Labour Relations Board (the “Board”) was established by section 2 of the *Labour Relations Act, 1948* and is continued by subsection 110(1) of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as amended (the “Act”). The Board is an adjudicative agency of the Government of Ontario and its staff is appointed under Part III of the *Public Service of Ontario Act, 2006* (“PSOA”).
- 1.2 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. It plays a fundamental role in the labour relations regime in Ontario and encourages harmonious relations between employers, employees and trade unions by dealing with matters before it as expeditiously and as fairly as reasonably possible. Because of the functions that it performs and the interests at stake, and also because the Crown and the Ministry of Labour (“Ministry”) appear as parties before it, independence is required of the Board. Independence relates to the institution of the Board, as well as to individual members. Independence as used herein refers to the independence of the Board and its members in rendering adjudicative decisions.
- 1.3 The Board exercises the powers and performs the duties conferred upon it by the following statutes:
- *Labour Relations Act, 1995*
 - *Hospital Labour Disputes Arbitration Act*
 - *Colleges Collective Bargaining Act, 2008*
 - *Education Act*
 - *Crown Employees’ Collective Bargaining Act, 1993*
 - *Public Service of Ontario Act, 2006*
 - *Fire Protection and Prevention Act, 1997*
 - *Public Sector Labour Relations Transition Act, 1997*
 - *Occupational Health and Safety Act*
 - *Employment Standards Act, 2000*
 - *Environmental Protection Act*
 - *Environmental Bill of Rights, 1993*
 - *Ambulance Services Collective Bargaining Act, 2001*
 - *Ontario Provincial Police Collective Bargaining Act, 2006*

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- *Fairness for Parents and Employees Act (Teachers' Withdrawal of Services), 1997 (Act to be repealed on a day to be named by proclamation)*
- *Long-Term Care Homes Act, 2007*
- *Community Small Business Investment Funds Act, 1992*
- *Local Health System Integration Act, 2006*
- *Smoke-Free Ontario Act*
- *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009*

2. MEMORANDUM OF UNDERSTANDING

2.1 Purpose of the Memorandum of Understanding

2.1.1 The purposes of this Memorandum of Understanding (“MOU”) are to clarify the accountability relationships between the Chair, the Minister and the Government of Ontario. As well, this MOU sets out the expectations for information exchange and working relationships that support the accountability requirements within a framework which recognizes the Board as an independent, adjudicative body.

2.1.2 The MOU establishes:

- the roles of the Minister, the Deputy Minister of Labour (“Deputy Minister”), the Chair and the Director/Registrar of the Board (“Registrar”);
- the independence of the Board from the Ministry and the accountability of the Board to the Minister;
- financial management and administrative practices and arrangements for the efficient and effective operation of the Board, including staffing;
- the extent to which specific Management Board of Cabinet Directives and Guidelines apply to the Board;
- the applicability of directives issued pursuant to the PSOA;
- reporting requirements; and
- accountability relationships including audits.

2.1.3 The MOU does not supersede the provisions of any legislation governing the Board nor is it intended to interfere with the independence of the Board and

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each of its members in rendering adjudicative decisions. The MOU shall not affect, modify, limit or interfere with any of the responsibilities of the Minister and the Board or its members established by law. In the event of a conflict between the MOU and a provision of any legislation respecting the Board, the legislation prevails.

2.2 Duration of Agreement

2.2.1 This MOU shall be effective on the date the Minister and the Chair of the Board sign the MOU. The MOU shall remain in effect for five years from the date of signing or until a new MOU is agreed to by the parties.

2.3 Review and Amendment

2.3.1 The MOU may be reviewed at the request of either of the parties, and shall be reviewed in the event that a new Minister or a new Chair is appointed, the Board's governing legislation is amended, or if there are mergers or consolidations of labour relations agencies that impact upon the Board.

3. ROLES AND RESPONSIBILITIES

The Minister

3.1 The Minister is accountable for the Board to the Government of Ontario and is responsible for representing the Board in Cabinet and its Committees, the Legislative Assembly and before Committees of the Legislature.

3.2 The Minister is accountable to the Legislature for the Board's fulfillment of its mandate, its compliance with government administrative policies and for this purpose shall report to the Legislature, concerning the activities of the Board.

3.3 The Minister is accountable for the coordination of the various agencies falling within his or her jurisdiction to ensure there is no duplication of effort and inconsistency amongst agencies.

3.4 The Minister recognizes that the Board is a statutory entity exercising powers and performing duties in accordance with its legislative mandate.

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The Minister acknowledges the independence of the Board in the conduct of the proceedings before it and in the rendering of its adjudicative decisions, and that these decisions must be made and be seen by the public to be made independently and impartially.

- 3.5 The Minister is responsible for assessing whether the Board is fulfilling its legislative mandate and for ensuring operational initiatives which are developed and implemented are in accordance with the Board's legislative mandate.
- 3.6 The Minister is responsible for the formulation and carriage of amendments to the legislation governing the Board.
- 3.7 The Minister is responsible for the review and approval of the Board's annual business plan and for the annual allocation of resources to the Board in accordance with the Ministry and government's annual budget approval allocation process.
- 3.8 The Minister may exercise such other responsibilities as may be determined by the Management Board of Cabinet Directive on Agency Establishment and Accountability, and consistent with Article 3.4 of this MOU.

The Chair

- 3.9 The Chair acknowledges that accountability to the government in exercising the Board's mandate is a fundamental principle to be observed in the management, administration and operation of the Board. The Chair acknowledges that accountability of the Board to the Government of Ontario means direct accountability to the Minister.
- 3.10 The Chair acknowledges that, in order for the Minister to perform the duties set out in this MOU, the Minister must be informed of the existence or emergence of issues relating to the Board's mandate, and the Chair shall inform the Minister of such issues upon their emergence and on a regular basis as required.
- 3.11 The Chair shall provide leadership and strategic direction to the Board, and is responsible for the overall management and administration of the Board. The Chair shall direct the affairs of the Board within its mandate as defined

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in Article 1.2 and Article 1.3 of this MOU and in accordance with its approved business plan.

- 3.12 The Chair is accountable to the Minister for ensuring that the Board carries out the responsibilities assigned or delegated to it under the Board's enabling legislation and any other applicable legislation, and complies with all applicable legislation, Management Board of Cabinet and Ministry of Finance Directives and Guidelines, Cabinet Office Communications Directives, Public Service Commission Directives and this MOU.
- 3.13 The Chair is responsible for signing an annual Certificate of Assurance, which includes attesting to the Board's compliance with the mandatory requirements set out in the Management Board of Cabinet's Agency Establishment and Accountability Directive.
- 3.14 The Chair shall present the Board's annual report to the Minister in accordance with the Agency Establishment and Accountability Directive. The Chair shall review the Board's proposed annual budget and business plan and bring them forward to the Minister and the Deputy Minister for approval.
- 3.15 The Chair shall ensure that there is a timely, effective and efficient caseload management system to resolve disputes.
- 3.16 The Chair shall ensure that an effective performance measurement and management system for the Board is in place. The Chair shall evaluate the performance of Board Vice-Chairs and Members and shall make every reasonable effort to ensure they receive proper orientation and training.
- 3.17 The Chair shall consult with the Chair of the Human Rights Tribunal of Ontario and the Presiding Officer of the Pay Equity Hearings Tribunal regarding the use of cross-appointed adjudicators and shared services.
- 3.18 The Chair is the Ethics Executive for Vice-Chairs and Members of the Board pursuant to the PSOA as described in Article 5.7 of this MOU.
- 3.19 The Chair is responsible for ensuring that Board Vice-Chairs and Members and Board staff are aware of the applicable conflict of interest rules under the PSOA. If the Board decides to adopt its own conflict of interest rules,

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instead of the rules in the PSOA, the Board will provide the Deputy Minister with a copy of the proposed conflict of interest rules before they are submitted for approval to the Conflict of Interest Commissioner.

- 3.20 The Chair is also responsible for ensuring that Board Vice-Chairs and Members and Board staff are aware of their obligations and rights under the PSOA related to political activity and the disclosure and investigation of wrongdoing.
- 3.21 The Chair is responsible for communicating performance objectives to the Registrar. The Chair is also responsible for reviewing the Registrar's performance with the Deputy Minister or his/her delegate in relation to the government's priorities, objectives of the Board, applicable Management Board of Cabinet Directives and other corporate or Ministry policy directives.

Since the Registrar is also responsible for the administrative function of the Pay Equity Hearings Tribunal, the Chair will consult with the Presiding Officer of the Pay Equity Hearings Tribunal regarding the Registrar's performance as it relates to the Pay Equity Hearings Tribunal.

The Deputy Minister

- 3.22 The Deputy Minister is responsible for ensuring that the Ministry is providing the administrative, financial, human resources and information technology support services required by this MOU to the Board, and shall commit to the Minister that the support or services provided to the Board are of the same quality and standard as provided to the Ministry's own divisions and branches.
- 3.23 The Deputy Minister is accountable to the Minister for: reviewing the Board's business plan; ensuring Board compliance with applicable Management Board of Cabinet and Ministry of Finance Directives and Guidelines, Public Service Commission Directives, conflict of interest rules and Cabinet Office Communications Directives; ensuring that the Minister is aware of any additions or amendments to the Board's policies or operational initiatives which affect the Board's mandate; providing advice to the Minister concerning Board issues and initiatives of importance relevant to the Board's mandate; and informing the Minister of the requirements of

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applicable Management Board of Cabinet and Ministry of Finance Directives and Guidelines, Public Service Commission Directives, conflict of interest rules and Cabinet Office Communications Directives.

- 3.24 The Deputy Minister shall undertake on behalf of, and in conjunction with, the Minister, assessments of whether or not the Board is fulfilling its legislative mandate and recommend ways to resolve any issues or problems that are identified as barriers to the delivery of the Board's mandate.
- 3.25 The Deputy Minister is responsible for providing a framework for assessing whether the Board's business planning and performance measurement processes and goals are developed and implemented in accordance with approved government policies.
- 3.26 The Deputy Minister is responsible for ensuring that all accountability and reporting requirements as provided for by this MOU are met.
- 3.27 The Deputy Minister or his/her delegate is responsible for ensuring a performance contract has been established for the Registrar based on consultation with the Chair, and the Presiding Officer of the Pay Equity Hearings Tribunal, that reflects the Board's and the Pay Equity Hearings Tribunal's objectives, the government's priorities, applicable Management Board of Cabinet Directives and other corporate or Ministry policy directives.

The Deputy Minister or his/her delegate will be responsible for approving the performance evaluation and rating of the Registrar, based on input and recommendation from the Chair.

The Registrar

- 3.28 The Registrar has been delegated human resources authority under the PSOA as described in Article 5.5 of this MOU.
- 3.29 The Registrar is prescribed as the Ethics Executive under the PSOA for public servants, other than government appointees, of the Board as described in Article 5.7 of this MOU. The Registrar will ensure that Board staff are familiar with the applicable conflict of interest rules and will promote ethical conduct by Board staff pursuant to section 64 of the PSOA.

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4. INFORMATION EXCHANGE

4.1 The Minister and the Chair recognize that timely information exchange concerning the operations and administration of the Board is essential to:

- i) enable the Minister to be accountable for the Board in the Legislature;
- ii) enable the parties to discharge their respective responsibilities; and
- iii) ensure the consistency of the Board's operational initiatives with the strategic directions of the Government of Ontario, as for example, meeting the government's standards of public service.

4.2 The Minister and the Chair shall meet on a regular basis, and as required to:

- (i) discuss issues relating to the delivery of the Board's mandate;
- (ii) review matters provided for in this MOU;
- (iii) discuss initiatives and issues that affect the Board and the Ministry's common stakeholder communities;
- (iv) ensure operational initiatives which are developed and implemented are in accordance with the Board's legislative mandate.
- (v) discuss any other issue considered appropriate.

4.3 The Deputy Minister and the Chair shall meet on a regular basis, and as required to discuss matters of mutual importance to the Board and the Ministry, such as the services provided by the Ministry to the Board, the implementation of corporate policies, issues relating to the efficient operation of the Board, and to review matters provided for in this MOU.

4.4 The Chair shall keep the Minister advised of planned events and issues that concern or can be reasonably expected to concern the Minister in the exercise of his or her responsibilities, including matters relating to the Board which are of importance to the Ministry, and shall keep the Deputy Minister informed and up-to-date on all program operating matters.

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- 4.5 The Ministry, wherever possible, shall consult with the Board as appropriate on initiatives that are being undertaken to amend the legislation or regulations which may affect the Board's mandate or operations. This commitment includes, wherever possible, consultation on any review of the Board's mandate or any consideration of alternative means of delivery of its services. The Minister shall advise the Chair of those policy decisions of the Government of Ontario relevant to the administration of the Board's operations.
- 4.6 The Minister and the Chair shall consult with each other with respect to the release to the public, via the media or otherwise, of any policy or operational initiative that concerns or can be reasonably expected to concern the Minister or the Chair in the exercise of their respective responsibilities.
- 4.7 The Minister and the Chair shall share information in a timely fashion, concerning any issue that affects the Board's operations or may require the Minister's attention. This may include issues which:
- (i) have a significant impact on clients or stakeholders;
 - (ii) raise questions in the Legislature or are raised by the media or stakeholders;
 - (iii) have a significant financial or operational impact on labour relations in the province; and
 - (iv) require reports to Cabinet, Treasury Board/Management Board of Cabinet, other Cabinet Sub-committees or other government agencies.
- 4.8 The Deputy Minister shall inform the Chair of the policies of the Ministry and the government that apply to the Board, such as financial, administrative, human resources and other corporate policies, including policies in respect of French language services, freedom of information, workplace harassment and equal opportunity.
- 4.9 Prior to embarking upon the preparation and/or release of any public discussion papers and/or research papers, or other public documents such as the Rules of Procedure, the Chair shall consult with the Minister.
- 4.10 The Chair shall ensure that a report of the Board's decisions is published and distributed bi-monthly, and the Board may publish and distribute any other

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material and reports it considers necessary to inform the public of the Board's decisions.

5. MANAGEMENT AND ADMINISTRATION

5.1 Agency Classification and Staffing

- 5.1.1 The Board is classified as an adjudicative agency of the Government of Ontario under the provisions of the Agency Establishment and Accountability Directive. Accordingly, the Board is subject to all Management Board of Cabinet, and Cabinet Office Directives and Guidelines applicable to adjudicative agencies, including any amendments to those Directives and Guidelines in effect on the date this MOU is executed, or any Directives and Guidelines which come into effect after that date.
- 5.1.2 The Board receives its funds from, and deposits its revenues to the Consolidated Revenue Fund through the Ministry's Expenditure Estimates pursuant to an appropriation authorized by the Legislature. Accordingly, the Board is subject to all Ministry of Finance policies, directives, and guidelines.
- 5.1.3 The Board is prescribed as a Commission Public Body under the PSOA. With the exception of persons appointed by the Lieutenant Governor in Council ("LGIC") under the Act, the Board's staff are appointed under Part III of the PSOA and shall receive all the rights and benefits under that Act and any relevant collective agreements. The management of such staff shall be subject to Management Board of Cabinet Directives and Guidelines, Public Service Commission Directives, other government policies and procedures respecting human resources, and any applicable collective agreements or other applicable legislation or regulations.
- 5.1.4 Schedule A, which forms part of this Memorandum of Understanding, provides a list of applicable Management Board of Cabinet, Public Service Commission and Ministry of Finance Directives. The Board must comply with all Management Board of Cabinet, Public Service Commission and Ministry of Finance Directives that are applicable to adjudicative agencies, former Schedule 1 agencies or Commission Public Bodies, whether or not a directive is specifically listed in Schedule A.

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- 5.1.5 Schedule B, which forms part of this Memorandum of Understanding, contains a list of statutes that are applicable to the Board. The Board must comply with all applicable statutes, whether or not it is specifically listed in Schedule B.
- 5.1.6 The Chair, Vice-Chairs and Members are appointed by the LGIC by Order in Council pursuant to subsection 110(2) of the *Labour Relations Act, 1995*. The Registrar is appointed under the former *Public Service Act* as continued by section 155 of the PSOA, pursuant to subsection 110(23) of the *Labour Relations Act, 1995*.
- 5.1.7 Pursuant to subsection 110(3) of the *Labour Relations Act, 1995*, the LGIC shall designate one of the Vice-Chairs to be the alternate Chair and when the alternate Chair is required to act as such, he or she is responsible for the matters assigned to the Chair of the Board by this MOU. In the absence of a designation by the LGIC, the Chair shall designate in writing one of the Vice-Chairs to be the acting Chair for the purposes of this MOU.
- 5.1.8 The Chair shall advise the Minister of appointment vacancies. The Minister and the Chair agree to follow the process for making Premier's appointments and re-appointments of Vice-Chairs and Members as may be established by Management Board of Cabinet.

5.2 Administrative Support

- 5.2.1 The Board receives its administrative support from the Ministry and is subject to all central agency Directives and Guidelines.
- 5.2.2 The Board and the Ministry shall avoid duplication of services to the extent possible, taking into account the need to reflect and preserve the independence of the Board.
- 5.2.3 The Chair shall operate the Board in accordance with all administrative policies established and specified in Management Board of Cabinet Directives and Guidelines.
- 5.2.4 The Deputy Minister is responsible for negotiating administrative services to be provided to the Board through Ontario Shared Services.

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5.2.5 The Chair shall, upon the request of the Minister or the Deputy Minister, supply specific data and other information which may be required from time to time for the Ministry to provide administrative, financial, human resources and information technology support services to the Board.

5.3 Legal Services

5.3.1 The Board shall supply its own legal services using rates of pay that are the same as, or less than, those of the Lawyers Compensation Plan of the Ontario Public Service.

5.3.2 The Board may obtain outside legal assistance when it requires expertise not available to it from its staff counsel, or when the use of staff counsel would result in a conflict of interest. If such assistance is to be obtained, the Board shall do so in accordance with Schedule C: "Use and Retention of Outside Legal Services" and the Ministry of the Attorney General's Corporate Operating Policy on Acquiring and Using Legal Services.

5.4 Management Board of Cabinet Requirements

5.4.1 As an agency of the government, the Board must conduct itself according to the management principles of the Government of Ontario. These principles include ethical behaviour, prudent and lawful use of public resources, value for money, high-quality service to the public, fairness and equity, and openness and transparency as set out in the Corporate Management Directive, 1997 of Management Board of Cabinet.

5.4.2 In accordance with the Agency Establishment and Accountability Directive, the Board shall prepare an annual report and an annual business plan for the Minister's consideration. Information in the annual business plan may be added to the Ministry's annual budget plan submission.

5.4.3 The annual report shall include a report on the Board's performance measures and indicators and client service initiatives.

5.4.4 The Board shall not release its annual report to the public until the Minister has tabled the report in the Legislature in accordance with the Standing

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Orders of the Legislative Assembly. Upon tabling the report in the Legislature, the Board shall circulate it to the labour relations community.

- 5.4.5 The Chair shall ensure that conflict of interest matters regarding Board Vice-Chairs and Members are dealt with in accordance with the Management Board of Cabinet Directive on Government Appointees.

5.5 Financial and Human Resources Delegation

- 5.5.1 The financial and administrative framework, including human resources administration, for the Board is set out in the Ministry's Delegation Documents, entitled "Ministry of Labour Financial Authority Framework" and "Inventory of Human Resources Responsibilities", collectively referred to as the "Delegation Documents". Any reference to the Delegation Documents in this MOU shall include any amendments made to them after the date this MOU comes into effect.
- 5.5.2 Pursuant to the PSOA, the Public Service Commission has delegated human resources authority to the Registrar.
- 5.5.3 The terms and conditions of the delegated human resources authority are specified in the Public Service Commission's delegation document dated July 20, 2007, entitled "Delegation of powers, duties and functions to prescribed individuals and chairs and deputy ministers in respect of public servants appointed to work in Commission public bodies", which may be amended from time to time. Any delegation is conditional upon exercising the delegated authority as defined therein.
- 5.5.4 The Registrar has subdelegated his or her human resources authority, in accordance with the PSOA, to public servants within the Board at the manager level or above pursuant to a subdelegation document executed in August 2007. The subdelegation document may be amended from time to time.
- 5.5.5 The Chair shall ensure that individuals within the agency with delegated or sub-delegated human resources authority will be accountable to the Public Service Commission or the sub-delegating authority as appropriate, and will exercise that authority in compliance with any relevant legislation, directives

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or policies and in accordance with the operational goals and mandate of the Board, and within the parameters of the delegated authority.

- 5.5.6 In accordance with the “Ministry of Labour Financial Authority Framework”, financial authority has been delegated to the Agency Head, Director and Managers, who shall exercise the delegated authority in accordance with the operational goals and mandate of the Board and within the parameters of the delegated authority.
- 5.5.7 The Chair is accountable to the Deputy Minister for compliance with the “Ministry of Labour Financial Authority Framework” and is responsible for ensuring that the Board operates within its approved budget allocation in the fulfillment of its mandate.
- 5.5.8 Financial and accounting procedures of the Board shall be in accordance with Ministry of Finance and Management Board of Cabinet Directives and Guidelines.
- 5.5.9 The Registrar is accountable to the Deputy Minister or the Deputy Minister’s delegate for the management and supervision of Board staff in accordance with Management Board of Cabinet Directives and Guidelines, Public Service Commission Directives, including the Human Resources Management Governance and Accountability Directive, and the Ministry’s “Inventory of Human Resources Responsibilities”. The Registrar is responsible for human resource management including Talent Management and other programs. The Registrar is ultimately responsible to the Public Service Commission for carrying out the human resources management functions delegated to him or her by the Public Service Commission. The Registrar shall exercise this authority in support of the Chair’s responsibility to direct the affairs of the Board within its mandate. For example, as the Board’s staff report, and are accountable to, the Registrar for their performance, the Registrar shall implement effective systems of performance and talent management for Board staff, including evaluation of performance in accordance with corporate guidelines.
- 5.5.10 The Chair is responsible for bringing any significant human resources matters to the attention of the Chief Administrative Officer of the Ministry or the Director of the branch responsible for providing strategic human

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resource advice in the Ministry, whether or not a delegated power is, or has been exercised by the Registrar.

5.6 Freedom of Information and Protection of Privacy

- 5.6.1 The Minister has delegated all of his or her powers and duties under the *Freedom of Information and Protection of Privacy Act* ("FOIPPA") to the Chair with respect to the Board pursuant to a delegation document dated December 11, 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 FOIPPA.
- 5.6.2 If the Board or the Chair becomes aware of a breach, potential breach or allegation of a breach of the FOIPPA, it shall be reported to the Freedom of Information and Privacy Office of the Ministry which may provide assistance in assessing the breach, potential breach or allegation of a breach. The Freedom of Information and Privacy Office may report the breach, potential breach or allegation of a breach to the Office of the Chief Information and Privacy Officer at the Ministry of Government and Consumer Services, as required.
- 5.6.3 The Ministry's Freedom of Information and Privacy Office shall coordinate an annual meeting with the Board and the Chair to review the Board's privacy and information management practices and any issues related to the application and administration of the FOIPPA.

5.7 Role and Responsibility of the Ethics Executive under the PSOA

- 5.7.1 It is recognized by the parties that the purpose of Article 5.7 is to promote consistency of decision-making regarding conflicts of interest, political activity and disclosures of wrongdoing within the Ontario Public Service.
- 5.7.2 The Ethics Executive for public servants of the Board is the person prescribed in Ontario Regulation 147/10 made under the PSOA. Currently, the Registrar is prescribed as the Ethics Executive for public servants, other than government appointees, of the Board ("EE"). The Chair shall receive reports from time to time from the EE regarding the ongoing application of this Article.

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- 5.7.3 The EE is responsible for receiving and assessing requests or notifications related to conflict of interest, applications, requests or notifications related to political activity and disclosures of wrongdoing, and making determinations in relation to such matters.
- 5.7.4 In carrying out the authority conferred on the EE under the PSOA, the EE will ensure compliance with the PSOA and Management Board of Cabinet's Disclosure of Wrongdoing Directive.
- 5.7.5 Upon receipt of a request or notification concerning conflict of interest or an application, request or notification concerning political activity, the EE will provide a copy of the request, notification or application to the branch responsible for providing strategic human resource advice in the Ministry ("HRB") who will assist the EE in making any necessary inquiries. HRB may provide a report with or without recommendations to the EE, with a copy to the Deputy Minister. Once the EE has made a determination with respect to the request, notification or application, or makes a referral to the Conflict of Interest Commissioner, the EE will provide a copy of the determination or referral, as the case may be, to the Deputy Minister. The EE may also provide a copy of the determination to the Chair as appropriate. The EE will provide any determination given by, or any direction received from the Conflict of Interest Commissioner to HRB.
- 5.7.6 If the EE initiates an inquiry, without receipt of an application, request or notification concerning conflict of interest or political activity, the EE will inform HRB who will assist the EE in making any necessary inquiries. HRB may provide a report with or without recommendations to the EE, with a copy to the Deputy Minister. Once the EE has made a determination with respect to the subject matter of the inquiry or makes a referral to the Conflict of Interest Commissioner, the EE will provide a copy of the determination or referral, as the case may be, to the Deputy Minister. The EE may also provide a copy of the determination to the Chair as appropriate. The EE will provide any determination given by, or any direction received from the Conflict of Interest Commissioner to HRB.
- 5.7.7 The EE is bound by the Management Board of Cabinet's Disclosure of Wrongdoing Directive, which requires that he or she, and any other persons involved in conducting or administering the process related to disclosures of

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wrongdoing, ensure that the process is fair, timely and as confidential as possible.

- 5.7.8 The EE will provide a copy of the disclosure of wrongdoing to the HRB, unless he or she believes that due to the nature of the wrongdoing, it would not be appropriate to do so. If the EE does not provide a copy of the disclosure of wrongdoing to the HRB, the EE will notify HRB of the disclosure and provide it with a summary of the disclosure to the extent he or she believes is appropriate. For example, the EE may decide not to disclose identifying information about the individual(s) involved in the disclosure.
- 5.7.9 HRB may provide assistance in assessing the disclosure and may prepare a report with or without recommendations for the EE. If the HRB prepares a report, a copy shall be provided to the Deputy Minister. After the EE has dealt with the disclosure, with or without the assistance of the HRB, the EE will provide a report describing the nature of the disclosure of wrongdoing, the manner in which it was handled and the determination that was made, to the Deputy Minister and/or the Chair, with or without identifying personal information as may be appropriate.
- 5.7.10 If the EE receives information related to a disclosure of wrongdoing filed directly with the Integrity Commissioner or any communication or referral from the Integrity Commissioner respecting the disclosure, the EE will provide HRB with as much information about the disclosure or referral as the EE considers appropriate. HRB may provide a report with or without recommendations to the EE, with a copy to the Deputy Minister. If the EE provides a report to the Integrity Commissioner, the EE will also provide a copy to the Deputy Minister, with or without identifying personal information as may be appropriate. The EE will also provide the Deputy Minister with information related to an investigation or any further referral by the Integrity Commissioner that he or she may become aware of, with or without identifying personal information as may be appropriate.
- 5.7.11 The Chair is the Ethics Executive for Vice-Chairs and Members of the Board. If the Chair receives a disclosure of wrongdoing from one of these persons, or becomes aware of disclosure of wrongdoing filed with the Integrity Commissioner, the Chair will notify the Minister, where appropriate, of the disclosure and provide as much information about the

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disclosure as may be appropriate in the circumstances. The Chair will notify the Minister, where appropriate, of the outcome of the disclosure of wrongdoing.

5.7.12 The Chair will notify the Minister, where appropriate, when he or she makes a disclosure of wrongdoing to the Conflict of Interest Commissioner or the Integrity Commissioner, with as much information about the disclosure as may be appropriate in the circumstances. The Chair will notify the Minister, where appropriate, of the outcome of the disclosure of wrongdoing.

5.7.13 The Registrar will notify the Deputy Minister, where appropriate, when he or she makes a disclosure of wrongdoing to the Conflict of Interest Commissioner or the Integrity Commissioner, with as much information about the disclosure as may be appropriate in the circumstances. The Registrar will notify the Deputy Minister, where appropriate, of the outcome of the disclosure of wrongdoing. The Registrar will also notify the Deputy Minister when he or she makes a request, notification or application related to conflict of interest or political activity to the Conflict of Interest Commissioner and will provide the Deputy Minister with a copy of the request, notification or application and will advise the Deputy Minister of the outcome.

5.8 Co-location and Shared Services

5.8.1 The Board has entered into a Co-Location and Shared Services Agreement with the Pay Equity Hearings Tribunal, the Workplace Safety and Insurance Appeals Tribunal and the Human Rights Tribunal of Ontario dated April 2007. The agreement provides for shared common services, including reception services, hearing and meeting room scheduling, security, library services, mail room services and printing services.

5.8.2 The Ministry shall be consulted on and provided the opportunity to provide advice and support to the Board in the continued operation of the Co-Location and Shared Services Agreement.

5.8.3 In addition, the Board provides administrative services to the Pay Equity Hearings Tribunal in accordance with a memorandum of the Chief Administrative Officer of the Ministry dated October 12, 2004.

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- 5.8.4 The Chair may enter into additional Letters of Understanding or Service Agreements with the Chairs of the other agencies that may co-locate to establish terms and conditions regarding shared facilities, resources and assets.
- 5.8.5 The Board and the Ministry shall ensure an appropriate segregation of budgets and expenditures in recognition of the separate and distinct financial accounts reflecting that the Workplace Safety and Insurance Appeals Tribunal's costs are charged to the Insurance Fund of the Workplace Safety and Insurance Board in accordance with the *Workplace Safety and Insurance Act, 1997* and that the Board and other government co-located agencies' costs are charged to the government's Consolidated Revenue Fund.

6. FINANCIAL REQUIREMENTS

6.1 Business Plan & Performance Measurement

- 6.1.1 The Chair shall review the Board's annual budget requirements and business plan and ensure that a business plan is submitted to the Minister for review and approval within the requirements established by the Agency Establishment and Accountability Directive.
- 6.1.2 Information from the Board's business plan may form part of the Ministry's annual budget plan submission and will be reflective of the Ministry's broad strategic directions. Each year the Minister shall advise the Chair of government and Ministry priorities and directions for consideration in the Board's business plan.
- 6.1.3 The Board's business plan must conform to the Agency Establishment and Accountability Directive and shall:
- (i) outline the Board's business strategies for fulfilling its statutory mandate under all legislation which confers powers or duties upon the Board;
 - (ii) include the previous year's resource levels, expenditures, forecast expenditures and revenues for the current year and the proposed budget for the upcoming year;

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- (iii) outline the Board's proposed performance, quality service measures, standards, targets and commitments, and expected achievements and outcomes for the upcoming year;
- (iv) outline the Board's proposed client service initiatives for the upcoming year including a case management strategy;
- (v) include detailed human resources, cash flow and information technology plans that reflect performance goals, client services initiatives and business strategies;
- (vi) include Board workload targets respecting the number of applications received, hearings held, and decisions rendered by the Board.
- (vii) include a risk assessment and risk management plan in accordance with the Agency Establishment and Accountability Directive to assess risks, develop and maintain necessary records and report to Treasury Board/Management Board of Cabinet.

6.1.4 The Chair shall prepare and submit such reports as are required under any applicable legislation or by the Ministry, in accordance with established practices and time frames of the Ministry.

6.1.5 The Board shall provide the Ministry with reports on the implementation of its business plan on a quarterly or as required basis.

6.2 Audit Arrangements

6.2.1 The Board is subject to periodic review and value-for-money audits by the Auditor General of Ontario under the *Auditor General Act* or by the Ontario Internal Audit Division.

6.2.2 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.

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- 6.2.3 Regardless of any audit described in Articles 6.2.1 and 6.2.2, the Minister may direct that the Board be audited by an external auditor.
- 6.2.4 The Chair may request that the Deputy Minister arrange for an external audit of the financial transactions or management controls of the Board at the Board's expense.
- 6.2.5 The Board shall provide the information, material and access necessary for the conduct of any audit.
- 6.2.6 The Board will promptly provide a copy of every report from any audit to the Minister, the Deputy Minister and the Minister of Finance. 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.

7. OTHER CONSIDERATIONS

7.1 Emergency Management

- 7.1.1 As an adjudicative agency of the government, the Board is subject to applicable Management Board of Cabinet Directives and Guidelines and the Ministry's Emergency Plan mandated by the *Emergency Management and Civil Protection Act* (EMCPA), including the Ministry's Business Continuity Plan for Downtown Toronto. Therefore, the Board and the Ministry agree to develop and maintain necessary mutual arrangements to ensure continuity of the Board's services as may be required in the event of an emergency as defined in the EMCPA.

7.2 Environmental Bill of Rights

- 7.2.1 The Board recognizes and supports the Ministry's endorsement of the purposes of the *Environmental Bill of Rights, 1993* ("EBR"), which include protecting and conserving the environment. The Board also recognizes and supports the Ministry's commitment to environmentally sound practices and the Ministry's support and promotion of the "greening" of its programs, practices and activities to all its employees (e.g. the 3R's: reduce, reuse and recycle, in all daily transactions and work activities). The Board will make

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reasonable efforts to integrate consideration of the purposes of the EBR and utilize environmentally sound practices when conducting its business.

7.3 Customer Service

7.3.1 The Chair will ensure that the Board delivers its services in accordance with the principles and mandatory requirements, as appropriate, of the OPS Service Directive.

7.3.2 The Board shall establish and maintain a formal complaints process that is:

- well-publicized and easily accessible, particularly to those with special needs;
- responsive to clients by providing consistent, prompt, thorough and impartial review of their concerns including the provision of appropriate remedies where warranted and communication of the outcome of the complaint investigation that can be understood even if not acceptable to the complainant; and
- used by the Board to improve its operations.

7.4 Intellectual Property

7.4.1 In order to ensure that the Ontario government's intellectual property assets are managed efficiently, effectively and consistently across government, the Board shall comply with Management Board of Cabinet's Managing, Distributing and Pricing Government Information (Intellectual Property) Directive.

7.5 Liability Protection and Insurance

7.5.1 Pursuant to clause 65(1)(c) of the *Occupational Health and Safety Act* ("OHSA"), no action or other proceeding for damages, prohibition or mandamus shall be instituted respecting any act done in good faith in the execution or intended execution of the Board's or a labour relations officer's duties under the OHSA or in the exercise or intended exercise of a Board's or a labour relations officer's powers under the Occupational Health and Safety Act or for any alleged neglect or default in the execution or

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performance in good faith of the Board's or a labour relations officer's duties or powers.

7.5.2 The Board is covered by the province's Protection Program.

7.6 Records Management

7.6.1 Board records are governed by the *Archives and Recordkeeping Act, 2006* and the Management Board of Cabinet's Management of Recorded Information Directive.

7.7 Harmonized Sales Tax (HST)

7.7.1 The Board does not receive a rebate of the federal portion of the Harmonized Sales Tax.

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Schedule A: Applicable Government Directives

The Board must comply with all Management Board of Cabinet, Public Service Commission and Ministry of Finance Directives that are applicable to adjudicative agencies, former Schedule 1 agencies or Commission Public Bodies, including, but not limited to, the following list:

- Accountability Directive
- Advertising Content Directive
- Agency Establishment and Accountability Directive
- Delegation of Authority Key Directive.
- Disclosure of Wrongdoing Directive
- Freedom of Information and Privacy Directive
- Government Appointees Directive
- Human Resource Management and Governance and Accountability Directive
- Management of Recorded Information Directive
- Managing, Distributing and Pricing Government Information (Intellectual Property)
- Procurement Directive
- Travel, Meal and Hospitality Expenses Directive

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Schedule B: Applicable Statutes

The Board must comply with all applicable statutes, including, but not limited to, the following list:

- *Accessibility for Ontarians with Disabilities Act, 2005*
- *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (if and when the provisions affecting the Board are proclaimed into force)
- *Archives and Recordkeeping Act, 2006*
- *Financial Administration Act*
- *Freedom of Information and Protection of Privacy Act*
- *French Language Services Act*
- *Pay Equity Act*
- *Public Service of Ontario Act, 2006*

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Schedule C: Use and Retention of Outside Legal Services

Legal services are defined as: Legal services and advice provided by private sector lawyers as part of a consultant or fee-for-service arrangement with a consulting or multi-disciplinary firm undertaken within the Management Board of Cabinet Procurement Directive for Consulting Services and the Ministry of the Attorney General's Corporate Operating Policy on Acquiring and Using Legal Services. Where legal work is to be provided as part of such an arrangement, the following operating policy applies to the legal work portion.

If the Board wants to obtain outside legal assistance, it must do the following:

1. Provide prior written notification to the Director of Legal Services Branch, MOL, ("Director") of the need to retain outside legal counsel. The notification shall include,
 - (a) the legal matter for which the private sector lawyer is being retained;
 - (b) the name, firm and year of call of the private sector lawyer to be retained;
 - (c) the hourly rate of pay, and the approximate ceiling amount of the retainer, including fees and disbursements;
 - (d) a description of the legal work to be undertaken by the private sector lawyer and the period of the retainer (date to date);
 - (e) an explanation as to why the Board counsel cannot do the legal work; and
 - (f) how the private sector lawyer is being identified/selected, e.g. from an approved listing/roster.
2. Draft a retention letter, which shall include the information described in clauses 1(a) to (d), inclusive. The fees to be paid shall be within the approved fee schedule as set out from time to time by the MAG.
3. Supply the Director with copies of the retention letter and all retention accounts.
4. If necessary, develop and maintain a roster of qualified lawyers for the purposes of retaining outside legal counsel. The selection and retention of lawyers on the roster shall be done in a fair and equitable manner.

The Director, Legal Services MOL will provide the CAO of MOL and the Assistant Deputy Attorney General of the Legal Services Division, MAG with the retention information described in paragraph 3 above for their requirements.

The Chair of the Board is responsible for,

- (a) ensuring that the Board staff is up to date on and understands this Schedule with regard to the procurement of legal services;
- (b) preparing and submitting annual plans or prior written notification to the Director for retaining private sector lawyers on behalf of the Board;
- (c) managing and monitoring the legal work performed by private sector lawyers on behalf of the Board;
- (d) reviewing and approving invoices/bills submitted by private sector lawyers for legal work performed on behalf of the Board;
- (e) entering, reporting and maintaining statistics and costs for private sector retentions;
- (f) developing a roster, if necessary, and maintaining it; and
- (g) retaining the private sector lawyer and negotiating the fees and disbursements.