

MEMORANDUM OF UNDERSTANDING

Between:

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

and

**The PRESIDING OFFICER,
PAY EQUITY HEARINGS TRIBUNAL**
(hereinafter referred to as the "Presiding Officer" or
"PO")



Charles Sousa
Minister of Labour

April 4' 2011

Date



Diane Gee
Presiding Officer
Pay Equity Hearings Tribunal

April 5/2011

Date

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Pay Equity Commission (Pay Equity Hearings Tribunal)

1. LEGISLATIVE AUTHORITY AND MANDATE

- 1.1 The Pay Equity Commission (the “Commission”) was established by section 27 of the *Pay Equity Act, 1987*, S.O. 1987, c.34 and is continued by subsection 27(1) of the *Pay Equity Act*, R.S.O. 1990, c.P.7 as amended (the “Act”). The Commission consists of two separate, independent parts: the Pay Equity Hearings Tribunal (the “Tribunal”) and the Pay Equity Office (the “Office”). The Tribunal is an adjudicative agency of the Government of Ontario. The Commission reports to the Minister and the Minister is responsible for the legislation.
- 1.2 A reference in this Memorandum of Understanding to the Tribunal means the Pay Equity Hearings Tribunal of the Pay Equity Commission. A reference to the Commission means the Office and the Tribunal. A reference to the Ministry means the Ministry of Labour, and a reference to the Deputy Minister means the Deputy Minister of Labour.
- 1.3 Where a reference to the Commission places an obligation upon the Presiding Officer (PO), the PO is responsible only for ensuring that the Tribunal meets the obligation and is not also responsible for the Office. The Chief Administrative Officer of the Commission (CAO) is responsible for ensuring that the Office meets the obligation.
- 1.4 Pursuant to subsection 28(1) of the Act, the Tribunal is composed of a Presiding Officer, one or more Deputy Presiding Officers and as many other Members equal in number representative of employers and employees as the Lieutenant Governor in Council (“LGIC”) considers proper, all of whom shall be appointed by the LGIC to maintain the Tribunal’s statutory quorum.
- 1.5 The purpose of the Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes. The Tribunal plays a fundamental role in achieving and maintaining pay equity in Ontario.
- 1.6 The Tribunal is an independent tribunal adjudicating disputes that arise under the Act as fairly and as expeditiously as reasonably possible. It has the exclusive authority under the Act to determine all questions of fact or law that arise in an application. Its decisions are based upon the evidence and

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submissions presented to it by the parties, and upon its interpretation and determination of the relevant legislation and jurisprudence.

- 1.7 Because of the functions that it performs and the interests at stake, and also because the Crown and the Ministry appear as parties before it, independence is required of the Tribunal. Independence relates to the institution of the Tribunal, as well as to individual members. Independence as used herein refers to the independence of the Tribunal and its members in rendering adjudicative decisions.

2. MEMORANDUM OF UNDERSTANDING

2.1 Purpose of the Memorandum of Understanding

2.1.1 The purpose of this Memorandum of Understanding ("MOU") is to clarify the Tribunal's accountability to 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 recognises the independence of the Office and Tribunal from one another, and the independence of the Tribunal from the Ministry, while respecting the statutory framework establishing the Office and the Tribunal collectively as the Commission.

2.1.2 The MOU establishes:

- the roles of the Minister, the Deputy Minister, the PO and the Director/Registrar of the Ontario Labour Relations Board;
- the independence of the Tribunal from the Office and the Ministry and the accountability of the Tribunal to the Minister;
- financial management and administrative practices and arrangements for the efficient and effective operation of the Tribunal, including staffing;
- the extent to which specific Management Board of Cabinet Directives and Guidelines apply to the Tribunal;
- the applicability of directives issued pursuant to the *Public Service of Ontario Act, 2006* ("PSOA");
- reporting requirements; and
- accountability relationships including audits.

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2.1.3 The MOU does not supersede the provisions of any legislation governing the Tribunal, nor is it intended to interfere with the independence of the Tribunal and each of its members in rendering adjudicative decisions. This MOU shall not affect, modify, limit or interfere with any of the responsibilities of the Minister and the Tribunal. In the event of a conflict between the MOU and a provision of any legislation respecting the Tribunal, the legislation prevails.

2.2 Duration of Agreement

2.2.1 This MOU shall be effective on the date the Minister and the PO (for the Tribunal) 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 PO is appointed, the Commission's governing legislation is amended or repealed, or any other changes of significance to the Commission are contemplated.

3. ROLES AND RESPONSIBILITIES

The Minister

3.1 The Minister is accountable for the Tribunal to the Government of Ontario and is responsible for representing the Tribunal 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 Tribunal'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 Tribunal.

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.

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- 3.4 The Minister recognizes that the Tribunal is a statutory entity exercising powers and performing duties in accordance with its legislative mandate. The Minister acknowledges the independence of the Tribunal in the conduct of the proceedings before it and in the rendering of its adjudicative decisions, and the need for these decisions to be made and be seen by the public to be made independently and impartially.
- 3.5 The Minister is responsible for assessing whether the Tribunal is fulfilling its legislative mandate and for ensuring operational initiatives which are developed and implemented, are in accordance with the Tribunal's legislative mandate.
- 3.6 The Minister is responsible for formulating and carrying forward amendments to the Act.
- 3.7 The Minister is responsible for the review and approval of the Tribunal's annual business plan, and for the annual allocation of resources to the Tribunal in accordance with the Ministry and government's annual budget approval and resource 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 Presiding Officer

- 3.9 The PO acknowledges that accountability to the government in exercising the Tribunal's mandate is a fundamental principle to be observed in the management and administration of the Tribunal. The PO acknowledges that accountability of the Tribunal to the Government of Ontario means direct accountability to the Minister. The PO is responsible for and shall provide leadership and strategic direction to the Tribunal, to ensure the statutory mandate of the Tribunal is realized as described in Article 1 of this MOU and in accordance with the approved business plan.
- 3.10 The PO is accountable to the Minister for ensuring that the Tribunal carries out the responsibilities assigned or delegated to it under the Act and any other applicable legislation, and complies with all applicable legislation,

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Management Board of Cabinet and Ministry of Finance Directives and Guidelines, Cabinet Office Communication Directives, Public Service Commission Directives and this MOU.

- 3.11 The PO is responsible for signing an annual Certificate of Assurance, which includes attesting to the Tribunal's compliance with the mandatory requirements set out in the Management Board of Cabinet's Agency Establishment and Accountability Directive.
- 3.12 The PO 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 Tribunal's mandate, and the PO shall inform the Minister of such issues upon their emergence and on a regular basis as required.
- 3.13 The PO shall:
- (i) ensure that the functions of the Tribunal are carried out in accordance with the Act, and that there is a timely, effective and efficient caseload management system respecting applications for hearings to resolve disputes under the Act;
 - (ii) promote consistency, where appropriate, and expeditious, high quality decision-making in the performance of the dispute resolution function; and
 - (iii) ensure that the Tribunal has an effective performance measurement and management system, concerning Deputy Presiding Officers and Members of the Tribunal.
- 3.14 The PO shall ensure the preparation of policies, procedural guidelines and rules of practice respecting the conduct of the Tribunal's affairs and the conduct of hearings before the Tribunal.
- 3.15 The PO shall ensure that a report of the Tribunal's decisions is published and distributed regularly, and that the Minister is provided with copies of all Tribunal decisions, following release to the parties.

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- 3.16 The PO shall ensure that an annual report of the Tribunal is prepared for inclusion with the annual report of the Commission in accordance with the Agency Establishment and Accountability Directive.
- 3.17 The PO shall evaluate the performance of the Deputy Presiding Officers and Members based on the agency's performance measures, and shall make every reasonable effort to ensure they receive proper orientation and training.
- 3.18 The PO shall consult with the Chair of the Human Rights Tribunal of Ontario and the Chair of the Ontario Labour Relations Board regarding the use of cross-appointed adjudicators and shared services.
- 3.19 The PO is the Ethics Executive for Deputy Presiding Officers and Members of the Tribunal pursuant to the PSOA as described in Article 5.7 of this MOU.
- 3.20 The PO is responsible for ensuring that Deputy Presiding Officers and Members of the Tribunal, and any staff that may be hired, are aware of the applicable conflict of interest rules under the PSOA. If the Tribunal decides to adopt its own conflict of interest rules, instead of the rules in the PSOA, the Tribunal 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.
- 3.21 The PO is responsible for ensuring that Deputy Presiding Officers and Members of the Tribunal, and any staff that may be hired, are aware of their obligations and rights under the PSOA related to political activity and the disclosure and investigation of wrongdoing.
- 3.22 The PO, in consultation with the Chair of the Ontario Labour Relations Board and the Deputy Minister or his/her delegate, shall provide input into the performance contract and performance evaluation of the Director/Registrar of the Ontario Labour Relations Board as it relates to the to the objectives and needs of the Tribunal.

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The Deputy Minister

- 3.23 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 Tribunal, and shall also commit to the Minister that the support or services provided to the Tribunal are of the same quality and standard as provided to the Ministry's own divisions and branches.
- 3.24 The Deputy Minister is accountable to the Minister for: reviewing the Tribunal's business plan; ensuring the Tribunal's 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 Tribunal's policies or operational initiatives which affect the Tribunal's mandate; providing advice to the Minister concerning Tribunal issues and initiatives of importance relevant to the Tribunal's mandate; and informing the Minister of the requirements of the 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.
- 3.25 On behalf of, and in conjunction with the Minister, the Deputy Minister shall assess whether the Tribunal is fulfilling its legislative mandate, and recommend ways to resolve any issues or problems that are identified as barriers to the delivery of the Tribunal's mandate.
- 3.26 The Deputy Minister is responsible for providing a framework for assessing whether the Tribunal's business planning, performance measurement processes and goals are developed and implemented in accordance with approved government policies.
- 3.27 The Deputy Minister is responsible for ensuring that all accountability and reporting requirements as provided for by this MOU are met.
- 3.28 The Deputy Minister or his/her delegate is responsible for ensuring a performance contract has been established for the Director/Registrar of the Ontario Labour Relations Board based on consultation with the Chair of the

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Ontario Labour Relations Board, and the Presiding Officer, that reflects the Ontario Labour Relations Board's and the 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 Director/Registrar of the Ontario Labour Relations Board, based on input and recommendation from the Chair of the Ontario Labour Relations Board.

The Director/Registrar of the Ontario Labour Relations Board

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

4. INFORMATION EXCHANGE

- 4.1 The Minister and the PO recognise that timely information exchange concerning the operations and administration of the Tribunal is essential to:
- i) enable the Minister to be accountable for the Tribunal in the Legislature;
 - ii) enable the parties to discharge their respective responsibilities; and
 - iii) ensure the consistency of the Tribunal's operational initiatives with the strategic directions of the Government of Ontario, as for example, meeting the government's standards of public service.

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- 4.2 The Minister shall meet with the PO on a regular basis, and as required to:
- (i) discuss issues relating to the delivery of the Tribunal's mandate;
 - (ii) review matters provided for in this MOU;
 - (iii) discuss initiatives and issues that affect the Tribunal and the Ministry's common stakeholder communities;
 - (iv) ensure operational initiatives which are developed and implemented are in accordance with the Tribunal's legislative mandate.
 - (v) discuss any other issue considered appropriate.
- 4.3 The Deputy Minister shall meet with the PO on a regular basis, and as required to discuss matters of mutual importance to the Tribunal and the Ministry, such as the services provided by the Ministry to the Tribunal, the implementation of corporate Ministry policies, issues relating to the efficient operation of the Tribunal, and to review matters provided for in this MOU.
- 4.4 The PO shall keep the Minister advised of all planned events, as well as 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 Tribunal which are of importance to the Ministry, and shall keep the Deputy Minister informed and up-to-date on all program operating matters.
- 4.5 The Ministry, wherever possible, shall consult with the Tribunal as appropriate on initiatives that are being undertaken to amend the legislation or regulations that may affect the Tribunal's mandate or operations. This commitment includes, wherever possible, consultation on any review of the Tribunal's mandate or any consideration of alternative means of delivery of its services. The Minister shall advise the PO of those policy decisions of the Government of Ontario relevant to the administration of the Tribunal's operations.
- 4.6 The Minister and the PO shall consult with each other with respect to release to the public, via the media or otherwise, of any policy or operational initiative.
- 4.7 The Minister and the PO shall share information in a timely fashion, concerning any issue that affects the Tribunal's operations or may require the Minister's attention. This may include issues which:

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- (i) have a significant impact on clients or stakeholders;
- (ii) raise questions in the Legislature, or are raised by the media or stakeholders;
- (iii) 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 PO of the policies of the Ministry and the government that apply to the Tribunal, 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 documents such as Rules of Practice or Guide to Hearings, the PO shall consult with the Minister.

5. MANAGEMENT AND ADMINISTRATION

5.1 Agency Classification and Staffing

5.1.1 The Tribunal is classified as an adjudicative agency of the Government of Ontario under the provisions of the Agency Establishment and Accountability Directive. Accordingly, the Tribunal 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 Tribunal receives its funds from the Consolidated Revenue Fund through the Ministry's Expenditure Estimates, pursuant to an appropriation authorized by the Legislature. Accordingly, the Tribunal is subject to all Ministry of Finance policies, directives, and guidelines.

5.1.3 The Tribunal is prescribed as a Commission Public Body under the PSOA. With the exception of persons appointed by the LGIC under the Act, any staff assigned to work for the Tribunal are appointed under Part III of the

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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 Tribunal 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.
- 5.1.5 Schedule B, which forms part of this Memorandum of Understanding, contains a list of statutes that are applicable to the Tribunal. The Tribunal must comply with all applicable statutes, whether or not it is specifically listed in Schedule B.
- 5.1.6 The PO, one or more Deputy Presiding Officers and Members of the Tribunal equal in number representative of employers and employees, pursuant to subsection 28(1) of the Act, are appointed by the LGIC by Order in Council.
- 5.1.7 Pursuant to subsection 28(2) of the Act, the LGIC shall designate one of the Deputy Presiding Officers to be the alternate Presiding Officer and when the alternate Presiding Officer is required to act as such, he or she is responsible for the matters assigned to the PO of the Tribunal by this MOU. In the absence of a designation by the LGIC, the Presiding Officer shall designate in writing one of the Deputy Presiding Officers to be the acting Presiding Officer for the purposes of this MOU.
- 5.1.8 The PO shall notify the Minister of appointment vacancies. Appointments shall be made in accordance with the process for making appointments and re-appointments of Deputy Presiding Officers and Members as may be established by Management Board of Cabinet.

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- 5.1.9 Members of the Human Rights Tribunal of Ontario appointed under the *Human Rights Code* and members of the Ontario Labour Relations Board appointed under the *Labour Relations Act, 1995* may be cross-appointed as Deputy Presiding Officers of the Tribunal.
- 5.1.10 The Tribunal currently does not have staff other than those appointed by the LGIC under subsection 28(1) of the Act.

5.2 Administrative Support

- 5.2.1 The Tribunal currently does not have any administrative staff. The Tribunal receives its administrative support from the Ministry, the Ontario Labour Relations Board and through a Co-Location and Shared Services Agreement described in Article 5.8 of this MOU.
- 5.2.2 The Tribunal 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 Tribunal.
- 5.2.3 The Deputy Minister is responsible for negotiating administrative services to be provided to the Tribunal through Ontario Shared Services.
- 5.2.4 The PO 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 Tribunal.

5.3 Legal Services

- 5.3.1 The Tribunal may obtain legal services from counsel at the Ontario Labour Relations Board as required.
- 5.3.2 The Tribunal may obtain outside legal assistance when necessary. If such assistance is to be obtained, the Tribunal 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.

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5.4 Management Board of Cabinet Requirements

- 5.4.1 As an agency of the government, the Tribunal 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 and subsection 33(5) of the Act, the Chief Administrative Officer of the Commission shall present, for review by the Minister, an annual report on the activities and affairs of the Commission. The Tribunal shall report annually through the Commission's annual report. The Tribunal shall also prepare 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 Tribunal's portion of the annual report shall include a report on the Tribunal's performance measures and indicators and client service initiatives.
- 5.4.4 The PO shall ensure that conflict of interest matters regarding Deputy Presiding Officers and Members of the Tribunal are dealt with in accordance with the Management Board of Cabinet Directives and Guidelines on Government Appointees.

5.5 Financial and Human Resources Delegation

- 5.5.1 Any employees who are necessary for the proper conduct of the Tribunal's work may be appointed under the PSOA to serve in the Office pursuant to subsection 27(3) of the Act. Due to the Co-Location and Shared Services Agreement entered into by the Tribunal and the administrative support provided by the Ontario Labour Relations Board, as described in Article 5.8 of this MOU, there is currently no need for employees to be assigned to work in the Tribunal.

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- 5.5.2 Pursuant to the PSOA, the Public Service Commission has delegated human resources authority to the Director/Registrar of the Ontario Labour Relations Board.
- 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 Director/Registrar of the Ontario Labour Relations Board has subdelegated his or her human resources authority, in accordance with the PSOA, to public servants within the Tribunal 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 PO shall ensure that individuals in the Tribunal with delegated or subdelegated 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 or policies and in accordance with the mandate of the Tribunal, and within the parameters of the delegated authority.
- 5.5.6 The financial framework for the Tribunal is set out in the Ministry's Delegation Document, entitled "Ministry of Labour Financial Authority Framework", referred to as the "Delegation Document". Any reference to the Delegation Document in this MOU shall include any amendments made to it after the date this MOU comes into effect.
- 5.5.7 The Deputy Minister has, with the knowledge of the CAO, delegated financial authority to the PO, in accordance with the Delegation Document.
- 5.5.8 The terms and conditions of the delegated authority are specified in the Delegation Document, and any delegation is conditional upon exercising the delegated authority as defined therein.

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- 5.5.9 The PO shall exercise the delegated authority in accordance with the operational goals and mandate of the Tribunal and within the parameters of the Delegation Document.
- 5.5.10 The PO is accountable to the Deputy Minister for compliance with the Delegation Document, and is responsible for ensuring that the Tribunal operates within its approved budget allocation in fulfilling its mandate.
- 5.5.11 Financial and accounting procedures of the Commission shall be in accordance with Ministry of Finance and Management Board of Cabinet Directives and Guidelines.
- 5.5.12 The Director/Registrar of the Ontario Labour Relations Board is accountable to the Deputy Minister or the Deputy Minister's delegate for the management and supervision of Tribunal staff, when and if hired, 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 Director/Registrar is responsible for human resource management including Talent Management and other programs. The Director/Registrar of the Ontario Labour Relations Board is ultimately responsible to the Public Service Commission for carrying out the human resources management functions delegated to him by the Public Service Commission. The Director/Registrar of the Ontario Labour Relations Board shall exercise this authority in support of the PO's responsibility to direct the affairs of the Tribunal within its mandate.
- 5.5.13 The PO is responsible for bringing any significant human resources matters relating to the Tribunal to the attention of the Chief Administrative Officer of the Ministry or the Director of the branch responsible for providing strategic human resource advice in the Ministry, whether or not a delegated power is, or has been, exercised by the Director/Registrar of the Ontario Labour Relations Board.

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 PO with respect to the Tribunal pursuant to a delegation document dated

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December 11, 2008, as amended from time to time. The PO recognizes that the Minister is ultimately responsible and accountable to the Legislature for ensuring compliance with the FOIPPA.

- 5.6.2 If the Tribunal or the PO 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 Tribunal and the PO to review the Tribunal'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 Tribunal is the person prescribed in Ontario Regulation 147/10 made under the PSOA. Currently, the Director/Registrar of the Ontario Labour Relations Board is prescribed as the Ethics Executive for public servants, other than government appointees, of the Tribunal ("EE"). The PO shall receive reports from time to time from the EE regarding the ongoing application of this Article.
- 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.

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- 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 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 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 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.

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- 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, 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 PO is the Ethics Executive for Deputy Presiding Officers and Members of the Tribunal. If the PO receives a disclosure of wrongdoing from one of these persons, or becomes aware of disclosure of wrongdoing filed with the Integrity Commissioner, the PO will notify the Minister, where appropriate, of the disclosure and provide as much information about the disclosure as may be appropriate in the circumstances. The PO will notify the Minister, where appropriate, of the outcome of the disclosure of wrongdoing.
- 5.7.12 The PO 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 PO will notify the Minister, where appropriate, of the outcome of the disclosure of wrongdoing.
- 5.7.13 The Director/Registrar of the Ontario Labour Relations Board 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

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Commissioner in his or her capacity as the EE, with as much information about the disclosure as may be appropriate in the circumstances. The Director/Registrar of the Ontario Labour Relations Board will notify the Deputy Minister, where appropriate, of the outcome of the disclosure of wrongdoing. The Director/Registrar of the Ontario Labour Relations Board 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 Tribunal has entered into a Co-Location and Shared Services Agreement with the Ontario Labour Relations Board, 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 Tribunal in the continued operation of the Co-Location and Shared Services Agreement.
- 5.8.3 In addition, the Ontario Labour Relations Board provides administrative services to the Tribunal in accordance with a memorandum of the Chief Administrative Officer of the Ministry dated October 12, 2004.
- 5.8.4 The PO 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 PO, on behalf of the Tribunal, 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 Tribunal and other

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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 PO shall review the Tribunal's annual budget requirements and business plan and ensure that the business plan for the Tribunal 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 Tribunal's business plan may form part of the Ministry's annual budget plan submission and shall be reflective of the Ministry's broad strategic directions. Each year the Minister shall advise the PO of government and Ministry priorities and directions for inclusion in the business plan.
- 6.1.3 The Tribunal's business plan must conform to the Agency Establishment and Accountability Directive and shall:
- (i) outline its business strategies for fulfilling the statutory mandate under all legislation which confers powers or duties upon it;
 - (ii) include the previous year's resource levels and expenditures, forecast expenditures for the current year and the proposed budget for the upcoming year;
 - (iii) outline its proposed performance, quality service measures, standards, targets and commitments, and expected achievements and outcomes for the upcoming year;
 - (iv) outline its proposed client service initiatives for the upcoming year including a case management strategy;

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- (v) include detailed human resources, cash flow and information technology plans that reflect performance goals, client service initiatives and business strategies;
- (vi) include Tribunal workload targets respecting the number of applications received, hearings held, and decisions rendered by the Tribunal.
- (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 PO shall prepare and submit such reports as are required under any applicable legislation or by the Minister, in accordance with established practices and time frames of the Ministry.

6.1.5 The Tribunal 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 Tribunal 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.

6.2.3 Regardless of any audit described in Articles 6.2.1 and 6.2.2, the Minister may direct that the Tribunal be audited by an external auditor.

6.2.4 The PO may request that the Deputy Minister arrange for an external audit of the financial transactions or management controls of the Tribunal at the Tribunal's expense.

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- 6.2.5 The Tribunal shall provide the information, material and access necessary for the conduct of any audit.
- 6.2.6 The Tribunal will promptly provide a copy of every report from any audit to the Minister, the Deputy Minister and the Minister of Finance. The Tribunal will also provide a copy of its response to the audit report and any recommendations therein. The Tribunal will advise the Minister annually on any outstanding audit recommendations.

7.0 OTHER CONSIDERATIONS

7.1 Emergency Management

- 7.1.1 As an adjudicative agency of the government, the Commission 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 Commission and the Ministry agree to develop and maintain necessary mutual arrangements to ensure continuity of the Commission'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 Commission 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 Commission 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 Commission will make reasonable efforts to integrate consideration of the purposes of the EBR and utilize environmentally sound practices when conducting its business.

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7.3 Customer Service

- 7.3.1 The PO will ensure that the Tribunal delivers its services in accordance with the principles and mandatory requirements, as appropriate, of the OPS Service Directive.
- 7.3.1 The Tribunal 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 Tribunal 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 Tribunal shall comply with Management Board of Cabinet's Managing, Distributing and Pricing Government Information (Intellectual Property) Directive.

7.5 Insurance

- 7.5.1 The Tribunal is covered by the province's Protection Program.

7.6 Records Management

- 7.6.1 Tribunal 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 Tribunal does not receive a rebate of the federal portion of the Harmonized Sales Tax.

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Schedule A: Applicable Government Directives

The Tribunal 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 Tribunal 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 Tribunal 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 Tribunal 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 Tribunal 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 Tribunal is responsible for,

- (a) ensuring that the Tribunal 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 Tribunal;
- (c) managing and monitoring the legal work performed by private sector lawyers on behalf of the Tribunal;
- (d) reviewing and approving invoices/bills submitted by private sector lawyers for legal work performed on behalf of the Tribunal;
- (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.

