

Chapter 4

Section 4.02

The Provincial Public Appointment Process

1.0 Executive Summary

Public appointments in Ontario are co-ordinated through the Public Appointments Secretariat (“Secretariat”), which was set up to both administer and provide support to ministries on the appointment process. It reports to the Treasury Board Secretariat. The Secretariat publishes information on its website about the appointment process, upcoming vacancies, how to apply for appointments, and specific details on all current appointments by agency (including the tenure, remuneration and position).

While it is good that the administration of the appointment process is centrally co-ordinated through the Secretariat, it (in conjunction with the ministries) has not ensured that the appointment of members to provincial agencies, boards and other entities is done in a timely and transparent manner. Timely appointments of qualified candidates to public agencies, boards and other entities are important for ensuring these organizations are well governed and meet their mandates. Each year, the provincial government makes approximately 1,500 public appointments to 184 provincial agencies and 360 other entities. In our review of the appointment process, we noted the following:

- **Significant delays in the appointment and reappointment processes in the last five years.** In our review of a sample of 1,400 new appointments in the last five years between 2012 and 2016, we found that it took on average almost 16 months to fill these vacant positions despite frequent monitoring and reporting of existing and upcoming vacancies months ahead of the end date of the outgoing members’ terms. The delay in 421 of these appointments caused 33 provincial agencies to drop below their legislated minimum number of members and 163 other entities not to have legislated public representatives on their boards as required. The remaining 979 appointments, at agencies with no legislated minimum requirements, had similar delays, taking an average of 15 months to make new appointments. Board-governed agencies could have their operations impacted if they are operating below their minimum number of members prescribed in legislation, so that there may not be sufficient members to hold a quorum for meetings, or if the permanent chair position remains vacant for a long time. As well, in our review of 2,039 reappointments in the same five-year period, we found that for over 300 of them, the reappointment occurred on average more than two months

after the appointee's term had ended, with the longest delay in reappointments being over one year. As of August 2016, 165 of the 215 vacancies throughout the Province were over six months old. In addition, the majority of CEOs and appointees (including board chairs) we surveyed noted concerns with the timeliness of appointments, with almost 77% of CEOs, 54% of the chairs, and 50% of the other appointees rating the timeliness of the process as poor or very poor. Agency CEOs and chairs reported that delays in appointments have a significant negative impact on their operations. For example, they have difficulty achieving quorums for meetings; and members waiting to be reappointed cannot participate in major decisions. These delays also create a lot of uncertainty as the agencies are unable to plan future meetings or set up subcommittees of the boards until they know when members will be appointed.

- **Lack of transparency in the selection and approval process undermines its credibility.** In our survey of the appointees to agencies (including the chairs) and CEOs, 28% of the chairs, 21% of the other appointees and 54% of the CEOs rated the transparency of the appointment process as poor or very poor. They indicated that agencies and appointment candidates are not well informed of the status of appointments, and sometimes they wait months for approval decisions even when the candidates have been recommended by the agencies for appointment. In addition, only 40% of the chairs strongly agreed that there were sufficient consultation and communication between the ministry and their organization to ensure appointees have the necessary competencies to fill the gaps in their boards. Most appointments are recommended to Cabinet for approval by the minister or premier, although the appointments to adjudicative tribunals and regulatory agencies have to be recommended by the chair of these agencies.

- **Appointees to non-board-governed agencies are serving longer than the maximum term allowed by government directive.** In 2006, the government mandated that appointees to adjudicative and regulatory agencies (non-board-governed agencies) are to serve a maximum term of 10 years in the same position (for example, member, chair), unless exceptional circumstances exist to allow the appointee to serve longer. As of July 2016, 275 (or 22%) of these appointees had served for longer than 10 years in the same position. Terms longer than the maximum were meant to be an exception and only if the appointment served the public interest, such as in the case of an appointee staying to mentor and provide training to new members or in cases where there is difficulty recruiting a replacement in certain regions. While there are no maximum terms for board-governed, advisory and other agencies, 41 appointees at board-governed, 47 at advisory and 44 at other agencies have served over 10 years.
- **Appointees are able to serve on certain agencies past their term.** Forty-three agencies have enabling legislation that permits appointees to continue their duties until they are reappointed or a replacement is found. For the remaining 501 agencies, positions become vacant when members' terms expire and the new appointments or reappointments have not yet been made. This delay in new appointments or reappointments can have negative consequences for agency operations, such as lack of a quorum for decision-making. Only five of the 77 board-governed agencies have enabling legislation permitting appointees to serve past their term.
- **Agencies have 50% or more of their appointees expiring in the same year.** At 208 agencies, 50% or more of their appointees have terms ending in the same year. This adds undue stress on the process of finding the

right replacement candidates, or reappointing candidates, in a timely manner.

- **A better process is needed to ensure that provincial agencies and other entities are attracting qualified candidates.** In reviewing applications to public appointments, we noted that relatively few applicants are interested in positions at agencies in Northern Ontario. As of August 2016, 30 agencies with one or more vacancies have received less than 10 applications each; 22 of them were in Northern Ontario. Conversely, other agencies have a significant number of applicants on file, yet they still have long-standing vacancies. For example, the Citizens' Council (an advisory agency that allows citizens to provide input on the policies and priorities in Ontario's prescription drug program) has received 300 applications over the past three years, yet one of its seven unfilled positions has been vacant since April 2012. The chairs responding to our survey noted that ministries and agencies are not doing a good enough job consulting with each other to ensure that appointees have the right skills to fill the gaps at agencies.
- **Training provided by the Public Appointments Secretariat has generally been well received by the appointees.** Mandatory training of appointees by the Public Appointments Secretariat started in 2015. Board-governed agency appointees are required to take an in-class training session, and all new appointees and reappointees are required to complete an online training session. Our survey indicated that appointees were generally satisfied with the training, though 40% requested more information on the expectations of the appointee position. Our survey also found that more specific training on the agency was provided to over 90% of the respondents by the agencies.
- **Compensation is not in line with the Agencies and Appointments Directive.** Almost a quarter of appointees to board-governed and

advisory agencies are compensated at per diem rates higher than the rates set out in the Directive. The difference between the rates in the Directive and the actual rates paid can be as high as \$800 for an appointee. Higher rates are being separately approved by Orders-in-Council for these appointees.

This report contains six recommendations consisting of 14 recommended actions to address our findings.

OVERALL TREASURY BOARD SECRETARIAT RESPONSE

While Ontario has a well-developed public appointments process that has been used as a model for similar processes in other jurisdictions, there is room to improve and modernize Ontario's process. The input and recommendations of the Auditor General will assist Ontario in further enhancing the transparency and effectiveness of Ontario's public appointments process and help make Ontario's public appointments process an international benchmark.

2.0 Background

2.1 What Are Public Appointments?

Public appointments are appointments made by the government to positions at public entities (such as appointments to an entity's board). A public entity is an organization that was created by the government to provide, manage, or advise on public services. While created by the government, public entities generally operate at arm's length, to varying degrees. Public appointees are required to exercise a duty of care, which means they must act honestly, in good faith, and in the best interest of the public entity.

Public appointments can be made one of three ways:

- by premier’s prerogative—appointments by an Order-in-Council on the recommendation of the premier;
- by minister’s prerogative—appointments by an Order-in-Council on the recommendation of a minister; or
- by ministerial letter—if an organization’s enabling legislation permits it, a minister may make appointments to agencies by a ministerial letter.

Appointments made by an Order-in-Council are formally approved by the Lieutenant-Governor. In some cases, the enabling legislation of the agency specifies whether these appointments are to be recommended by the premier or responsible minister, though in most cases it is at the government’s discretion.

As of July 2016, a total of 3,647 individuals were serving as public appointees, appointed as shown in **Figure 1**.

2.2 What Types of Organizations Have Public Appointees?

As of July 2016, public appointees in Ontario served in 544 different organizations. About one-third of them (184) are “provincial agencies.” The remaining two-thirds (360) are “other entities.”

A “provincial agency” is an organization that is accountable to a government minister for achieving its mandate and most of whose appointments are made by the provincial government. Examples are Metrolinx, Infrastructure Ontario, the Ontario

Labour Relations Board, and the Landlord and Tenant Board.

In contrast, an “other entity” does not have to follow the financial and administrative requirements that the Management Board of Cabinet has set for provincial agencies. They are still public entities because the government makes at least one appointment to them. Examples are the boards of governors at universities, police services boards and public health unit boards.

As **Figure 2** shows, provincial agencies are divided into board-governed agencies, non-board-governed agencies and advisory agencies. In short:

- Board-governed agencies have the authority to make operating decisions through their governing board of directors. They also have the financial and operating authority to carry on a business and conduct operations in support of the agency’s mandate.
- Non-board-governed agencies lack the authority to make their own operational decisions

Figure 2: Organizations with Public Appointees, July 2016

Source of data: Public Appointments Secretariat and MyOPS Directives website

	# of Entities	# of Public Appointees
Provincial Agencies		
I. Board-Governed		
Operational Services*	37	324
Operational Enterprises*	30	284
Trust*	6	39
Regulatory*	4	41
Subtotal	77	688
II. Non-Board-Governed		
Adjudicative*	34	1159
Regulatory*	13	89
Subtotal	47	1,248
III. Advisory	60	497
Subtotal Provincial Agencies	184	2,433
Other Entities		
IV. Other Entities	360	1,214
Total	544	3,647

* This subdivision of provincial agencies is described in **Figure 3**.

Figure 1: Public Appointees by Type of Appointment, July 2016

Source of data: Public Appointments Secretariat

Appointments By:	# of Appointees
Premier’s prerogative	358
Minister’s prerogative	2,772
Ministerial letter	517
Total	3,647

and rely on their responsible ministries for operational support.

- Advisory agencies exist solely for the purpose of providing advice or recommendations to a minister or the premier (for example, the Accessibility Standards Advisory Council, the

Committee to Evaluate Drugs, the Livestock Medicines Advisory Committee and the Office for Victims of Crime).

Figure 3 describes the further subdivisions of board-governed and non-board-governed agencies.

Figure 3: Further Subdivisions of Board-Governed and Non-Board-Governed Agencies

Source of data: Public Appointments Secretariat

	Primary Function	Examples
I. Board-Governed		
Operational Service Agencies	Deliver goods or services to the public (usually with no, or a minimal, fee).	<ul style="list-style-type: none"> • Cancer Care Ontario • Education Quality and Accountability Office • eHealth Ontario • Ontario Tourism Marketing Partnership Corporation
Operational Enterprise Agencies	Sell goods or services to the public in a commercial manner (including, but not necessarily, in competition with the private sector).	<ul style="list-style-type: none"> • Liquor Control Board of Ontario • Metrolinx • Niagara Parks Commission • Ontario Lottery and Gaming Corporation
Trusts	Administer funds and/or other assets for beneficiaries named under statute.	<ul style="list-style-type: none"> • Grain Financial Protection Board • Livestock Financial Protection Board • Ontario Public Service Pension Board • Workplace Safety and Insurance Board
Regulatory Agencies	Make independent decisions (including inspections, investigations, prosecutions, certifications, licensing and rate-setting) that limit or promote the conduct, practice, obligations, rights and responsibilities of an individual, business or corporate body.	<ul style="list-style-type: none"> • Alcohol and Gaming Commission of Ontario • Financial Services Commission of Ontario • Ontario Energy Board • Ontario Securities Commission
II. Non-Board-Governed		
Adjudicative Agencies	Make independent quasi-judicial decisions and resolve disputes on obligations, rights and responsibilities of an individual, business or corporate body against existing policies, regulations, and statutes, and/or hear appeals against previous decisions.	<ul style="list-style-type: none"> • Animal Care Review Board • Human Rights Tribunal of Ontario • Ontario Labour Relations Board • Ontario Municipal Board
Regulatory Agencies	Make independent decisions (including inspections, investigations, prosecutions, certifications, licensing and rate-setting) that limit or promote the conduct, practice, obligations, rights and responsibilities of an individual, business or corporate body.	<ul style="list-style-type: none"> • Advertising Review Board • Building Materials Evaluation Commission • Ontario Human Rights Commission • Public Service Commission
III. Advisory		
Advisory Agencies	Provide information and/or advice to assist in the development of programs.	<ul style="list-style-type: none"> • Accessibility Standards Advisory Council • Livestock Medicines Advisory Committee • Committee to Evaluate Drugs • Office for Victims of Crime
IV. Other		
Other Entities	Cannot be assigned to any of the above categories. These are organizations that are excluded from the financial and administrative requirements of the Management Board of Cabinet, but to which the government makes at least one appointment.	<ul style="list-style-type: none"> • University boards • College boards • Police Services boards • Ontario Trillium Foundation—Grant Review Teams

Appendix 1 breaks down the Province's 3,647 public appointees (as of July 2016) by ministry and type of entity.

For the purpose of this report, reference to agencies or organizations would refer to all provincial agencies and other entities, unless it is specifically identified as such.

2.3 What Types of Positions do Public Appointees Fill?

The types of positions that public appointees fill vary from agency to agency. They include chairs, vice-chairs, and members for all the organizations; and the presidents and chief executive officers for 12 provincial agencies (including eHealth, Ontario Clean Water Agency, and Workplace Safety and Insurance Board).

Most positions are part-time and involve meeting periodically as required by an organization's mandate. Other appointments are full-time positions, which primarily involve members appointed to the adjudicative agencies who are remunerated within the Ontario Public Service salary ranges. Whether or not a position is full-time is defined by the needs of the organization.

We noted that the basis for determining the number of appointments varies across the agencies. Some will specify (in their enabling legislation) a minimum number of appointees, while others will specify a maximum. Where a minimum is specified, it is the minister who decides what the optimal number of appointees should be. Ministry monitoring systems will then flag the cases where the number of appointments drops below the minimum required by legislation or determined by the minister.

2.4 Why Are Public Appointments Important?

Public appointees perform specific responsibilities to deliver, manage or advise on important public services on behalf of the Ontario government. For example, they serve on the board of directors of agencies such as Ontario Power Generation,

which is responsible for generating almost half of Ontario's electricity, or regulatory authorities such as the Ontario Energy Board, which oversees energy pricing. They adjudicate appeals from injured workers on the Workplace Safety and Insurance Appeals Tribunal, or they decide on the compensation given to victims of violent crimes by serving on the Criminal Injuries Compensation Board.

Given the considerable impact these organizations have on the citizens of Ontario, it is crucial that appointees be qualified, that the appointments be timely, and that candidates be selected through an open and transparent process. Deficiencies or delays in the appointment process can result in significant governance issues, such as there are not enough members to form quorums for meetings (for board-governed agencies) or organizations not being able to effectively plan resources to schedule hearings (for adjudicative agencies). Also, if the appointment process seems cumbersome to observers, qualified individuals may choose not to participate in public service. Similarly, if qualified appointees go through a frustrating process in being appointed, they may choose not to renew their terms.

2.5 How Does the Public Appointment Process Work?

The Agencies and Appointments Directive (issued in 2015) sets out the policies and procedures for public appointments. These policies and procedures are intended to ensure that the most qualified people with the highest personal and professional integrity serve the public on the Province's agencies, boards and commissions. Part 3 of the Directive sets out criteria for the equitable treatment and remuneration of all government appointees who are accountable to a minister of the Government of Ontario.

The process followed for new appointments and reappointments is presented in the next subsections. We conducted research on the appointment processes in other Canadian jurisdictions and noted that the processes are quite similar across Canada. Refer to **Appendix 2** for a detailed comparison.

2.5.1 New Appointments

Figure 4 gives an overview of the public appointment process for new appointments.

Step 1: Vacant Positions are Identified and Advertised

The Public Appointments Secretariat (“Secretariat”) is responsible for the co-ordination and administration of the appointments process. It provides advice and support to ministries and implements policies and directives affecting appointees. The Secretariat has seven staff and reports to the Treasury Board Secretariat. It maintains a website that includes an inventory of all appointment positions. This allows it to identify vacancies. Every two months, it reports to the ministries on current vacancies and on positions that will become vacant in the next six months.

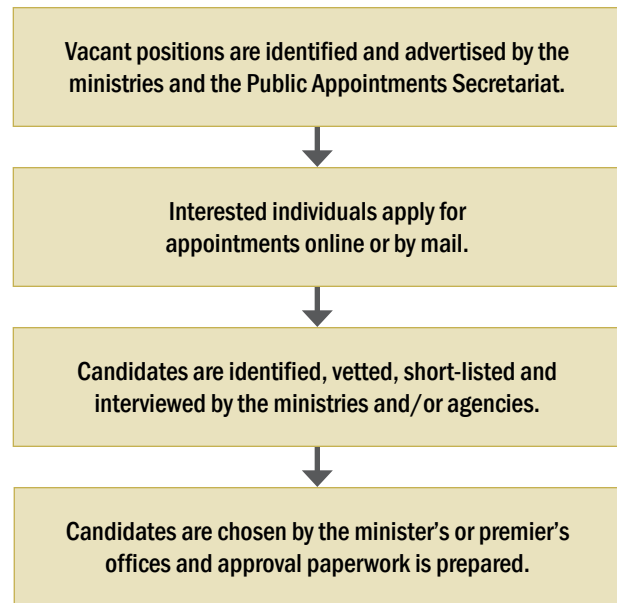
Ministries and agencies are responsible for monitoring their vacancies. Specifically, under the Agencies and Appointments Directive, ministers and deputy ministers are responsible for acting, in co-operation with the Secretariat, as the prime contact with respect to any appointments within their portfolio.

All ministers’ offices have staff who are responsible for appointments. Depending on the size of the ministry and the number of appointments, a ministry may also have a dedicated appointments unit, such as the ministries of the Attorney General, Health and Long-Term Care, and Labour. Typically, it is the role of ministry staff to support the minister’s office in the public appointments process. This includes monitoring vacancies and appointment expiration dates, briefing the minister’s office on them, preparing appointment ads and assisting with recruitment.

Vacant positions are advertised on the Secretariat’s website. These are usually chair vacancies and full-time appointments, but occasionally they also include other Ministry-advertised part-time appointments.

Figure 4: The Process for New Appointments

Source of data: Public Appointments Secretariat



Step 2: Interested Individuals Apply for Appointments

Any member of the public can apply for an appointment online through the website, or by mail or fax. The Secretariat provides a copy of the application to the appropriate ministry, and keeps the application on file for three years.

It is the responsibility of the ministries and agencies to review the applications for suitability of the interested candidates to their agencies and some agencies have specific eligibility requirements that must be met for certain appointments. For example, the Investment Advisory Committee of the Public Guardian and Trustee requires its members to have a minimum of 10 years’ experience in investment management, institutional fund management or the financial services sector.

Step 3: Candidates are Identified, Vetted, Short-Listed and Interviewed

For most appointments, the minister’s office is primarily responsible for determining the specifics of the recruitment process for the appointment, identifying candidates and vetting them to ensure

they have the necessary skills for the appointment. Depending on the appointment, either the minister's office or the premier's office is responsible for interviewing candidates. Interview panels generally consist of representation from the premier's office, minister's office, the assistant deputy minister (or deputy), and in some cases, a current chair of a comparable tribunal, agency or board, or, if possible, the outgoing chair. Interviews are required for all executive chair or chair positions.

The minister's office usually works with agency chairs in all these parts of the process.

The level of a minister's involvement in the appointments process varies from ministry to ministry. For ministries that are responsible for a large number of appointments, such as the Ministry of Health and Long-Term Care, ministry staff are more involved in supporting the selection process and recommending appointments to the minister. For ministries with fewer appointments, the minister's office is more involved in the selection process, including interviewing the potential candidates.

Adjudicative agencies, in accordance with the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* follow a slightly different process: the executive chair or chair of the agency (not the minister's office) identifies, vets, short-lists and interviews the candidates, and sends their list of recommended candidates to the minister for comment and final approval.

Step 4: Candidates are Chosen and Approval Paperwork is Prepared

If the premier's office/minister's office/adjudicative agency chair is satisfied after the interview that a candidate should be appointed (and all security checks and document reviews check out), approval paperwork is prepared. Different paperwork processes are followed depending on the type of appointment (as outlined earlier in **Section 2.1**).

Premier's and Minister's Prerogative Appointments

If the appointment is by the premier's prerogative, the Secretariat prepares an Order-in-Council, which the premier signs.

If the appointment is by minister's prerogative, ministry staff prepare the Order-in-Council, which the minister signs.

Orders-in-Council are technically decisions of the Executive Council (Cabinet) that take the form of "advice" to the Lieutenant-Governor. So once an Order-in-Council is signed by the minister, the Secretariat reviews it and the rest of the appointment documents, and forwards the Order-in-Council to Cabinet. It then works with the premier's office to schedule Cabinet meeting time for discussion and approval of the appointment.

If the term of the appointment is longer than a year, one more process occurs between Cabinet approval and the Lieutenant-Governor's signing of the Order-in-Council. The minister's office/ministry informs the candidate of the approval and explains that the appointment is subject to review by the Standing Committee on Government Agencies (Committee). The Secretariat then sends information on the candidate to the Committee.

The Committee has up to 14 days to decide whether or not to review a candidate. Candidates are selected for review by a subcommittee composed of a member from each political party and the chair. In the last five years (2011 to 2015), the Committee reviewed 125 out of a total of 2,014 Order-in-Council candidates, or about 6%.

If it decides to review a candidate, it has up to 30 days to complete the review (if needed, the Committee can extend this period with its members' unanimous consent). The review involves calling the candidate in for a hearing and then voting on whether or not it agrees with the appointment. The hearing allows the Committee to question the candidates on their qualifications and publicly express their opinion on the appointments, though the Committee has no veto power to block the appointment, even if it votes against it.

Once the review has been waived or completed, or the 30-day deadline for the Committee to act has passed, the Lieutenant-Governor signs the Order-in-Council. This completes the process for premier's and minister's prerogative appointments.

Ministerial Letter Appointments

If the appointment is by ministerial letter, ministry staff prepare the letter, which the minister signs. No Cabinet approval is required. The signing of the letter completes the appointment. Once the Public Appointments Secretariat receives the final letter, it publicly posts the names of the appointees on its website.

2.5.2 Reappointments

Reappointments follow the same process as new appointments except for the following:

- In step 1, once the vacancy is identified (by the Secretariat and ministry staff monitoring appointment expiration dates), the position is not advertised. There is no step 2 of candidates applying, and no step 3 of candidates being identified, vetted, short-listed and interviewed.
- Once the vacancy is identified, step 4 of preparing approval paperwork occurs (that is, the Order-in-Council or ministerial letter is prepared for signature).
- Reappointments are not subject to review by the Committee, so once the approvals are complete, the appointee is reappointed.

2.6 What Training Is Provided to Public Appointees?

Up until 2015, the Secretariat had no training program in place for public appointees and relied on agencies to provide the necessary training. In 2015, the Secretariat commenced a training and orientation program for new appointees.

Appointees to board-governed agencies are required to attend a full-day, in-class training session, as well as complete online training. Online training covers general governance topics and appointees' roles.

All other appointees are required to complete only the online training.

The Secretariat website also includes links to generic governance tools for provincial agencies. These include, for example, descriptions of different position titles that specify the purpose of the position, the key duties and the required qualifications.

The training courses and materials were prepared to give new appointees a common understanding of their role; to provide easy access to governance information and guidance; to provide consistent training to all public appointees; to increase awareness of the governance and accountability expectations and responsibilities of appointees; and to enhance communication between agencies and ministries.

2.7 Are Public Appointees Compensated for Their Time?

As mentioned in **Section 2.3**, most appointments are part-time, with full-time appointees mostly limited to adjudicative tribunals and regulatory agencies.

Full-time appointees are remunerated within the Ontario Public Service salary ranges for their services.

Part-time appointees may serve as unpaid volunteers or be compensated in ways that depend on the nature of the services they provide. These include per diems and expense reimbursement. The rates of remuneration are set out in the Agencies and Appointments Directive though, in some cases, the rates are set by Order-in-Council (as approved by the Lieutenant-Governor) on an agency by agency basis.

Because an element of public service is implied in any appointment, the compensation public appointees receive may be less than the compensation for the same type of work in the private sector.

Figure 5 shows the numbers of appointees receiving different types of compensation by type of entity.

Figure 5: Number of Appointees Receiving Different Types of Compensation, by Agency Type, as of July 2016.

Source of data: Public Appointments Secretariat

Type of Compensation	Board-Governed				Non-Board-Governed				Total
	Operational Service	Operational Enterprise	Trust	Regulatory	Adjudicative	Regulatory	Advisory	Other	
Per diem	210	137	32	14	889	67	224	294	1,867
Expenses	81	70					232	224	607
Nil ¹	20	12	1		64	2	7	223	329
OPS salary ranges ²	13	35	3	1	205	19	26	18	320
Other ³		30	3	26	1	1	8	455	524
Total	324	284	39	41	1,159	89	497	1,214	3,647

1. Nil means no payment, volunteer basis.

2. OPS salary ranges means appointees are remunerated within the Ontario Public Service salary ranges.

3. Other is remuneration paid by another entity such as a municipal council.

3.0 What We Looked At

The objective of our review was to assess whether effective systems and procedures are in place to ensure:

- appropriate information is publicly available regarding the appointment process in order to promote accessibility and transparency;
- vacancies are filled on a timely basis;
- individuals with the proper skills sets and competencies are matched to vacancies;
- appointees receive appropriate training and orientation;
- terms do not exceed maximum limits; and,
- compensation is within approved levels.

The objective and scope of our review was discussed with and agreed to by senior management at the Public Appointments Secretariat.

Our work was conducted primarily through the Public Appointments Secretariat between February and August 2016. We also met with the eight provincial ministries accounting for about 77% of the appointments and the clerk of the Standing Committee on Government Agencies to understand their roles in the appointment process and obtain their feedback on it.

We also sent out a survey to the chief executive officers/executive leads (executive leads head organizations, similar to the role of a CEO; both are referred to as CEOs throughout) of all the provincial agencies to solicit their views and opinions on the appointment process and its impact on the operations of their agencies. As well, we sent a survey to the chairs of all the provincial agencies and to a sample of other public appointees to get their perspective on and experience with the appointment process. We received feedback from 65 out of the 100 CEOs surveyed (65% response rate), and from 1,034 out of the 1,750 chairs and other appointees surveyed (59% response rate). The responses covered 410 out of the 544 provincial agencies and other entities.

We also researched and surveyed the public appointment processes in other Canadian provinces and the federal government for best practices.

We confirmed that the Ontario Internal Audit Division has not undertaken any work in this area.

4.0 Key Observations and Recommendations

4.1 Significant Delays in the Appointment and Reappointment Processes in the Last Five Years

Public appointees provide a wide range of important services, including overseeing police and health services, resolving labour disputes and deciding on compensation for victims of crime. In light of how important public appointees are in serving the public in these critical areas, it is essential that public appointments and reappointments be made in a timely and efficient manner.

When there are delays, operations of provincial agencies may be impeded. For instance, important or time-sensitive financial decisions do not get made if an agency's finance and audit committee chair is awaiting reappointment and cannot attend meetings in the meantime. Or a scheduled hearing on an employee's unjust dismissal complaint is delayed if an agency is waiting to have enough members appointed to meet its quorum requirement. For other entities, where the Province appoints at least one member to the boards as required by legislation, not having the legislated number of appointees on these boards means that the public interest may not be adequately represented as intended in the legislation.

The Public Appointments Secretariat monitors and reports on existing vacancies and upcoming vacancies six months in advance of their end dates. This information is communicated to the responsible ministries every two months so that they can initiate the process to either reappoint the existing members or appoint new members to the positions.

Our review of a sample of 1,400 new appointments (representing 53% of total new appointments) made in the last five years found that there were significant delays in appointing new members to the various agencies, despite frequent monitoring and reporting of existing and upcoming

vacancies months ahead of the expiry of terms. We looked at 421 appointments required to fill vacant positions at 196 different provincial agencies and other entities. Of the 196 organizations, 33 were provincial agencies, where the number of appointees would drop below the legislated minimum number of appointments if the position was not filled on a timely basis (that is, these agencies would operate with fewer than their minimum number of required appointees until the positions were filled), and 163 were other entities that would not have had their required provincial representation. In addition, we looked at 979 other new appointments to replace outgoing members whose terms had ended. Delays in these appointments can negatively impact agencies' operations.

We found that it took, on average, almost 16 months to fill the 421 vacancies, which caused the number of appointees to be below the minimum number required by legislation. **Figures 6a and 6b** show the length of time it took to fill the 421 vacant positions at agencies that were required to meet the legislated minimum number of members in the last five years and a list of the agencies with vacant positions that took over one year to fill.

For new appointments to fill positions above the minimum requirement, the Secretariat does not monitor how long it takes to fill these positions. To obtain an estimate of how long it takes, in our sample of 979 new appointments, we calculated the time interval between the end date of the outgoing appointees and the start date of the new appointees for the same agency. We found the average time was about 15 months, similar to the 16-month delay in appointments needed to meet the legislated minimum number of members. The Secretariat indicated that there could be a number of reasons for this time interval (such as that the recruitment might not start right away after the end date of the previous member, or the agency decided to postpone the recruitment of a new member); however, it does not track this information to be sure of the reasons for the time gap. As well, we found the time it took to make new appointments to

Figure 6a: Length of Time Required to Fill Vacant Positions to Meet Legislated Minimum Number of Members in the Last Five Years, 2012–2016

Source of data: Public Appointments Secretariat

Length of Time to Fill Vacancies	# of Vacant Positions by Agency Type				Total Positions Filled	
	Board-Governed	Non-Board-Governed	Advisory	Other	#	%
Under 3 months	11	3	0	51	65	16
Between 3 and 6 months	15	2	1	53	71	17
Between 6 and 9 months	4	1	4	31	40	10
Between 9 and 12 months	5	2	5	27	39	9
Between 1 and 2 years	17	3	2	85	107	25
Between 2 and 3 years	5	0	3	52	60	14
Over 3 years	1	0	1	37	39	9
Total	58	11	16	336	421	100

Figure 6b: Agencies with Vacant Positions Needing to Be Filled to Meet Legislated Minimum Number of Members That Took over One Year to Fill

Source of data: Public Appointments Secretariat

List of Provincial Agencies and Other Entities with Vacant Positions That Took over Three Years to Fill	# of Positions	Agency Type
Legal Aid Ontario	1 member	Board-Governed
Citizens' Council	1 member	Advisory
Board of Management – District of Nipissing East	1 member	Other
Ontario Trillium Foundation – Grant Review Teams (12 teams)	34 members	Other
Police Services Board (2)	2 members	Other
Vacant Positions That Took over Two Years but Less Than Three Years To Fill		
College of Trades Appointments Council	1 member	Board-Governed
Province of Ontario Council for the Arts (Ontario Arts Council)	1 member	Board-Governed
Provincial Schools Authority	1 vice-chair	Board-Governed
Royal Ontario Museum	2 members	Board-Governed
Citizens' Council	3 members	Advisory
Algoma University Board of Governors	1 member	Other
Ontario Trillium Foundation – Grant Review Teams (14 teams)	42 members	Other
Independent Electricity System Operator (IESO)	1 member	Other
Justices of the Peace Review Council	1 member	Other
Law Foundation of Ontario	1 member	Other
Police Services Board (5)	5 members	Other
University of Waterloo Board of Governors	1 member	Other
Vacant Positions That Took over One Year but Less Than Two Years to Fill		
Cancer Care Ontario	1 chair	Board-Governed
Local Health Integration Network – Central Local Health Integration Network	1 vice-chair	Board-Governed
Ontario Educational Communications Authority (TVO)	1 member	Board-Governed
Ontario French-Language Educational Communications Authority	3 members	Board-Governed
Province of Ontario Council for the Arts (Ontario Arts Council)	6 members	Board-Governed
Provincial Schools Authority	1 member	Board-Governed

List of Provincial Agencies and Other Entities with Vacant Positions That Took over One Year but Less Than Two Years to Fill (continued)	# of Positions	Agency Type
Royal Ontario Museum	4 members	Board-Governed
Environment and Land Tribunals Ontario (5 tribunals)	1 executive chair	Non-Board-Governed
Niagara Escarpment Commission	1 member	Non-Board-Governed
Ontario Police Arbitration Commission	1 member	Non-Board-Governed
Citizens' Council	2 members	Advisory
Art Gallery of Ontario	3 members	Other
Board of Management (2)	2 members	Other
Council of the Ontario College of Teachers	1 member	Other
Council of the Registered Insurance Brokers of Ontario	1 member	Other
Deputy Judges Council	2 members	Other
Ontario Trillium Foundation – Grant Review Team (12 teams)	40 members	Other
Health Unit Board – Chatham-Kent	1 member	Other
Human Resources Professionals Association	1 member	Other
Labour-Management Advisory Committee	1 member	Other
Laurentian University Board of Governors	2 members	Other
Municipal Property Assessment Corporation	3 members	Other
Police Services Boards (22)	22 members	Other
Royal Botanical Gardens	1 member	Other
Sir Sanford Fleming College of Applied Arts and Technology – Board of Governors	2 members	Other
University of Ottawa Board of Governors	1 member	Other
University of Toronto Governing Council	2 members	Other

the board-governed agencies was about 16 months, slightly higher than the average of 15 months.

In addition, we also found many instances where reappointments in Ontario in the last five years were made late. Specifically, in our sample of 2,039 reappointments (representing about 40% of reappointments made), 323 were made late—the average delay was two months after the end date of the previous appointment, and the longest delay was over a year after.

The enabling legislation of some agencies allows appointees to continue to sit on a board until they are reappointed. This is not the case at many agencies, however, and when it is not, appointees cannot participate in official board business until their reappointments are approved. Of the 323 delayed reappointments, 58 members were allowed to continue to participate in official board business, while the remaining 265 members were not. **Figure 7** shows the breakdown of the

amount of time delay for the reappointment of these 265 members by agency type. For the board-governed agencies, delays in reappointments could negatively impact the governance of these agencies, as there might not be enough members to make up a quorum for meetings to review strategic planning and decision-making, impacting the operations of the agencies, or to participate in subcommittees of the boards.

In our interview with the Secretariat, we were informed that sometimes, the effective dates of reappointments on the Orders-in-Council are backdated to the end date of the previous appointment to cover the gap period. Since the Secretariat does not track how often this is done, overdue reappointments could be underreported.

We also reviewed the list of current vacancies posted on the Secretariat website as of August 26, 2016. Out of 215 vacant positions across 102 different organizations, 165 had been vacant for

Figure 7: Time Delay in the Reappointment of Members in the Last Five Years, 2012–2016

Source of data: Public Appointments Secretariat

Amount of Time Delay in the Reappointment of Members	# of Reappointments Delayed				Total Positions Filled	
	Board-Governed	Non-Board-Governed	Advisory	Other	#	%
Under 1 month	12	14	25	26	77	29
Between 1 and 3 months	20	13	28	62	123	46
Between 3 and 6 months	6	3	16	19	44	17
Between 6 and 9 months	3	2	4	6	15	6
Between 9 and 12 months	1	2	0	2	5	2
Over 1 year	0	1	0	0	1	0
Total	42	35	73	115	265	100

over six months, with the longest-standing vacancy since April 2010. Of these vacancies, 199 were at 93 different organizations that have been operating with less than the minimum number of appointees prescribed by their enabling legislation. The most-affected agencies were the Grant Review Teams for the Ontario Trillium Foundation in 16 regions, with a total of 93 vacancies; and the Police Services Boards in 30 municipal areas, with 32 vacancies.

The Secretariat indicated that there can be difficulties in filling positions that have regional requirements (for example, those in Northern Ontario) or lower compensation levels (for example, those that are unpaid volunteer positions or only reimburse expenses). Of the 215 vacancies, 63 were in Northern Ontario (from 35 agencies) and 119 were unpaid volunteer positions or positions that only reimburse expenses (from 34 agencies).

Figure 8 shows the average amount of time (in months) that the current vacancies have been outstanding, as well as the oldest vacant position by agency type.

The CEOs and appointees (including the chairs) we surveyed also noted that the timeliness of appointments is an overwhelming concern. Some 77% of CEOs rated the timeliness of the process as poor or very poor, and almost 54% of the chairs and almost 50% of the other appointees who had gone through the process rated it as poor or very poor. A majority of the respondents also stated that overdue appointments and reappointments,

leaving positions vacant, were negatively impacting their agencies' operations. This included a greater workload being shifted onto existing members, an inability to plan or schedule hearings for adjudicative agencies, and other work and decisions being put on hold.

Many surveyed CEOs and chairs expressed their frustration and concerns about these delays. For example:

- “While expiration of appointments is well known, no active effort to recruit and appoint new members is apparent, resulting in last minute ill-advised appointments.”
- “It has taken a very long time for appointments to be confirmed. Long service board members have had to sit out meetings when their reappointments were delayed.”
- “Incredibly slow and tardy. We are at risk repeatedly of not having quorum because appointments are delayed for months to years. Repeat emails/calls to minister's office ignored routinely.”
- “We had a six-month period in 2015 with no Board because we did not have enough members appointed to be legally constituted. This was in spite of there being sufficient recommended candidates and applications with sufficient lead time to ensure the Board could continue.”
- “The amount of time it takes is atrocious. We identified an ideal candidate, who was inter-

Figure 8: Number of Vacant Positions Needing to Be Filled to Meet the Legislated Minimum Number of Members, by Agency Type, August 2016

Source of data: Public Appointments Secretariat

Agency Type	# of Agencies with Vacant Positions	# of Vacant Positions	Average Time	Oldest
			Positions Have Been Vacant (Months)	Vacant Position
Board-Governed	10	17	7	Aug 12, 2014
Non-Board-Governed	2	3	5	Jul 22, 2015
Advisory	9	21	15	Apr 16, 2012
Other	72	158	20	Apr 6, 2010
Total	93	199	18	

ested in being appointed, and it took nearly two years for the appointment to finally come through. It was miraculous that he was still interested by then, because people do move on in their lives.”

- “New appointments have been impossible—the last new appointment was in November 2013. Reappointments (after terms of three years) have been difficult with three recent reappointments only being finalized AFTER their expiration date.”
- “We have had candidates approved through a rigorous recruitment process wait more than three years for approval. This is beyond tardy—it is completely inept and an embarrassment.”

RECOMMENDATION 1

To minimize the negative impact of delays of appointments on the operations of the provincial agencies and the lack of provincial representation on the boards of other entities, the Treasury Board Secretariat, in conjunction with the ministries, should ensure:

- the appointments of new members and reappointments of existing members are done in a timely manner (where appropriate, defining the time allowed for each step of the appointment process); and

- all provincial agencies have at least the minimum number of members in order to conduct business, and other entities have sufficient provincial representation as dictated by their enabling legislation or as identified by the ministry/agency if no minimum is set in legislation.

TREASURY BOARD SECRETARIAT RESPONSE

The Treasury Board Secretariat will establish “best practice guidance” regarding timelines related to those steps of the appointment process that are overseen by Ministry staff.

The Treasury Board Secretariat will develop educative and “best practice guidance” materials to help Ministry staff who participate in the public appointments process understand the benefits and importance of timely appointments and reappointments to provincial agencies.

4.2 Lack of Transparency in the Appointments Process Undermines the Credibility of the Process

Just as the appointment process needs to be timely to ensure that the public continues to be served in critical areas, it also needs to have open, transparent

and thorough selection procedures based on merit. Candidates should be evaluated based on their qualifications, experience and fit against the needs of the organization. Board chairs should always be involved (excluding appointments to the 360 other entities where generally a minority of members are public appointees) given their knowledge and understanding of their agency's requirements.

As well, the range of skills and background sought and the expectations for the role should be clearly detailed to ensure that candidates are fully aware of the criteria their evaluation will be based on. Candidates should also be required to disclose potential conflicts of interest, and these should be adequately considered when candidates are evaluated. All candidates short-listed for potential appointments are required to submit a Personal and Conflict of Interest Disclosure Statement.

We noted that the federal government's appointment process requires that selection criteria be published for all positions. This is generally not done in Ontario, as the Secretariat's website only lists the vacancies and does not publish the selection criteria for the positions. In some cases, agencies list position requirements on the Secretariat's website.

Many of the CEOs and appointees (including chairs) we surveyed were concerned about the transparency of the appointment process. Some 28% of chairs, 21% of other appointees and 54% of CEOs rated the transparency of the process as poor or very poor. They found the process to have long periods of no communication on the progress of the appointments. This lack of communication has created considerable frustration and uncertainty among appointees about how candidate selection takes place.

In addition, only 40% of chairs strongly agreed that there were sufficient consultation and communication between the government/ministry and their organizations to ensure appointees have the necessary competencies to fill the gaps in their boards.

Many survey respondents expressed their concerns about the lack of transparency. For example:

- "Lack of clarity up front by the Province as to characteristics, competencies that are desirable. Lack of transparency. Second-guessing board decisions despite rigorous recruitment. Inability to think ahead and plan for retirements and term expirations. Management by crisis, which leads to a fundamental problem of governance with no trustees, no institutional knowledge or memory, no continuity and no clarity around timeline and process."
- "Explanations of why certain applicants are screened out at the Secretariat or minister's office are not clear—usually we are told that the candidate has a conflict of interest—but will not be clear on what that might be—even in cases where we have reviewed the candidates and don't see any COI [conflict of interest]. The feedback from the Secretariat to the unsuccessful candidates... is almost non-existent and they contact us for explanations, which we don't have—so [cannot] provide."
- "The most qualified are not always selected for reasons that are not obvious."
- "No dialogue regarding why certain candidates were selected and others rejected. A complete lack of explanation why the approvals take so long."
- "There is no transparency in the appointment process... often very worthwhile candidates do not make it through this initial screening for reasons that 'cannot be identified.'"
- "Agency is unaware of who is being considered for board appointment, or selection criteria being applied. Agency is not consulted about gaps in skills or expertise. Individuals who applied through online process report months/years of inactivity and lack of communication."
- "It is a complete black hole. The steps required for approval are unclear, the status is never clear, there is never any proactive communication, decisions are arbitrary and random."
- "The process is almost always delayed once the recommendation leaves our office. There is no

way to predict how long the process will take, which has a negative impact on the Board's business as well as the applicant. It can take up to seven or eight months for an OIC [Order-in-Council] to be approved and signed. Despite requests, the Board is refused updates as to where the application is in the process and when we might expect a new [appointment] to be approved. This makes it impossible to plan for a tribunal that schedules hearings every day of the week, many on an expedited basis."

Overall, a majority of the chairs and CEOs responding to our survey said they felt member vacancies are being filled with qualified individuals. However, some of them also felt that there is not enough consultation between the ministry and their organization to ensure that appointees have the qualifications necessary to fill the gaps in their boards. Two notable comments made about the lack of qualified members were:

- "...there is nothing by which to measure whether or not any candidate is a suitable choice. The issue for the Agency in the absence of any such appropriate vetting is that we often end up with well-meaning but under-qualified persons who (by no fault of their own) [are] not equipped to hold the Agency accountable."
- "Lack of transparency on holding back by the Ministry of applications submitted in response to competitions. Agency is advised it is the result of vetting for basic qualifications but it is clear this is not the case. Agency is often asked to consider specific candidates (who either did or did not apply) at the request of the Minister's office."

RECOMMENDATION 2

To maintain a transparent and credible appointments process, the Treasury Board Secretariat, in conjunction with the ministries, should work with the ministers' and premier's offices to ensure:

- there is clear communication with the agencies on the selection process used to evaluate the candidates' qualifications, experience and fit against the needs of the agencies, including publishing the selection criteria used to evaluate the candidates, where appropriate;
- chairs, in conjunction with CEOs, are consulted for their input on board requirements so that appointed board members have the competencies to fill the gaps in their boards; and
- agencies are promptly and clearly informed of the status of position vacancies being filled to facilitate planning at the agencies.

TREASURY BOARD SECRETARIAT RESPONSE

The Treasury Board Secretariat will work with ministries to educate both chairs and ministers' offices regarding the benefits and importance of the candidate selection process and, where appropriate, of engaging chairs and CEOs in that process.

The Treasury Board Secretariat will continue to provide a bi-monthly report outlining appointment vacancies to facilitate appointment planning in ministries. Where appropriate, the Treasury Board Secretariat will also supplement the regular vacancy list provided to all ministries with periodic communications to ministries enquiring about the status of appointees whose terms have expired and encouraging ministries to address the vacancies.

The Treasury Board Secretariat will continue the work it began in early 2016 to modernize relationship-management practices between ministries and their provincial agencies.

4.3 Terms of Appointments May Not Be Effective for Proper Governance

Appointments are generally for a “fixed term” (that is, for a set number of years) and “at pleasure” (meaning that, although the appointment is for a set number of years, it can be revoked at any time, without cause and without giving notice). Other than appointments to adjudicative tribunals and regulatory agencies, most appointments are at pleasure.

Terms of appointments are fixed to benefit organizations, with the turnover of appointees helping to ensure a diversity of perspectives. Fixing appointment terms also ensures that other qualified individuals have opportunities for public service. Terms should also be staggered to ensure proper continuity of operations and training of new members.

The Agencies and Appointments Directive has guidelines for the terms of appointments. The maximum fixed term for appointments to adjudicative tribunals and regulatory agencies (including reappointments) is 10 years for a given position. Only in exceptional circumstances can this maximum be exceeded: the reason has to be in the public interest in the judgment of the appointing authority. In most other cases, such as board governed agencies, the term of an appointment must not exceed three years, with unlimited further reappointments allowed (each of which may not exceed three years).

While the Agencies and Appointments Directive does not include any guidance on staggering the terms of appointees, it is considered best practice (in Ontario and other jurisdictions) that, where possible, terms of appointments do not all end in the same year. This is important because it enables the agency to maintain board continuity (such as maintaining a quorum and implementing plans) and the ministries and Secretariat to focus on recruiting candidates with the required skill sets each year.

4.3.1 Twenty-Two Percent of All Appointees to Non-Board-Governed Agencies Have Served Longer Than the Maximum Term Allowed

In 2006, the Province standardized the appointment and reappointment terms for non-board-governed agencies. The maximum total service time was capped at 10 years for a given position (for example, appointee, vice-chair or chair), with extensions to that position granted only for exceptional circumstances. Yet as of July 2016, there were 275 appointees (or 22%) to non-board-governed agencies who had served more than 10 years in the same position, as shown in **Figure 9**. In total, 318 individuals had served more than 10 years, representing 25% of total appointees at non-board-governed agencies. In addition, we noted that 13 appointees had served more than 30

Figure 9: Number of Appointees Serving Longer Than 10 Years by Agency Type, as of July 2016

Source of data: Public Appointments Secretariat

Agency Type	# of Agencies with Appointees Serving Longer Than 10 Years	# of Appointees Serving Longer Than 10 Years	Total # of Appointees	% of Appointees Serving Longer Than 10 Years	Average Term of Service (Years)	Longest Term (Years)
Board-Governed	20	41	681	6	13	28
Non-Board-Governed*	30	275	1,255	22	16	48
Advisory	21	47	497	9	13	25
Other	34	44	1,214	4	13	32
Total	105	407	3,647	11	15	

* These numbers represent appointees serving >10 years in the same position. The total number of appointees serving >10 years is 318, representing 25% of total appointees, with an average term of 16 years of service.

years, with the longest serving 48 years. The agencies in these situations face a potential loss of a very high number of experienced appointees in a short period of time, as agencies are required to meet the 10-year limit and will therefore need to recruit and train new appointees to ensure proper operations.

The five non-board-governed agencies with the most number of appointees serving for more than 10 years in the same role are:

- **Ontario Review Board** (makes or reviews the settlement of criminal cases for individuals found unfit to stand trial or not criminally responsible by reason of mental disorder)—79 out of 161 appointees, or 49%.
- **Consent and Capacity Board** (reviews patients' capacity to consent to admission and treatment in a psychiatric facility)—41 out of 146 appointees, or 28%.
- **Workplace Safety and Insurance Appeals Tribunal** (hears appeals from workers and employers on rulings by the Workplace Safety Insurance Board on entitlements to benefits and health care)—35 out of 89 appointees, or 39%.
- **Grievance Settlement Board** (adjudicates rights disputes between Crown employers and employee unions/bargaining agents)—21 out of 35 appointees, or 60%.
- **Ontario Labour Relations Board** (administers the Labour Relations Act and other statutes involving employer-employee rights or interactions)—17 out of 59 appointees, or 29%.

The reasons chairs have given for requesting some of their members' terms be extended beyond the 10-year limit are:

- The long-serving member needs to stay to mentor and provide training to new members coming on board (who will be appointed shortly, as recruitment is under way).
- The long-serving member has a professional designation required by legislation (for example, is a psychiatrist or lawyer), and it may be difficult to recruit a replacement in certain regions.

- The long-serving member is an experienced bilingual adjudicator with the ability to hold hearings in French; again, it may be difficult to find a replacement.
- The long-serving member has the needed experience to help reduce a backlog of complex cases for adjudication.

As mentioned in **Section 4.3**, there is no limit on reappointments for board-governed, advisory and other agencies, though these agencies have fewer instances of appointees serving more than 10 years—132 out of the 2,358 (6%) appointees had served more than 10 years as of July 2016. An additional 43 appointees will exceed 10 years' service before the end of their current appointment term. In most of these instances, the reappointments are made for the same reason as the adjudicative and regulatory agencies: the appointee has specific skills required for the role, and the board has trouble attracting new appointees with those skills.

One of the main concerns that the chairs and appointees we surveyed had about appointment terms was this 10-year limit. Forcing appointees to stop serving at 10 years could cause boards to experience significant loss of knowledge and continuity, especially if agencies do not have effective transition processes to enable experienced members to transfer their knowledge to incoming members. However, the 10-year limit is intended to ensure regular membership renewal on the government's adjudicative tribunals and regulatory agencies, to foster a diversity of perspective and provide other qualified individuals with the opportunity to serve.

In addition, we noted that 34 appointments were open-ended at 17 agencies (four board-governed, five advisory and eight other entities), with no end date. Such appointments are allowed in the enabling legislation of certain agencies. For example, members of the Soldier's Aid Commission, which helps take care of and find employment for Canadian military members returning from service, serve until they are replaced or their appointment is revoked. Others include three members of the Advisory Council of the Order of Ontario (the

Chief Justice of Ontario, Speaker of the Legislative Assembly and Secretary of Cabinet) who serve for the tenure of their designated positions, and members on boards of agencies (such as Ontario Power Generation) who are reappointed annually.

Most other jurisdictions in Canada have maximum appointment terms. These are usually set out in legislation. For example, appointees to public agencies subject to the *Alberta Public Agencies Governance Act*, serve a maximum of 12 years (if the agency is adjudicative or regulatory) and a maximum of 10 years (for all other agencies).

4.3.2 Some Appointees Have Been Serving Past Their Term's Expiry Date

As of July 2016, 180 of the 3,647 appointees listed as current members are past their term's expiry date due to delays in either appointing new members or reappointing the existing members. In a few cases, an agency's legislation allows for an appointee to continue to serve past their term until a replacement is approved. When legislation does not allow for this, appointees serving past their term would not be allowed to officially participate in board discussions or decisions, making their continued service virtually ineffectual. Overall, there are 43 agencies (five board-governed, two non-board-governed and 36 other entities) that have enabling legislation that allows members to serve past their term expiry date.

Of the 180 appointees on expired terms (at 103 agencies), we found that 19 appointees (at eight agencies) were allowed to serve until a replacement was found, 26 (at 16 agencies) subsequently had their terms extended, 10 (at four agencies) were in the process of being reappointed, and 32 (at 25 agencies) had resigned and not sought reappointment. The Secretariat informed us that it was awaiting notification from ministries as to whether the remaining 93 appointees on expired terms would be reappointed or end their service.

If an appointee retires or resigns, they continue to be listed as a current member on the Secretariat's website until Cabinet revokes their

Order-in-Council, which can take time depending on when Cabinet is sitting. The Secretariat relies on the ministries to provide them with notification when appointees' terms expire or they have resigned, to update its records of all appointees in the Province.

4.3.3 Some Agencies Will Have More Than Half of Their Appointees' Terms Expiring in the Same Year

As of July 2016, there were a significant number of agencies with more than 50% of their members' terms expiring in the same year. Any delays in appointments for these agencies could result in vacancies, with all the negative outcomes they entail (for example, quorums not being met and implementation of plans being delayed). Even if new appointees begin serving in time to avoid a vacancy, their inexperience and lack of knowledge coming in causes challenges to the effective functioning of boards.

Within the next five years, there will be 208 agencies (with more than two provincial appointees) with 50% or more of their appointees' terms expiring in the same year. Of these, 101 are provincial agencies (44 are board-governed agencies, 18 are non-board-governed and 39 are advisory) and 107 are other entities. The challenges caused by multiple appointees' terms expiring in the same year will be particularly felt by board-governed agencies, where the government appoints all appointees and the agencies act on the government's directions.

Figure 10a shows the number of agencies with more than 50% of the appointees' terms ending in the same year. **Figure 10b** shows, in the next few years, that the terms of many appointees at board-governed agencies will expire in the same year.

We noted that the enabling legislation of some federal agencies requires that appointees' terms be staggered. The federal equivalent of the Secretariat told us that, for agencies without such a requirement, it encourages ministers to adopt staggered appointee terms as a best practice to ensure the continued effectiveness of agency operations.

Figure 10a: Number of Agencies with 50% or More of Their Appointees' Terms Ending in the Same Year, as of July 2016.

Source of data: Public Appointments Secretariat

Agency Type	Agencies with >50% Appointees with Expired Terms on the Same Year*	Total # of Agencies	% of Agencies with >50% of Appointees Ending in the Same Year*
Board-Governed	44	77	57
Non-Board-Governed	18	47	38
Advisory	39	60	65
Other	107	360	30
Total	208	544	38

* Only review agencies with more than two appointees.

Figure 10b: Board-Governed Agencies with 50% or More of Their Members' Terms Ending in the Same Year, as of July 2016.

Source of data: Public Appointments Secretariat

Board-Governed Agency	Year of Term Expiry	Total # of Appointees	Appointees Whose Terms Expire in the Same Year	% of Board Members Whose Terms Expire in the Same Year
Ontario Retirement Pension Plan Administration Corporation	2016	3	3	100
College Of Trades Appointments Council		8	6	75
St. Lawrence Parks Commission		6	4	67
Metropolitan Toronto Convention Centre Corporation		8	5	63
Niagara Parks Commission		12	7	58
Alcohol and Gaming Commission of Ontario		7	4	53
Science North (Centre)		15	8	53
Ottawa Convention Centre Corporation		8	4	50
Deposit Insurance Corporation of Ontario		2017	8	8
Ontario Capital Growth Corporation	4		4	100
Ontario Mortgage and Housing Corporation	5		5	100
Owen Sound Transportation Commission	5		5	100
Toronto Islands Residential Community Trust Corporation	6		6	100
Ontario Place Corporation	7		6	86
Local Health Integration Network – Toronto Central	6		5	83
Ontario Lottery and Gaming Corporation	12		9	75
Ontario Financing Authority	15		11	73
Ontario Securities Commission	14		10	71
Local Health Integration Network – Central East	7		5	71
Human Rights Legal Support Centre	6		4	67
Local Health Integration Network – Erie St. Clair	6		4	67
Local Health Integration Network – Mississauga Halton	9		6	67
Ontario Electricity Financial Corporation	9		6	67
Ontario Energy Board	11		7	64

Board-Governed Agency	Year of Term Expiry	Total # of Appointees	Appointees Whose Terms Expire in the Same Year	% of Board Members Whose Terms Expire in the Same Year
Provincial Schools Authority	2017	5	3	60
Grain Financial Protection Board	cont'd	7	4	57
Local Health Integration Network – North Simcoe Muskoka		7	4	57
Local Health Integration Network – Central Local		9	5	56
Walkerton Clean Water Centre		9	5	56
Ontario Infrastructure and Lands Corporation (Infrastructure Ontario)		13	7	54
Ontario Health Quality Council (Health Quality Ontario)		12	6	50
Local Health Integration Network – Central West		8	4	50
Trillium Gift of Life Network		14	7	50
Ontario Mental Health Foundation		8	4	50
Ontario Northlands Transportation Commission	2018	6	6	100
Ontario Immigrant Investor Corporation		3	3	100
Local Health Integration Network – South East		6	5	83
Ontario Heritage Trust	2018	13	9	69
Livestock Financial Protection Board		7	4	57
Agricorp		11	6	55
Local Health Integration Network – North West		8	4	50
Ontario French-Language Educational Communications Authority		8	4	50
Ontario Media Development Corporation	2019	12	6	50
Nawiingnokiima Forest Management Corporation		8	4	50

RECOMMENDATION 3

To maximize the effectiveness of provincial agencies and other entities serving the public, the Treasury Board Secretariat, in conjunction with the ministries, should work with the provincial agencies to:

- support the transition of members who have served over the 10-year maximum term to new members and take steps to minimize any negative impact on the operations of the agencies;
- ensure timely communication between the ministries and the Secretariat on the status of members on expired term to ensure its record of all appointees in Ontario is up-to-date; and

- stagger the terms of appointees serving at the same agency.

TREASURY BOARD SECRETARIAT RESPONSE

The Treasury Board Secretariat will continue to make the Public Appointments Secretariat website available to ministries to assist with recruitment for adjudicative agencies as they work to comply with the 10-year term maximum. In September 2016 the Treasury Board Secretariat developed and distributed to all ministries guidance and direction regarding the utilization of external advertising to support the public appointments process.

The Treasury Board Secretariat will supplement the regular vacancy list provided to all ministries with periodic communications to ministries enquiring about the status of appointees whose terms have expired.

The Treasury Board Secretariat will work with ministries to educate both chairs and ministers' offices regarding the benefits and importance of staggering appointee terms to ensure improved governance continuity on provincial agency boards.

The Treasury Board Secretariat will review and revise, as appropriate, its current Succession Planning Guide for provincial agencies in order to provide further assistance and guidance to provincial agency chairs.

4.4 Process to Attract Qualified Candidates Needs Improvement

The key skills, abilities and expertise appointees need to effectively fulfill their roles vary across agencies. For example, some roles require specialized knowledge of a subject, such as employment and labour relations law, while others require community-based knowledge about the areas the agencies serve.

Some requirements are specified in an agency's legislation. For example, the Ontario Review Board's legislation requires that the chair be a currently serving or retired judge, or have the qualifications of a judge. The board usually sits in panels of five members: the chair (or an alternate chair selected by the chair), one lawyer, two psychiatrists and one public member.

As well, the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* specifically requires that the selection process for members of an adjudicative tribunal be competitive and merit-based, and that the criteria to assess candidates include experience, knowledge and training in the subject matter and legal issues being dealt with by the tribunal. There is also a requirement that no person be appointed or re-appointed unless the chair of the tribunal recommends that person.

We reviewed the number of applications that the Secretariat has received by agency and noted that there seems to be a chronic shortfall of applicants interested in positions at agencies in Northern Ontario. For example, in the last five years in the Province overall, 30 agencies with one or more vacancies have received less than 10 applications each; 22 of them were in Northern Ontario.

On the other hand, there are other agencies that have a significant number of applicants on file, yet vacant positions at these agencies still remain unfilled for long periods. For example:

- The average number of applications for a position on a Grant Review Team for the Ontario Trillium Foundation is 65. The Grant Review Team for the Toronto area had over 260 applications for one vacancy. Yet on the August 2016 list of overall public appointment vacancies, the Grant Review Teams had the highest number of vacancies and the longest-standing vacancies of all the organizations on the list.
- The Citizens' Council (an advisory agency that allows citizens to provide input on the policies and priorities in Ontario's prescription drug program) has received 300 applications over the past three years. Yet it has seven vacancies, the oldest of which became vacant in April 2012.
- The Royal Ontario Museum has received over 220 applications over the past three years. Yet it currently has five vacancies, the oldest of which dates to February 2016.

In all cases, the Secretariat does not review the applications it receives to assess the suitability of the applicant to the needs of the agency; instead, the Secretariat simply forwards the applications to the responsible ministry to track them and refer to them for their vacancies. In June 2016, the Ontario government announced gender diversity targets for provincial agencies. The government has targeted that, by 2019, women make up 40% of all appointments to provincial boards and agencies. Although the Secretariat's appointees database has the information needed to track the Province's progress in

achieving the target, the Secretariat had not started to do so at the time of our review.

In comparison, the City of Toronto currently shows its diversity statistics as a key component of its public appointments website.

As well, within the last year, the federal government has implemented a new approach for Governor-in-Council appointments. The appointments will be:

- advertised on a website and in national media;
- representative of Canada's diversity (ministers' recommendations will take into consideration gender parity and reflect Canada's diversity); and
- merit-based.

RECOMMENDATION 4

To ensure that qualified candidates are appointed to provincial agencies and other entities, the Treasury Board Secretariat, working with the ministries, should:

- proactively promote vacant positions in Northern Ontario to attract qualified candidates;
- assess the need to prioritize and fill long-standing vacant positions, particularly if those positions have been outstanding for a number of years; and
- monitor appointment diversity statistics and post them on its public website.

TREASURY BOARD SECRETARIAT RESPONSE

The Treasury Board Secretariat will continue to improve the government's outreach strategies to see that provincial agency boards continue to reflect the face of Ontario.

In September 2016, the Treasury Board Secretariat developed and distributed to all ministries guidance and direction regarding the utilization of external advertising to support the public appointments process.

The Treasury Board Secretariat will continue to provide a bi-monthly report outlining appointment vacancies to facilitate appointment planning in ministries.

Where appropriate, the Treasury Board Secretariat will also supplement the regular vacancy list provided to all ministries with periodic communications to ministries enquiring about the status of appointees whose terms have expired and encouraging ministries to address the vacancies.

The government has publicly committed to achieving a target of 40% women appointees on all provincial agencies by 2019. As part of delivering on that commitment, the Treasury Board Secretariat will monitor diversity statistics regarding appointees to provincial agencies.

4.5 Training Provided by the Public Appointments Secretariat Has Been Generally Well Received by the Appointees

Both the in-class training and the online training that the Public Appointments Secretariat provides focus on the principles of good public-sector governance, provide background information on the government, and explain the roles and responsibilities of public appointees. As of July 2016, 17 in-class sessions were provided to a total of 265 appointees, and 1,100 appointees completed the online training.

Appointees were asked to provide feedback on the training by answering a survey. We reviewed the surveys summary and found that, overall, the feedback was favourable: over 90% of respondents rated the training as good or excellent. The results of our own survey were similar: over 80% of appointees said the training was good or excellent. When it came to suggesting improvements for the orientation and training process, about half of the respondents requested more information regarding the general overview of expectations for appointee

positions. Other areas identified include the relationship and communication between the agencies and the provincial ministries, and best practices/common requirements applicable to the various types of roles.

The Secretariat tracks the appointees' training to determine whether they have completed the online and/or in-class training. As of July 2016, out of over 1,400 appointments that were required to take the online training, 1,115 completed the training (about 80%). In addition, out of 450 appointments that were required to take the in-class training, 310 completed it (about 70%). The Secretariat sends reminders when training has not yet been completed and when the next in-class session is available (where applicable). As expected, given the convenience of online training (available to be taken at any time as compared with in-class training offered just once a month), the online training reports better attendance than the in-class training. Although there is no required timeline to complete the training, the Secretariat does encourage appointees to complete the training as soon as possible. A majority of the appointees who have not taken the training were appointed in the last year.

Ontario and Manitoba are the only two jurisdictions that require new appointees to take mandatory training centrally. The federal government, Saskatchewan and Quebec also offer training centrally but it is not mandatory. Alberta is working on developing centrally offered government training for all new appointees that will be similar to the training Ontario offers.

Almost every CEO surveyed stated that their organization provides new appointees with an orientation pertaining to their organization's mandate and operations. About 90% of appointees responded that they received this training when they were appointed to their positions.

RECOMMENDATION 5

To ensure its public appointees are sufficiently trained to effectively perform their roles, the Treasury Board Secretariat should:

- review its training materials to enhance areas for improvement identified by public appointees, specifically relating to their expected roles and responsibilities, the relationship and communication between the agencies and the provincial ministries, and best practices/common requirements applicable to the various types of roles; and
- in conjunction with ministries ensure appointees complete their training requirements as part of their appointment in a timely manner.

TREASURY BOARD SECRETARIAT RESPONSE

The Treasury Board Secretariat will review and work to continually enhance and improve appointee training materials, and will work with ministries to have appointees complete the required training in a timely manner.

4.6 Compensation Is Not in Line with the Agencies and Appointments Directive

While the Agencies and Appointments Directive does not specifically require that appointees be compensated, it does set out maximum per diem and remuneration rates for the ministries that decide to compensate their appointees and/or reimburse their expenses.

According to the Directive, the per diem rates for board-governed and advisory agencies are split into two levels, Basic and Specific Expertise, and they must be within the following ranges:

- members: up to \$150 (Basic) and \$200 (Specific Expertise);

- vice-chairs: up to \$175 (Basic) and \$250 (Specific Expertise); and
- chairs: up to \$225 (Basic) and \$350 (Specific Expertise).

The Directive also states that Treasury Board/Management Board of Cabinet is responsible for granting exceptions to any per diem rates and full-time remuneration in excess of those prescribed in the Directive.

In our review of the compensation rates for current members, we found almost a quarter of appointees to board-governed and advisory agencies (140 of 606, or 23%) are being compensated using per diem rates that are higher than the rates set out in the Directive. These appointees are on the boards of eight board-governed and seven advisory agencies across seven ministries. The average difference between the maximum per diem rate and the actual was about \$200, and the highest is with the members on the Committee to Evaluate Drugs, whose remuneration rate is \$800 more per day than the amounts outlined in the Directive.

The compensation rates for these 140 members were approved by Treasury Board/Management Board of Cabinet. Each agency has a remuneration Order-in-Council signed by the Lieutenant-Governor. Treasury Board/Management Board of Cabinet decisions take precedence over the rates set out in the Directive. However, the purpose of the Agencies and Appointments Directive is to set out the rules and requirements for appointments and remuneration. If the Directive does not reflect the actual remuneration for the agencies, then the

Directive is not providing the correct information to potential appointees.

In contrast, less than 1% of appointees to adjudicative tribunals and regulatory agencies (six of 959, all appointed to the Public Accountants Council for the Province of Ontario—the agency responsible for overseeing public accounting in Ontario) are being remunerated at a higher rate than the Directive allows. These rates were approved by an Order-in-Council signed by the Lieutenant-Governor.

RECOMMENDATION 6

To ensure that compensation to appointees is transparent, provincial agencies should adhere to the compensation rates outlined in the Agencies and Appointments Directive or, as needed, the Treasury Board Secretariat should propose to the Treasury Board/Management Board of Cabinet that the Directive be amended to indicate the compensation actually in effect.

TREASURY BOARD SECRETARIAT RESPONSE

The Treasury Board Secretariat will continue to recommend compensation rates consistent with the Directive as new provincial agencies are established, while also respecting the Treasury Board/Management Board of Cabinet's authority to make compensation decisions on behalf of the government.

Appendix 1: Public Appointees by Ministry and Type of Agency, July 2016

Source of data: Public Appointments Secretariat

Ministry	Board-Governed				Non-Board-Governed			Total	
	Operational Service	Operational Enterprise	Trust	Regulatory	Adjudicative	Regulatory	Advisory		Other
Accessibility Directorate of Ontario							13		13
Advanced Education and Skill Development	7						13	177	197
Agriculture, Food and Rural Affairs	7	17	14	7	50	8	32	5	140
Attorney General	17			7	480 ¹	21	63	53	161
Children and Youth Services							17		17
Citizenship and Immigration		3				1	20		24
Community and Social Services	8							7	15
Community Safety and Correctional Services					5		63	239 ²	68
Education	14	17					30	32	93
Energy				11				41	52
Environment and Climate Change	9	13					53	29	104
Finance		50	3	16		9	3	21	102
Francophone Affairs							11		11
Government and Consumer Services						6		25	31
Health and Long-term Care	185				415 ³		71	286 ³	671
Housing		5						1	6
Infrastructure		13						4	17
Labour	10		10		194	1	10	11	236
Municipal Affairs		6			10	12	21	24	73
Natural Resources and Forestry		18				16	61	16	111
Northern Development and Mines	17	11						3	31
Research, Innovation and Science		4					11		15
Seniors' Secretariat		4							4
Tourism, Culture and Sport	50	111						218 ⁴	161
Transportation		16				1		14	31
Treasury Board Secretariat			12		5	14	5	4	40
Total	324	284	39	41	1,159	89	497	1,214	3,647

1. Mostly composed of appointees on environment and land and social justice tribunals.
2. Mostly composed of appointees on police service boards.
3. Mostly composed of appointees on regulated health sector councils and consent and review boards.
4. Mostly composed of appointees on the Grant Review Teams for the Ontario Trillium Foundation.

Appendix 2: Interjurisdictional Comparison

Prepared by the Office of the Auditor General of Ontario

	ON	CAN	BC	AB	SK	MB	QC	NB	NS	PEI	NF	NWT	YK	NU
Does one centralized organization perform most administrative activities of the public appointments process?	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No
Are the administrative policies governing the process centralized?	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No
Is a central database to track appointees and terms maintained?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
When does the appointment process usually start?	Between 2 and 6 months prior	Depends on agency	More than 6 months prior	More than 6 months prior	More than 6 months prior	More than 6 months prior	More than 6 months prior	More than 6 months prior	Between 2 and 6 months prior	Less than 2 months prior and after term ended	Depends on agency	Less than 2 months prior	Between 2 and 6 months prior	Less than 6 months prior
What is the typical time period from identification of vacancy to placement of appointee?	Greater than 6 months	Greater than 6 months	Between 2 and 6 months	Greater than 6 months	Between 2 and 6 months	Between 2 and 6 months	Between 2 and 6 months	Greater than 6 months	Greater than 6 months	Between 2 and 6 months	Between 2 and 6 months	Less than 2 months	Between 2 and 6 months	Between 2 and 6 months
What is the typical term length for an appointment?	3 years (except for adjudicative and regulatory agencies)	Depends on legislative provisions	Usually 1 year but depends on legislative provisions	3 years	Depends on legislative provisions	Usually 2 or 3 years	5 years	3 years	3 years	3 years	3-5 years	3 years	3 years	3 years
Do reappointments follow the same process as appointments?	No	No	No	No	Yes	Yes	Sometimes	Yes	Yes	No	No	Yes	No	Yes

	ON	CAN	BC	AB	SK	MB	QC	NB	NS	PEI	NF	NWT	YK	NU
Are there limits on the number of terms appointees can serve?	Depends on agency	Yes	Depends on legislative provisions	Yes	No	Yes, typically 10 years	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Are appointment terms typically staggered to ensure a large proportion of appointees are not replaced at the same time?	Sometimes	Yes	Yes	Sometimes	Sometimes	Yes	Sometimes	Sometimes	Sometimes	Yes	Sometimes	Sometimes	Sometimes	Yes
Do documented competencies exist for all appointment positions regarding applicants' required skill sets?	Yes	Yes	Yes	No	Yes	No	No	No	No	No	Yes	No	No	No
Is there compensation for all appointed positions?	No	No	No	No	Yes	No	Yes	No	No	No	No	No	No	Yes
If per diems are provided, what is the range?	\$75-\$1,000*	Depends on agency and position	Depends on agency	Depends on agency	Depends on agency	\$55-\$560	\$100-\$400	Up to \$500	\$35-\$1,000	\$73-\$200	Depends on agency	\$250-\$500	\$75-\$200	\$250-\$500
Are new appointees provided with orientation and training centrally or at the entity level?	Both	Both	Entity level	Entity level	Both	Both	Both	Entity level	Entity level	Entity level	Entity level	No	Entity level	No
Is training mandatory?	Yes centrally	Yes at Entity level	Yes at Entity level	No	No	Yes centrally	No	No	Yes at Entity level	No	No	No	No	No
Does your jurisdiction have a standing committee of the legislature which is empowered to review intended appointees?	Yes	Yes	No	No	Yes	Yes	No	No	Yes	No	Yes	No	Yes	No

* One exception for the Nominating Committee for the Board of Ontario's Retirement Pension Plan Administration Corporation at \$1,500.