

## Chapter 1

### Section 1.15

# Toward Better Accountability

Follow-Up on Chapter 5, *2015 Annual Report*

#### RECOMMENDATION STATUS OVERVIEW

	# of Actions Recommended	Status of Actions Recommended			
		Fully Implemented	In Process of Being Implemented	Little or No Progress	Will Not Be Implemented
Recommendation 1	2	1	1		
Recommendation 2	1	1			
Recommendation 3	1		1		
Recommendation 4	1		1		
Recommendation 5	1		1		
<b>Total</b>	<b>6</b>	<b>2</b>	<b>4</b>	<b>0</b>	<b>0</b>
<b>%</b>	<b>100</b>	<b>33</b>	<b>67</b>	<b>0</b>	<b>0</b>

## Overall Conclusion

According to the information Treasury Board Secretariat provided to us, as of July 26, 2017, 33% of actions we recommended in our *2015 Annual Report* had been fully implemented. For example, Treasury Board Secretariat issued an update to the Agencies and Appointments Directive in July 2016 that stipulated that a Minister must approve an agency's annual report (and, where required by statute, table it in the Legislature) within 60 days of receiving it from the agency. The annual report must also be posted on the agency's or a government website within 30 days of tabling (if the report was tabled) and within 30 days of the Minister's approval (if it was not tabled).

Treasury Board Secretariat had made progress in implementing the remaining 67% of the recommendations. For example, it was in the process of amending the legislation covering agencies to streamline the annual reports approvals and public release process. In addition, Treasury Board Secretariat was developing tools to help track agencies' compliance with their deadlines, and providing training and education to ministries regarding agency annual reporting.

The status of actions taken on each of our recommendations is described in this report.

## Background

### Overview of Provincial Agencies

Provincial agencies undertake a variety of activities in the public interest, such as providing goods and services. They operate, to varying degrees, at arm's length from the government.

The Government of Ontario grants provincial agencies the authority and responsibility to perform their public functions or services. It establishes agencies through an act, a regulation of an act or an Order-in-Council (OIC), which is an order that the government issues to, for example, bring a law into force or appoint members to the board of an agency.

Agencies' governance structures are defined by Management Board of Cabinet directives issued under the *Management Board of Cabinet Act* and consist of three key parties:

- the responsible Minister;
- the governing board; and
- the agency's management.

Although agencies are not part of a ministry, they are accountable to the responsible Minister (and ultimately to the Legislature and the public) for fulfilling their legislative obligations, managing effectively the resources they use and maintaining the appropriate standards for any services they provide. To perform their duties, they either use public funds allocated to them by the government or generate their own funds.

An agency's annual report details the agency's activities and expenditures. This enables the government and the public to know whether the agency has achieved its goals and how it has spent its money.

In some cases, the legislation, regulation or OIC that established the agency specifies that the agency must produce an annual report. It may also specify when the annual report must be submitted to the responsible Minister.

In some cases, a Memorandum of Understanding (MOU) between the agency and its responsible Minister specifies when the annual report is to be submitted.

Given that legislation stipulates reporting requirements for only a limited number of agencies, and in some cases does not prescribe timelines, the Management Board of Cabinet has issued directives that formally require the preparation of annual reports by given deadlines. Treasury Board Secretariat is responsible for ensuring that provincial agencies comply with these directives.

The Legislature's Standing Committee on Government Agencies reviews proposed appointments to the boards of directors and other key roles of provincial agencies, as well as reviewing agency operations. It reports its findings and recommendations to the Legislature.

### The Directives Governing Agency Annual Reporting

Two Management Board of Cabinet directives for agencies relating to annual reporting had been issued when we conducted our work for the *2015 Annual Report*. One, the Agency Establishment and Accountability Directive, was in effect until February 2015, and the second, the Agencies and Appointments Directive, succeeded and replaced the Agency Establishment and Accountability Directive as of February 2015.

#### Prior to February 2015—Agency Establishment and Accountability Directive

Under this directive, agencies (except advisory agencies and agencies with differing legislated requirements) were required to submit an annual report to the responsible Minister:

- within 120 days of the end of their fiscal year if they had a governing board; or
- within 90 days of the end of their fiscal year if they did not have a governing board.

Annual reports were required to include the agency's financial statements, as well as actual results, variances against estimates and explanations of those variances.

### February 2015—Agencies and Appointments Directive

Under the new Agencies and Appointments Directive, issued in February 2015, in addition to the financial reporting required by the old directive, annual reports must contain a description of the agency's activities over the year, an analysis of operational and financial performance, and a discussion of performance targets achieved and of action to be taken when targets are not met.

### Our 2015 Main Findings on Agency Annual Reporting

The following are the main findings in our *2015 Annual Report*:

- The annual reports of many of the 57 agencies in our sample were not submitted to the responsible Minister in time and not tabled in time over the previous three years. For example, only 58% of the agencies sampled submitted their annual reports to their responsible Minister within 120 days after the agency's fiscal year-end. Only 5% of annual reports were tabled within six months after the agencies' fiscal year-end, while 68% were tabled more than 12 months after the year-end, and 6% had not been tabled at all.
- Deadlines for submitting and tabling annual reports were not consistent. The agencies that report under the requirements of legislation, a regulation, an OIC or an MOU could have different reporting timelines than the other agencies subject to the requirements of the Management Board of Cabinet directive.
- The Agencies and Appointments Directive issued in February 2015 eliminated the requirement for Ministers to table provincial

agency annual reports in the Legislature. One hundred and one provincial agencies fell under a statute that required them to table their annual report in the Legislature.

- The Agencies and Appointments Directive also did not specify a deadline for Ministers to release reports, either through tabling or by posting them on websites. As a result, an annual report could potentially sit in a Minister's office for months or even years without being released, and the Minister would not be in contravention of the directive.

We made five recommendations, consisting of six actions needed for improvement, and received Treasury Board Secretariat's commitment that it would take action to address them.

### Standing Committee on Public Accounts

In April 2016, the Standing Committee on Public Accounts (Committee) held a public hearing on our 2015 chapter on *Toward Better Accountability*. In December 2016, the Committee tabled a report in the Legislature resulting from this hearing. The Committee endorsed our findings and recommendations. The Committee also made six of their own recommendations, consisting of a total of eight action items. Treasury Board Secretariat reported back to the Committee in April 2017. At the time of our follow-up, it had fully implemented four of the action items recommended by the Committee and it was in the process of implementing the remaining four action items. The Committee's recommendations and our follow-up on them are found in Chapter 3, **Section 3.07**.

### Status of Actions Taken on Recommendations

We conducted assurance follow-up work between March 3, 2017 and July 26, 2017, and obtained

written representation from Treasury Board Secretariat on September 12, 2017 that it had provided us with a complete update of the status of the recommendations we made in the *2015 Annual Report*.

## Significant Delays in the Public Release of Annual Reports

### Recommendation 1

*To ensure agencies effectively demonstrate their accountability to their responsible Minister, the Legislature and the public, Treasury Board Secretariat, in conjunction with the ministries, should ensure that all agencies submit their annual reports within legislated time frames or the directed 90 or 120 days.*

**Status: Fully implemented.**

### Details

In our 2015 report, we found that less than a quarter of agencies sampled had legislated time frames for submitting their annual reports. The legislated time frames for these agencies to submit their annual reports to the responsible Minister varied from 90 days to 183 days after the end of the agency's fiscal year. Of the agencies sampled, five out of the 14 agencies with legislated time frames met their legislated requirements for submitting their annual reports. Overall, 58% of the agencies sampled submitted their annual reports to the responsible Minister within 120 days after the agency's fiscal year-end.

To ensure that all agencies submit their annual reports in time, Treasury Board Secretariat launched a new compliance tracking module in May 2017. Ministries continue to be responsible for tracking the status of documents for their agencies as they move through the approval process, but now have to use the module to report to Treasury Board Secretariat when key milestones are reached. The compliance tracking module gives Treasury Board Secretariat real-time information on all agencies' status in meeting their deadlines. Treasury Board Secretariat is using it to let ministries know that deadlines are approaching.

In addition, in June 2017, Treasury Board Secretariat began educating and training staff in ministries and Ministers' offices to improve their awareness of the requirements and timelines of the Agencies and Appointments Directive, to provide better insights into challenges and opportunities to enhance the annual report submission process, and to reduce potential delays when there is staff turnover at ministries.

*In addition, ministries should co-ordinate with their Ministers to ensure the Minister tables and/or otherwise makes public the annual reports in a timely manner than in the past.*

**Status: In the process of being implemented by October 2017.**

### Details

In our 2015 report, we found that only 5% of provincial agencies' annual reports, from 2012 to 2014, were tabled in the Legislature within six months of the agency's fiscal year-end. However, as previously indicated, 58% were provided by agencies to ministries within the required timeline in accordance with the Agency Establishment and Accountability Directive. This indicated to us that delays within the Minister's office mainly contributed to the delays in tabling of the annual reports.

Treasury Board Secretariat issued an update to the Agencies and Appointments Directive in July 2016 that stipulated that a Minister must approve an agency's annual report (and, where required by statute, table it in the Legislature) within 60 days of receiving it from the agency.

In addition, as previously discussed, Treasury Board Secretariat had developed a compliance tracking module for reviewing compliance results and sharing them with officials at various levels at the ministries and Ministers' offices. The intent is for progress to be presented on a regular basis to the Assistant Deputy Minister and Director Committees on Agency Oversight. At the time of our follow-up, Treasury Board Secretariat was planning to proactively reach out to ministries to ensure they meet their deadlines. For example, Treasury

Board Secretariat wants ministries to report not only their compliance, but also steps they are taking to ensure compliance, mitigation plans for areas/agencies at risk of being late, and/or remedial plans when agencies do not comply. This functionality was not yet available within the tracking module. Refinements and enhancements to the process and module were to be operational in October 2017.

## Maximum Time Frames for Ministers to Approve Annual Reports for Public Release Eliminated for Most Agencies

### Recommendation 2

*To ensure that the annual reports of provincial agencies are released promptly, Treasury Board Secretariat should advise the government to consider revising the Agencies and Appointments Directive to specify the period of time for ministerial approval of agency annual reports after ministers receive them.*

**Status: Fully implemented.**

### Details

We reported in 2015 that, since there were no requirements for when a Minister must approve an annual report after receiving it, an annual report might never be made public if a Minister does not (unintentionally or by choice) approve it.

In July 2016, Treasury Board Secretariat changed the Agencies and Appointments Directive to stipulate that the responsible Minister must approve an agency's annual report (and, where required by statute, table it in the Legislature) within 60 days of receiving it from the agency. The annual report must also be posted on the agency's or a government website within 30 days of tabling or within 30 days of the Minister's approval if tabling is not required.

## Directive No Longer Requires Annual Reports to Be Tabled

### Recommendation 3

*To increase the accountability of publicly funded provincial agencies after the directive was changed so that annual reports are no longer required to be tabled, Treasury Board Secretariat should advise the government to establish a process to ensure that all elected officials are notified when agencies publicly release their annual reports.*

**Status: In the process of being implemented by April 2018.**

### Details

We noted in our 2015 report that, notwithstanding Ontario's move away from tabling reports in the Legislature to posting them on websites, not tabling an agency's annual report may result in some loss of accountability and Legislature oversight. While posting a report on a website gives the public access to the report, tabling a report brings agencies' annual results to the attention of all elected officials, who can hold these agencies—which are responsible for billions of dollars in public funds—accountable. We therefore recommended that, in the absence of the tabling requirement, elected officials should be notified when agencies' annual reports are made public.

At the time of our follow-up, Treasury Board Secretariat was working on changes to legislation for all agencies so that legislation aligns with the timelines in the Agencies and Appointments Directive. In addition, Treasury Board Secretariat received government approval to update the Agencies and Appointments Directive to require tabling of all provincial agencies annual reports. This will result in elected officials being notified through the tabling process when an annual report is publicly released. Treasury Board Secretariat expects the Agencies and Appointments Directive will be updated by April 2018.

## Requirements for Agency Annual Reports Lack Consistency

### Recommendation 4

*To ensure that provincial agencies are consistent in following the Agencies and Appointments Directive, Treasury Board Secretariat, in conjunction with Management Board of Cabinet, should consider amending the legislation governing some agencies to eliminate any inconsistencies with the directive, or introducing legislation applicable to all agencies that covers the preparation and tabling date or public release date for all annual reports.*

**Status:** In the process of being implemented by fall 2017.

#### Details

We reported in 2015 that it is confusing for the reporting timelines of an agency and its responsible Minister to potentially be found in several different places—the establishing statute, a regulation, an Order-in-Council (OIC), a Memorandum of Understanding (MOU) or the Agencies and Appointments Directive. For example, an agency may mistakenly follow the Agencies and Appointments Directive for its reporting requirements when it should be following its establishing statute. We therefore recommended that consideration be given to having consistent reporting requirements for all agencies.

In late 2016, Treasury Board Secretariat undertook an in-depth legislative review to identify all statutory references to both the preparation and tabling of provincial agency annual reports. The review yielded 129 references to 119 provincial agencies associated with 19 ministries in 63 statutes, 10 regulations and five OICs.

In December 2016, Treasury Board Secretariat received approval from Treasury Board and Management Board of Cabinet to proceed, in collaboration with the 19 ministries, with the process of changing legislation to ensure consistent timelines and alignment with the Agencies and Appointments Directive.

At the time of our follow-up, Treasury Board Secretariat was proposing that legislative amendments include:

- standardizing all statutory language relating to provincial agency annual report production; and
- eliminating inconsistencies with the Agencies and Appointments Directive in agencies' governing legislation (simultaneously updating the Agencies and Appointments Directive to include a requirement to table).

At the time of our follow-up, Treasury Board Secretariat was planning to seek government approval of the legislative amendments in fall 2017.

## Standing Committee on Government Agencies Has Not Reviewed Many Agencies, Boards and Commissions Since 1996

### Recommendation 5

*To ensure the ongoing accountability and transparency of the operations of provincial agencies, Treasury Board Secretariat should consult the Legislative Assembly of Ontario on how best to ensure the Standing Committee on Government Agencies is provided with all agencies' annual reports when they are made public, as the annual reports can assist the Standing Committee in determining which agencies it considers for review.*

**Status:** In the process of being implemented by April 2018.

#### Details

We reported in 2015 that there is no requirement that all provincial agencies' annual reports be referred to the Legislature's Standing Committee on Government Agencies for review. Under the Agencies and Appointments Directive, not all annual reports are required to be tabled, and therefore the Committee receives only the reports of those agencies whose enabling legislation or a Memorandum of Understanding requires them to table their annual reports. As such, Committee members might not be receiving full information on agencies' annual results. It is important for the Committee to have such information as it could factor into its selection of which agencies to review.

At the time of our follow-up, Treasury Board Secretariat was working on an approach to notify all members of the Legislative Assembly, elected officials and the Standing Committee on Government Agencies, to implement this recommendation by:

- amending the Agencies and Appointments Directive, and
- seeking government approval for legislating timelines that are consistent with the Agencies and Appointments Directive.

In August 2017, Treasury Board Secretariat received government approval to update the Agencies and Appointments Directive to require that all provincial agencies' annual reports be tabled. This will result in elected officials being notified through the tabling process when an annual report is publicly released. Treasury Board Secretariat expects the Agencies and Appointments Directive to be updated by April 2018.