

TRIBUNAL WATCH ONTARIO

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Statement on the Ombudsman's Report on the Landlord and Tenant Board

May 2023

On May 4, 2023, the Ombudsman released his [report](#) on the massive delays and application backlog at the Landlord and Tenant Board (LTB), one of the tribunals within Tribunals Ontario. The Report, entitled “*Administrative Justice Delayed, Fairness Denied*”, follows a 3-year plus investigation that commenced in January 2020. The Ombudsman detailed extremely serious concerns about the current crisis at the LTB. Unfortunately, the LTB is not the only tribunal in crisis at Tribunals Ontario.

A central conclusion of the Report is:

Over the past few years, the Board has proven itself unequipped for the task of reducing its extraordinary backlog of applications. More importantly, those applications represent tens of thousands of Ontarians suffering hardship caused by the Board's inability to provide timely service. As an administrative tribunal, the Board is fundamentally failing in its role of providing swift justice to those seeking resolution of residential landlord and tenant issues. In doing so, it is denying justice to a significant segment of Ontarians.
(para.306)

The Report contains many devastating stories of tenants and landlords whose lives have been made miserable by the precipitous drop in the timeliness and accessibility of landlord and tenant proceedings, commencing shortly after the 2018 provincial election and deepening after the LTB was brought under the authority of Tribunals Ontario in 2019.

Some of the key statements in the Report include:

- “Excruciatingly long delays have had immense negative impacts on thousands of landlords and tenants who depend on the Board to resolve their tenancy issues.” (para.307)
- Those “trapped in the queue” included tenants “forced to live in unsafe and substandard conditions”, and landlords “facing financial ruin”. (para. 307)

- The “early signs of crisis” at the LTB emerged after the 2018 election when the number of adjudicators “plummeted”. (para. 308) (As Tribunal Watch has documented [elsewhere](#), this drop was the result of the new government’s refusal to retain the existing panel of experienced adjudicators first appointed by the previous Liberal government.)
- The huge increase in the backlog of cases developed despite a significant drop in the number of applications filed since 2019.¹
- In 2019, Tribunals Ontario rejected a just-completed new case management system for the LTB that had been developed over 4 years and instead sought and received millions in government funding to develop yet another case management system that was supposed to allow integrated scheduling across Tribunals Ontario. This new case management system has been incapable of producing even the basic reliable data needed to manage the LTB caseload, resulting in multiple failures including applications going missing. (para. 108; 115-120; 225-228)
- Limited training left many adjudicators unable to handle most files. (para.100)
- Scheduling practices that the Ombudsman calls “grossly unfair” are still leading to long-delayed applications being dropped or lost at the end of the hearing day, resulting in further months or even years of delay. (para. 226)
- The abandonment of in-person hearings and the shift to virtual hearings has slowed the Board down, as reported by a former Associate Chair and members. (para.217).
- Tenants are not equally positioned to participate in electronic hearings. “A significant number of tenants, in contrast to landlords, do not have access to video technology and must participate in hearings by phone,” while the landlord and the adjudicators are in a video hearing room. The reports notes that some tenants some

¹ See Tribunals Ontario Annual Report, 2021/22, LTB statistics.

individuals lack access to phones, rendering their participation in virtual hearings impossible without accommodation. (para.198)

- Virtual hearings are “chaotic,” with participants struggling and sometimes failing to join their hearing, or “losing audio connection part way through.” Adjudicators reported being unable to find and share documents on screen during a hearing. (para. 215-220)
- The use of multiple, simultaneous, province-wide virtual hearing blocks has made it more difficult for tenants to connect with legal clinic duty counsel (as compared to the previous in-person hearing model). (para.214)
- Adjudicators have been required to work evenings and weekends, leading to stress. (para.204)

The Ombudsman has called on Tribunals Ontario and the LTB, in conjunction with the Ministry of the Attorney General, to adopt an aggressive strategy to reduce the delays and eliminate the backlog. However, it is not clear that the Ministry of the Attorney General itself has understood that the crisis continues. A Ministry spokesperson, quoted in the Toronto Star on May 4, suggested that the Ombudsman’s report examined “past conditions” at the Board and did not “reflect ongoing work.” It is clear from the report that the Ombudsman understood the ongoing work but found that despite these efforts, the backlog continues to grow, now at 38,000, up from 32,000² at this time last year. (para. 8)

The Report documents in detail the steps that his office has taken over the past three years and five months to work collaboratively with Tribunals Ontario and the LTB to identify and fix the problems. This has not worked to date, with the backlog continuing to grow, and it is difficult to have any confidence in the ability of Tribunals Ontario and the LTB to course-correct to address the myriad of issues spelled out in the Report.

The Report itself, although expressing some confidence in the potential for improvement, has this to say on the inadequacy of Landlord and Tenant Board’s efforts to date to address the crisis:

² See Tribunals Ontario Annual Report, 2021/22, LTB statistics.

“Since my investigation began, the Board has adopted a series of shifting strategies to manage its backlog of applications awaiting hearings. While there has been some slight fluctuation in the volume, the queue has not been substantially reduced, and now stands at more than 38,000 applications. Where once it took the Board a matter of days to schedule hearings, it now takes an average of seven to eight months and tenant applications could take up to two years to be scheduled.” (para.6)

“Despite the Board’s efforts, the scheduling situation has not improved over time. Even once a hearing is held, there is no guarantee that the matter will then be resolved expeditiously. Additional delays are often incurred at the order issuance stage.”(para. 138)

Tribunal Watch Ontario’s Solutions for the LTB

In addition to the many specific recommendations made by the Ontario Ombudsman, Tribunal Watch Ontario is urging an immediate two-pronged strategy to address the crisis at the LTB:

1. Specialized Backlog Resolution Panel

A dedicated adjudicative panel should be established with a separate reporting structure to the Ministry of the Attorney General to deal with the backlog cases.

A team of specialized adjudicators with demonstrated expertise in landlord and tenant law and dispute resolution should be immediately recruited through an expedited process to serve on this panel.

This will require separate, experienced leadership which should be recruited from outside Tribunals Ontario. It should be possible to recruit experienced adjudicators and leaders who managed the Board when it did not have a backlog, or to recruit senior leadership from other tribunals who have successfully led a similar special backlog reduction team.

This approach, which has been adopted by other adjudicative tribunals both in Ontario and in other jurisdictions, will allow the

existing panel of LTB adjudicators under the current leadership to deal with the incoming case load in accordance with appropriate timelines.

2. Immediate return to in person hearings as the default hearing format

There is a growing consensus that the pre-pandemic model of in-person hearings allowed for more timely, successful and appropriate resolution of landlord and tenant disputes. With in-person hearings, mediation and duty counsel services can be better and more effectively accessed to find solutions that can allow tenants to remain housed and landlords to be paid.

As with other provincial and federal tribunals, video and telephone hearings should be available as an option where this will meet the accessibility needs of the parties. However, as the Ombudsman report shows, the refusal of Tribunals Ontario to also provide in-person hearings has led to an imbalance in access to a fair process, with a particular negative impact on households that lack internet access.

As Tribunal Watch has noted [elsewhere](#), the negative impact of the digital divide is experienced most acutely by rural and low-income households, the latter group being disproportionately racialized, recent immigrants, persons with disabilities and others with barriers to higher earnings.

The LTB crisis is part of a larger crisis at Tribunals Ontario

As the Ombudsman notes: “Administrative tribunals make decisions about matters that have a serious impact on people’s lives.” Ontarians need their government to take seriously its responsibility to provide adjudicative services to resolve matters that fundamentally affect the quality of their lives. Far more people will need to turn to adjudicative tribunals than to the courts for resolution of important legal issues.

The Ontario Government must create and maintain expert and experienced adjudicative panels at all Ontario tribunals, with decision-makers and leadership that is capable of providing timely, fair and accessible dispute resolution services.

The LTB is not the only adjudicative tribunal at Tribunals Ontario that has developed an enormous backlog over the years since the 2018 election. The Human Rights Tribunal of Ontario has almost doubled its backlog since 2017, and social assistance recipients appealing for disability benefits were waiting as long as two years for a Social Benefits Tribunal hearing in recent years. The Licence Appeal Tribunal that hears auto accident benefits claims, also part of Tribunals Ontario, has a backlog that grew from 4,241 cases in 2018 to 16,204 in its most recent Annual Report.

The crisis at Tribunals Ontario is wider and deeper than the deplorable state of the LTB as documented by the Ombudsman.

Reform of the Appointments Process

As the Ombudsman notes, a significant factor that contributed to the crisis at the LTB was loss of experienced adjudicators because of a change in government. We do not change the judges in our courts after an election just because they were appointed by a previous government led by a different political party. We should not discard experienced and skilled adjudicators at Ontario tribunals. The Ombudsman's Report demonstrates the peril of doing so.

[Adjudicative Tribunal Justice Council](#)A related problem was the change in leadership. Experienced and proven leaders were replaced, in some cases, by people for whom political affiliation seemed to be the main qualification. Some leadership positions were unfilled or filled on an acting basis. The folly of this approach became apparent with the advent of the pandemic, a crisis that required strong leadership based on experience.

On an immediate basis, the appointment process for leadership positions at adjudicative tribunals must be overhauled. The recruitment and selection of Chairs and other senior leadership positions should be overseen by expert non-political panels.

This is an essential part of the longer-term systemic change that our tribunal justice system desperately needs – the process for appointments and reappointments to Ontario adjudicative tribunals must be regularized and depoliticized. Public confidence in the administration of justice requires that adjudicative tribunals and their adjudicators are independent, impartial, competent, expert, inclusive and accessible. As Tribunal Watch Ontario has

urged elsewhere, this requires the creation of an [Adjudicative Tribunal Justice Council](#) which will be an independent, non-partisan body responsible for the oversight of the tribunal justice system.

The Council must be managed by a board of governors structured with defined positions reserved for members with specialized backgrounds (such as judicial, tribunal, practitioner, academic, public interest). Part of the board would be appointed by the government, and a majority would be selected by designated outside organizations (such as the Law Society of Ontario) with interests compatible with the defined positions.

Call to Action

Tribunal Watch Ontario stands ready to work with the government on the solutions that we have proposed for the crisis at the LTB and the broader sector crisis in Ontario's adjudicative tribunals. And we are not the only ones – labour, employers, landlord and tenant advocates, human rights and disability advocates, and many more, are ready to provide constructive input into the longer-term systemic solutions. We urge the government to listen and act expeditiously. Our many affected parties and communities deserve no less.