

TRIBUNAL WATCH ONTARIO
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Politicization of appointments to tribunals is much worse than the politicization of the judicial appointments process

Recent moves by the current Government to politicize the process of appointing judges have caused significant concern. The process for appointing adjudicators who sit on Ontario's adjudicative tribunals is much worse. The Government has been criticized for making political appointments to the committee responsible for making judicial appointment recommendations. There is no such committee, and virtually no other form of oversight for appointments to adjudicative tribunals.

Every year, adjudicative tribunals in Ontario deal with hundreds of thousands of cases that would otherwise be dealt with by the courts. These include landlord and tenant disputes, human rights applications, entitlement to social benefits, compensation after a work-related or motor vehicle accident, complaints about health care providers, and land use disputes, to name just a few. People with a legal problem in Ontario are much more likely to have to turn to an adjudicative tribunal than to the courts. Like court decisions, tribunal decisions often have life altering significance for the parties. Sometimes these decisions have an impact on society as a whole.

For this system to work, people appointed to adjudicative tribunals should have specialized knowledge of the area of law and dispute resolution expertise. Section 14 of the [Adjudicative Tribunals Accountability, Governance and Appointments Act](#) requires a merit-based, competitive appointment process. Candidates must be assessed on their subject matter expertise and aptitude for dispute resolution. While that legislation is binding on the Government, it has been largely ignored since the change in Government in 2018. Hundreds of people have been appointed to tribunals without the required qualifications. This has been particularly true at Tribunals Ontario, which houses 13 adjudicative tribunals. Leadership positions at these tribunals have often been filled with people with little or no expertise in the area of law dealt with by the tribunal they are supposed to lead. These appointments have included individuals who ran for election as Conservatives and held senior positions in the Progressive Conservative Party of Ontario.

To be clear, the fact that a person has a political affiliation should not be a disqualification for a tribunal appointee, but neither should it be a qualification. The qualities of a good tribunal member are the same as for a good judge. They are required to apply the law to the evidence in the case before them in an objective and impartial manner. If the Government of the day does not like the outcomes, it can change the law. It should not change the people who administer the law.

Appointments to adjudicative tribunals are made by the provincial Cabinet on the recommendation of the relevant Minister and the Premier's Office. In the case of Tribunals Ontario, all appointments go forward through the office of the Attorney General. After review by Cabinet the names the list of intended appointments is sent to the Legislature's Standing Committee on Government Agencies. The Committee has representatives from the Opposition parties but the majority of its members today are the current Government's Progressive Conservative MPPs. The Committee has no power to block an appointment but is supposed to at least have the power to require the intended appointee to appear before the Committee to answer questions about their qualifications and political affiliation.

In the past, proposed appointees routinely appeared before the Committee to answer questions about their background and suitability. Under the current Government, even this minimal oversight has very often been thwarted. Appointees often decline to attend and there appears to be no pressure to do so. If the appointee says they are not available to appear on the day they are asked to attend, the person does not appear at all and there is no oversight of their appointment. Another date can only be scheduled with the unanimous consent of the committee, but the Government members, who form the majority of the committee, have never agreed to an extension in the last several years. [Tribunal Watch Ontario has commented](#) that the oversight system, as limited as it is, has become a farce.

The Government is no longer held to account by members of the Legislature when it appoints adjudicators who lack subject-matter expertise and experience with dispute resolution. The lack of experience and expertise in new appointees has been a factor contributing to the enormous delays experienced by litigants at Tribunals Ontario. Without experienced adjudicators who are experts in the relevant law, tribunals are not capable of delivering justice in a timely and effective way. The calamity at the Landlord and Tenant Board has been well documented and reported, including the findings of the Ombudsman in his May 2023 report:

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.

As Tribunal Watch noted in our recent [Statement on the LTB](#), since the Ombudsman released his report, the situation at the LTB has grown significantly worse. The backlog has increased from the 38,000 reported by the Ombudsman reported to 53,000, according to the most recent data provided by Tribunals Ontario. This has happened even though the LTB now has more than twice as many members, more staff, and a larger budget than ever before.

Other important tribunals at Tribunals Ontario that have not been able to manage backlogs include the Human Rights Tribunal of Ontario, which has a backlog that has doubled under the current Government, to over 9,000 cases, and the Automobile Accident Benefits

Service in the Licence Appeal Tribunal, which deals with insurance disputes following a motor vehicle accident, which has a reported backlog of 13,500 according to the most recent available data, up from 4,240 in 2017/18.

This system is in desperate need of reform. To that end, Tribunal Watch Ontario has proposed the creation of an that would provide arms-length and de-politicized oversight of the operation of the system including the appointment and reappointment process.

Until such a reform, any examination of the potential politicization of the judicial appointment system must be expanded to include the adjudicative tribunal system. Both of these parts of our justice system must be protected from political partisanship.