

## **Update – Recent appointments of two Executive Chairs and creation of new Ontario Land Tribunals**

June 24, 2020

In the past few weeks, the Ontario Government has appointed two Executive Chairs without a transparent or competitive process. Tribunal Watch Ontario advocates for proper appointments and reappointments that will help to ensure adjudicative independence and also promote access-to-justice values such as fairness, expertise and inclusion. It is essential that we avoid any appearance of political influence in the selection of tribunal adjudicators and chairs.

Appointment of Executive Chairs of adjudicative tribunal clusters without a transparent and competitive selection process is deeply problematic from a justice perspective. Executive Chairs have enormous day-to-day control over the operations of all the tribunals in their cluster, as well as a statutory veto over all appointments and reappointments to each of those tribunals. As noted in Tribunal Watch Ontario's Statement of Concern, in Appendix II, the exceptional powers of these positions call not only for a competitive process, but as well for selection processes that are akin to core elements of the proven and much-lauded process for the appointment of Ontario Court judges.

On June 2, 2020, Sean Weir was appointed for six months as the interim Executive Chair of Tribunals Ontario. On June 17, 2020, the Government announced the creation of a new Ontario Land Tribunals cluster [see below] and the appointment of Marie Hubbard as its Executive Chair. Both of these extremely important positions were filled without a competition.

The Government appears to have exempted itself from a competitive process via a regulation it adopted in 2019. That regulation (O. Reg. 273/19) authorizes tribunal appointments without competition "if the appointment is being made on an urgent basis for a maximum period of six months." The Government did not explicitly refer to this waiver in these two Executive Chair appointments. In contrast, the Government referred to this waiver when it announced Ms. Hubbard's previous interim appointment as Associate Chair of the Local Planning Appeal Tribunal on August 21, 2019.

Whatever the legal basis for these appointments may turn out to be, we face a situation where, within a 15-day period, the Government has chosen to fill two Executive Chair positions without a competition.

Tribunal Watch Ontario advocates for a review of the law and processes for appointments and reappointments to our judicial tribunals, in accordance with the principles set out in our Statement of Concern. Meanwhile, the Government must ensure that such appointments and reappointments comply with, and are seen to comply with, the law.

Recipients of this message may also be interested in the creation of the new cluster: Ontario Land Tribunals (OLT). It will commence on July 1, 2020, with five tribunals from Tribunals Ontario. This essentially restores the former Environment and Land Tribunals Ontario (ELTO), but leaving behind the Assessment Review Board. The extent to which this gives rise to specific concerns is an issue that a potential Tribunal Watch Ontario working group may explore.

<https://news.ontario.ca/mag/en/2020/06/ontario-takes-steps-to-resolve-land-disputes-faster.html>

We appreciate very much your interest in our work, and look forward to engaging with you to protect and enhance the integrity, independence and excellence of Ontario's judicial tribunals.