

TRIBUNAL WATCH ONTARIO

September 10, 2020

Concerns Arising from the Recent Associate Chair Appointment to the Social Benefits Tribunal of Ontario

Tribunal Watch Ontario is deeply concerned that the government has named as the head of the Social Benefits Tribunal (SBT) someone who lacks the government's own minimum qualifications for the position. As the new Associate Chair of the Tribunal, Stacy Ferguson is responsible for overseeing and leading its adjudication, mediations, and day to day operations subject only to reporting to an Executive Chair, Sean Weir. Mr. Weir oversees another 13 Tribunals and also has no adjudicative or administrative law experience.

The Social Benefits Tribunal hears appeals from individuals denied Ontario Works and Ontario Disability Support Program benefits. Appellants before the SBT are among the poorest and most disadvantaged in Ontario. The vast majority of appeals are complex matters that arise from the denial of disability benefits.

The new Associate Chair lacks the basic credentials and experience required for the position when assessed against the government's own statement of requirements of the position as follows:

- Thorough understanding of the administrative justice system, and relevant legal principles;
- Comprehensive practical knowledge of dispute resolution practices to mentor and coach others, to recommend options for change, and to design new processes or change existing ones; [this will be particularly important as Tribunals cope with the Covid environment.];
- Superior dispute resolution and analytical skills to resolve complex matters involving multiple interests, under public scrutiny.

But this is what the Government says about Ms. Stacey Ferguson's qualifications for the job:

A long-time public servant and leader in social services, Ms. Ferguson's extensive municipal career has spanned across three diverse municipalities: City of Toronto, Region of Durham and City of Cornwall.

Ms. Ferguson's active contributions to her community has involved interacting with and providing support to vulnerable individuals. Through community contributions and her current and previous roles, Ms. Ferguson is acutely aware of current key social services issues, trends and challenges. Her wealth of knowledge and leadership experience in social welfare will serve to strengthen leadership to the SBT.

Ms. Ferguson's Linked In page indicates that her career has been in municipal social and housing services, initially as a caseworker, and most recently as manager of Social and Housing Services in the City of Cornwall for just over 4 years. In the announcement of her appointment to her position in Cornwall, her highlighted career accomplishment was as supervisor of SAMS (Social Assistance Management System), a controversial technology system that made headlines during its recent implementation for overpaying or underpaying a large number of social assistance recipients. Her Linked In page also says that prior to SAMS implementation, she was the local business expert for SDMT, the previous case management system. Her expertise appears to be in administration and technological systems. Her academic background is a BA in psychology.

Even as an Administrator, she appears to have no experience with the Ontario Disability Support Program, which typically accounts for over 90% of appeals before the Tribunal.

But most fundamental, and of serious concern to the thousands who must rely on the SBT to determine their entitlement to income support, is that on the public record she has absolutely no experience as an adjudicator or mediator. This is a clear contradiction of the position requirements set out by the government (see above).

This appointment follows a recent pattern in which the government has been replacing experienced and effective Chairs with inexperienced candidates with questionable qualifications. In 2019, the SBT lost years of experience and progress in working effectively with stakeholders when its veteran and highly innovative Associate Chair was not re-appointed. The SBT had piloted video hearings in partnership with legal clinics so that counsel and their clients could participate in hearings from their own offices where practical. It was working on being more accessible to members of Indigenous communities by working with community Indigenous Justice Coordinators to adopt practices that would bring in evidence of the impact of colonization and intergenerational trauma on individuals with disabilities in their disability benefit appeals.

Associate Chair positions are important leadership positions. Tribunal Watch is deeply concerned that government has chosen to appoint a candidate who cannot reasonably be expected to provide the required leadership or meet the core qualifications for the Associate Chair position.

In May, Tribunal Watch Ontario reported on the crisis in the adjudicative tribunal system in Ontario, noting that Tribunals Ontario had lost almost half of its most experienced adjudicators. Specifically, the Social Benefits Tribunal (SBT) was down to 21 full and part-time members from the 38 who were in place on April 30, 2018. That number is now down to 17 members, with 4 more about to expire in October.

Why qualified leadership is particularly important right now at the SBT

If the government chooses to fill these vacancies, it is expected that the new Associate Chair will be directly involved in the selection process to fill these positions. She will also have to assess the performance of current members for re-appointment. This would

include assessing their subject matter expertise as well as their conduct of hearings and mediations. She is not qualified to make this assessment.

Of even greater concern is that there are currently no advertised vacancies on the Public Appointments website. If government chooses not to fill these vacancies, Ms. Ferguson will be expected to manage a Tribunal that is currently at less than half the capacity of 2 years ago. Prior to the pandemic, it was already taking up to 18 months to obtain a hearing of a disability appeal. The loss of members and the experience they have taken with them in combination with the lack of qualifications of the new Associate Chair puts the integrity and the ability of the SBT to carry out its mandate at risk.

For more information, please see our previous Statements of Concern at www.tribunalwatch.ca