

TRIBUNAL WATCH ONTARIO

“Ensuring independent and accessible tribunals”

<https://tribunalwatch.ca/>

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Tribunal Watch Ontario Calls for Review of Government’s Tribunal Appointments and Reappointments Processes

Tribunal Watch Ontario is alarmed by the lack of public review and transparency for the Ontario Cabinet’s appointments of adjudicators and senior leaders to Tribunals Ontario (the cluster of 14 tribunals). Strong steps must be taken to enhance public confidence in adjudicative tribunals, including giving more effective powers to the Standing Committee on Government Agencies to review proposed appointees in its public hearings. In addition to concerns about the lack of adjudicative or subject matter experience for some appointees, four of the five Executive Chair and Associate Chair appointments to Tribunals Ontario since June 2020 have strong connections with the governing party.

In May 2020, Tribunal Watch Ontario reported on the crisis in the adjudicative tribunal system, noting that Tribunals Ontario had lost almost half of its most experienced adjudicators. This turmoil has caused lengthy delays, a loss of expertise, and concerns about adjudicative independence due to many tribunal members facing arbitrary non-reappointment or short terms. Some of these concerns are relevant to the current Ombudsman Ontario investigation into delays at the Landlord and Tenant Board.

Since June 2020, Tribunal Watch Ontario has issued statements of concern for three senior appointees (see Background below), who do not appear to have the level of experience in adjudication or subject matter that would be expected for their tribunal leadership roles. In addition, the Executive Chair and three of the four recently appointed Associate Chairs have strong ties to the federal Conservative Party or Ontario Progressive Conservative party.

While being active with a political party does not in itself disqualify an appointee, serious concerns are raised when there is a pattern of appointees to senior positions who have obvious party connections. Appointments and reappointments of judicial decision makers need to be free from political influence, both in reality and in appearance. Unlike operating or advisory boards or agencies, the credibility and legitimacy of tribunals depends on public confidence in the adjudicative independence of the adjudicators.

The Standing Committee on Government Agencies has only been able to review one of these five senior appointees – Sara Mintz, Associate Chair of the Criminal Injuries Compensation Board, on October 6, 2020.

After an election in Canada, unlike in the United States, it is unacceptable for a new Government to stack the courts with appointees who may appear to have stronger political connections than judicial qualifications. The same should apply to tribunals that exercise judicial functions.

Tribunal Watch Ontario calls for an independent or all-party review of the appointments and reappointments processes to ensure that the Government is complying with the requirements of section 14 of the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009. This section requires “a competitive, merit-based process” that applies the required legislated criteria, and also a recruitment process that is made public. Reappointments should also be more predictable and based on the tribunal chair’s recommendation after the chair’s assessment of the member’s performance.

The Standing Committee on Government Agencies must be given more powers to effectively review proposed appointees in its public hearings. The Government must be held accountable to ensure that appointments and reappointments are, and appear to be, free from political influence.

For media contact: info@tribunalwatch.ca

BACKGROUND

Adjudicative tribunals are judicial bodies that affect our daily lives more than courts. Tribunals have the power to make binding decisions in areas such as social assistance, tenancies, human rights, business regulation, land development, auto insurance disputes, etc. Tribunals must operate independently from political or other influence, and be treated differently from advisory or operational boards or agencies. Appointments and reappointments of judicial decision makers need to be de-politicized.

Tribunal Watch Ontario is a public interest organization with a mission to monitor Ontario’s adjudicative tribunal system, advocate for adjudicative independence, and promote access to justice. We will monitor new appointments to ensure that candidates are selected following a competitive process. We will advocate for appointment and reappointment processes that are inclusive, transparent, merit-based, and free from political influence. We will advocate for dispute resolution processes that are fair, expert, timely and accessible.

<https://tribunalwatch.ca/>

Online Resources

1. Tribunal Watch Ontario Statement of Concern - May 14, 2020:
<https://tribunalwatch.files.wordpress.com/2020/05/statement-of-concern-may-14.pdf>
2. Ombudsman Ontario investigation into Landlord and Tenant Board:
<https://www.ombudsman.on.ca/resources/ongoing-investigations/delays-at-the-landlord-and-tenant-board>
3. Tribunal Watch Ontario Statement about appointment of Executive Chair of Tribunals Ontario: <https://tribunalwatch.files.wordpress.com/2020/05/statement-of-concern-may-14.pdf>
4. Tribunal Watch Ontario Statement about appointment of Associate Chair of Social Benefits Tribunal: <https://tribunalwatch.files.wordpress.com/2020/09/sbt-associate-chair-statement-final.pdf>
5. Tribunal Watch Ontario Statement about appointment of Associate Chair of Human Rights Tribunal of Ontario: <https://tribunalwatch.files.wordpress.com/2020/08/hrto-associate-chair-tribunal-watch-ontario-2020-08-06.pdf>
6. Information about Sara Mintz, appointed as Associate Chair of Criminal Injuries Compensation Board: <https://www.ola.org/en/legislative-business/committees/government-agencies/parliament-42/transcripts/committee-transcript-2020-oct-06>; <https://www.ourcommons.ca/DocumentViewer/en/39-2/PACP/meeting-32/evidence>
7. Information about Simon Chapelle, appointed as Associate Chair of Ontario Parole Board: <https://www.pressreader.com/canada/ottawa-citizen/20130528/281616712904887>
8. Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009 (see section 14): <https://www.ontario.ca/laws/statute/09a33>
9. “Ontario’s Adjudicative Tribunals – Basic Information” (*August 18, 2020*):
<https://tribunalwatch.files.wordpress.com/2020/10/ontario-tribunals-organizational-info-2020-08-18.pdf>