

TRIBUNAL WATCH ONTARIO

Statement of Concern regarding the Health Professions Appeal and Review Board (HPARB) and the Health Services Appeal and Review Board (HSARB)

April 2021

The Health Professions Appeal and Review Board (HPARB) and the Health Services Appeal and Review Board (HSARB) are adjudicative tribunals with important mandates related to regulation of health care professions, services and programs. Like many other provincial tribunals, HPARB and HSARB have undergone significant reductions in membership since the summer of 2018. At the same time, requests for reviews and hearings have increased. This leads to concerns about delays and lack of expertise.

1. Background

The HPARB and HSARB might be described as “sister” boards as in recent years both Boards have been chaired by the same individual, with the majority of members being cross-appointed to both.

The **Health Professions Appeal and Review Board** (HPARB) is an adjudicative body with a review and appeal mandate under the *Regulated Health Professions Act, 1991* (the *RHPA*). The practice of all 28 health professions and its members is governed by a regulatory College designated to each health profession. For the most part, the Board reviews decisions of the Colleges' Inquiries, Complaints and Reports Committees. The parties to these reviews are the individual complainant(s) and the health professional(s) who are the subject of the complaint. When conducting a review, the HPARB considers the *adequacy* of a Committee's investigation, the *reasonableness* of its decision, or both.

Additionally, **HPARB** conducts registration reviews and hearings of orders of the Colleges for registration or accreditation of health professionals. Finally, HPARB conducts hearings under the *Public Hospitals Act* concerning physicians' hospital privileges.

The **Health Services Appeal and Review Board** (HSARB) conducts appeals and reviews under 12 different health care statutes, including appeals and decisions of the Ontario Health Insurance Plan (“OHIP”), and appeals of decisions of local Medical Officers of Health.

2. Recent Trends and Related Concerns

A review of the Annual Reports of HPARB and HSARB, as well as the tribunal member rosters published by the Public Appointments Secretariat, shows an alarming decrease in the complement of adjudicators to both Boards. The decimation amounts to roughly a 50% reduction in adjudicators.

HPARB

March 31, 2018	March 31, 2019	June 28, 2020	April 8, 2021
54	39	29	27

HSARB

March 31, 2018	March 31, 2019	June 28, 2020	April 8, 2021
51	39	31	27

Number of HPARB and HSARB members cross-appointed to both tribunals

March 31, 2018	March 31, 2019	June 28, 2020	April 8, 2021
49	35	24	21

For a period of time in 2018-2019, neither Board had a Chair. The relevant legislation requires that a Chair assign panels to hear reviews and appeals, effectively precluding the assignment of new hearings when there was no Chair. A new Chair was appointed to both Boards, initially for a one-year period; on December 12, 2020 the Chair's appointment was extended for a further three years.

As of April 8, 2021, following routine monitoring of the Public Appointments Secretariat website listings for the Boards,

- The HPARB listing on the PAS website shows 27 members, plus one Vice-Chair, a new appointee to the only full-time Vice-Chair position on the Board, for one year; and
- The HSARB has 27 members, plus two Vice-Chairs, including a new appointee to the only full-time Vice-Chair position on the Board, for one year.
- Neither of the new Vice-Chairs has prior adjudication experience.
- Both new Vice-Chairs are cross-appointed to the other Board.
- Numbers of members for each Board have remained essentially the same for the past year, despite some new appointments in 2020 and one in 2021.
- The listings for the Boards on the PAS website show slots for vacancies, suggesting that the maximum number of members is 35 for HPARB and 36 for HSARB. These maximum numbers are a reduction from past years' member complements.

Caseload Statistics and Number of Decisions Issued

According to the March 31, 2019 Annual Report, HPARB received 964 new requests for review or appeal in the reporting year, an increase of over 33%

above the 642 received in 2017-18. This constituted the “highest number of requests for review or appeal ever experienced by the HPARB.” The report continues: “Given the high increase in intake in 2018-19, the HPARB is anticipating that its case conferences convened, matters heard, matters resolved, and decisions issued, volumes will increase in 2019-20.” Additionally, as reported in the recently posted 2020 to 2023 Business Plan, of the 23 members cross-appointed to HPARB and HSARB at December 31, 2019, 11 will have reached their 10-year maximum term by December 2021.

Despite this projection—consistent with the vision in the 2019 to 2022 and 2020 to 2023 Business Plans—adjudicator numbers continued to drop throughout 2019 and 2020, even though there were new appointments and a scant number of re-appointments. Currently, member numbers are at 50% for HPARB and 45% for HSARB, compared to 2017-2018. To the credit of its panels, both Boards continue to issue volumes of decisions comparable in number to that in 2017-2018 and earlier. Because the annual report for 2019 to 2020 is not yet posted on the Boards’ website, there is currently no publicly available data to show if this trend has continued. But this “output” appears to be far outweighed by the demands upon the Boards at the point of “input”.

As noted on the FAQs sections of the Boards’ websites, final written decisions are public documents and are available on CanLII. Insofar as CanLII provides a somewhat reliable source for the total number of decisions issued in a year, a cursory review of the number of decisions from 2016 to 2019 on CanLII does not show any significant decrease in the overall output of the Boards compared to the previous three years. At least, it appears that somewhat consistent output has been maintained by half the number of adjudicators who, except for the Chair and full-time Vice-Chair, are all part-time members. At the same time, the demand for HPARB review has increased dramatically, while adjudicator numbers have decreased greatly. Such a discrepancy in “input” versus “output” has significant potential to reveal a bottleneck of the kind seen by the Human Rights Tribunal of Ontario, the Landlord and Tenant Board, the Social Benefits Tribunal, etc., once the 2019 to 2020 and 2020 to 2021 annual reports are released.

3. Ongoing Issues of Concern

The following are items of ongoing concern for Tribunal Watch Ontario. We plan to continue to monitor these issues, seeking further information from relevant stakeholders.

1. What increased delays are parties experiencing?
 - For HPARB, this concerns wait times being experienced by regulated health professionals, patients and families, and existing and prospective registrants seeking review from decisions of a college registrar.

- For HSARB, this concerns wait times being experienced, for example, by:
 - patients and families seeking a hearing regarding a decision from OHIP;
 - physicians seeking a hearing regarding hospital privileges; or
 - parties appealing decisions from local Medical Officers of Health—delays of which are of particular concern during the current COVID-19 pandemic.
- 2. What are the implications of appointments of inexperienced adjudicators on the speed and quality of decisions being issued by these Boards?
- 3. Has there been an increase in the number of appeals from either Board to the Divisional Court? Or a shift in the nature of the issues raised at the Divisional Court?