

TRIBUNAL WATCH ONTARIO

THE ADJUDICATIVE TRIBUNAL JUSTICE COUNCIL: A PROPOSAL

OCTOBER 2021

The need for change

Ontario's adjudicative tribunals resolve many more disputes than the courts. Ontario's citizens are much more likely to have legal issues before tribunals – about all aspects of their lives – than before the courts. Public confidence in the administration of justice requires that adjudicative tribunals and their adjudicators are independent, impartial, competent, expert, inclusive and accessible. Tribunals often face challenges in these areas, especially because of how governments appoint and re-appoint members, and the resources and supports that are provided to them.

The Adjudicative Tribunal Justice Council

Tribunal Watch Ontario proposes the creation, by legislation, of an Adjudicative Tribunal Justice Council. The Council will be an independent, non-partisan body whose mandate is to oversee the administration of tribunal justice in Ontario, including appointment and re-appointment processes that are fair, timely and transparent, and are free of partisan or patronage influences.

The Council must be enshrined in legislation that guarantees the independence and impartiality of the Council and the adjudicative tribunals, with protections for funding and operational autonomy.

Tribunal Watch Ontario has drafted a Statement of Principles and Commentary which describes aspirational goals for a system of dispute resolution to which all tribunals should conform.¹ The Council is a necessary and logical part of implementing the Principles.

The Adjudicative Tribunal Justice Council is a foundational body that would safeguard adherence to these Principles and ensure that each tribunal and member possesses the public confidence of a fair and effective system.

The Principles and the Council echo the objectives articulated elsewhere in the Commonwealth for a framework for tribunal excellence.² The Society of Ontario Adjudicators and Regulators (SOAR) also has issued a Statement Of Principles For the Appointment and Re-Appointments Of Adjudicative Tribunal Members.³

Tribunal Watch Ontario's six Principles are based upon these same values: Independence and Impartiality; Accountability; Appointments and Reappointments; Competence and Expertise; Accessibility, Inclusion, Diversity and Equity; and Access to Justice and the Right to Be Heard. Procedural Fairness, Respect for the Law, and a Commitment to Achieving Just Outcomes are additional elements that support these Principles.

What is the Adjudicative Tribunal Justice Council and what will it do?

The Council will be an independent, non-partisan body responsible for the oversight of the tribunal justice system's compliance with the Principles. The Council will be governed by a board of governors structured with defined positions reserved for members with particular backgrounds such as judicial, tribunal, practitioner, academic, public interest etc., some appointed by the government, but a majority selected by designated outside organizations with interests compatible with the defined positions. Similar to the expectations for tribunals, the Council should also ensure a systemic and integrated approach to the maintenance of diversity and inclusion in its board, staff, policies and practices.

The Chair of the board of governors shall be filled by a person proposed by the government whose appointment has been approved by a designated quorum of the board of governors.

Management of the Council will be provided by full-time staff led by a full-time chief operating officer chosen by a designated quorum of the board of governors and working with an executive committee of the board of governors.

The Council shall have the powers necessary for the performance of its general mandate. These powers shall include:

- Recruitment of tribunal chairs, in accordance with processes set by legislation and the Council, including establishing selection panels;
- Review and policies regarding appointment, re-appointment, non-re-appointment or termination of appointment of tribunal chairs and members, in accordance with processes set by legislation and the Council, including processes for member performance assessments and requests for reviews of non-re-appointment or termination decisions;
- Review and policies regarding tribunal chairs' and members' compensation and benefits, length of appointment and re-appointment terms, minimum notice for non-re-appointments, and similar matters, in accordance with legislative requirements;
- Review and enhancement of the administrative justice system with a view to ensuring it is accessible, fair and efficient;
- Review and reporting on the constitution and working of tribunals;
- Review and commenting on legislation, existing or proposed, relating to tribunals or a particular tribunal; and
- Research, consultation, reports and recommendations about trends and concerns related to Ontario's adjudicative tribunal justice system.

The legislation creating the Adjudicative Tribunal Justice Council will provide further direction for the establishment, continuation and operation of tribunals, including appointments and re-appointments, member performance assessment, compensation and benefits, and tribunal accountability.

¹ *Statement of Principles and Commentary*, Tribunal Watch Ontario, 2021 (<https://tribunalwatch.files.wordpress.com/2021/05/statement-of-principles-and-commentary-may-2021.pdf>)

² See: *International Framework for Tribunal Excellence*, Council of Australasian Tribunals, 2012 (<https://coat.asn.au/publicationitems/the-final-version-of-international-framework-for-tribunal-excellence/>); *Principles of Administrative Justice*, Council of Canadian Administrative Tribunals, 2009 (<http://www.ccat-ctac.org/en/about-ccat/principles-of-administrative-justice>); and *Tribunals, Courts and Enforcement Act, 2007 (c. 15) SCHEDULE 7: Administrative Justice and Tribunals Council* (<https://www.legislation.gov.uk/ukpga/2007/15/schedule/7/enacted>)

³ *Statement Of Principles For the Appointment and Re-Appointments Of Adjudicative Tribunal Members*, 2018 (<https://soar.on.ca/2018/08/statement-of-principles-for-the-appointment-of-adjudicative-tribunal-members>)