

TRIBUNAL WATCH Survey

Summary of Responses to the Survey Regarding the Landlord and Tenant Board of Ontario

Responses to October 6, 2021

Report dated November 29, 2021

ABOUT THIS SURVEY

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

To fulfil our mandate Tribunal Watch Ontario circulated a brief survey to users of Ontario's tribunals. In soliciting responses, Tribunal Watch wrote: *[We are] interested in your experience with Ontario's adjudicative tribunals. The following survey was designed for persons – lawyers and others – advocating on behalf of clients in disputes requiring resolution by an Ontario adjudicative tribunal during the period from April 1, 2019 to March 31, 2021. We have chosen this time period because it will allow us to compare the survey results with the data reported by the tribunal in its annual reports for the two fiscal years.*

The results of the survey will be made available to all interested parties.

ABOUT THE LANDLORD AND TENANT BOARD

The Landlord and Tenant Board ("LTB") is the tribunal established under the *Residential Tenancies Act* to resolve disputes between landlords and renters. Applications may be filed by landlords or tenants with requests for eviction taking up the majority of the tribunal's work. The LTB is one of the busiest tribunals in Ontario, receiving over 80,000 applications in the last reported year (2019-2020 Annual Report).

The LTB schedules applications in large hearing blocks (multiple hearings per adjudicator on any given day). In some municipalities with few applications, the LTB sits infrequently (sometimes only twice a month or less often). In Toronto and other major urban centres, the LTB has daily sittings before a number of adjudicators.

The hearings, prior to the pandemic, were conducted in-person at one of over 40 hearing locations across Ontario. Self-represented tenants far outnumbered self-represented landlords appearing before the LTB. At each location there were counter staff, mediators, and one or more adjudicators to conduct the hearings. Mediators work with the parties to try and resolve disputes prior to a hearing before an adjudicator. These resolutions carry the same weight and enforcement mechanism as an adjudicator's decision (but there is no public decision). If a resolution between the parties is not possible, Tenant Duty Counsel is available to assist and advise self-represented renters. Tenant Duty Counsel is a program operated by the Advocacy Centre for Tenants Ontario (ACTO) and funded by Legal Aid Ontario.

At the hearing, both parties present their case and have an opportunity to test the other party's evidence through cross examination. Once the evidence is complete, the adjudicator makes their decision immediately or reserves their decision for issuance at a later date. Both approaches result in a written decision or order. Orders are enforced by the Small Claims Court of the Ontario Superior Court of Justice.

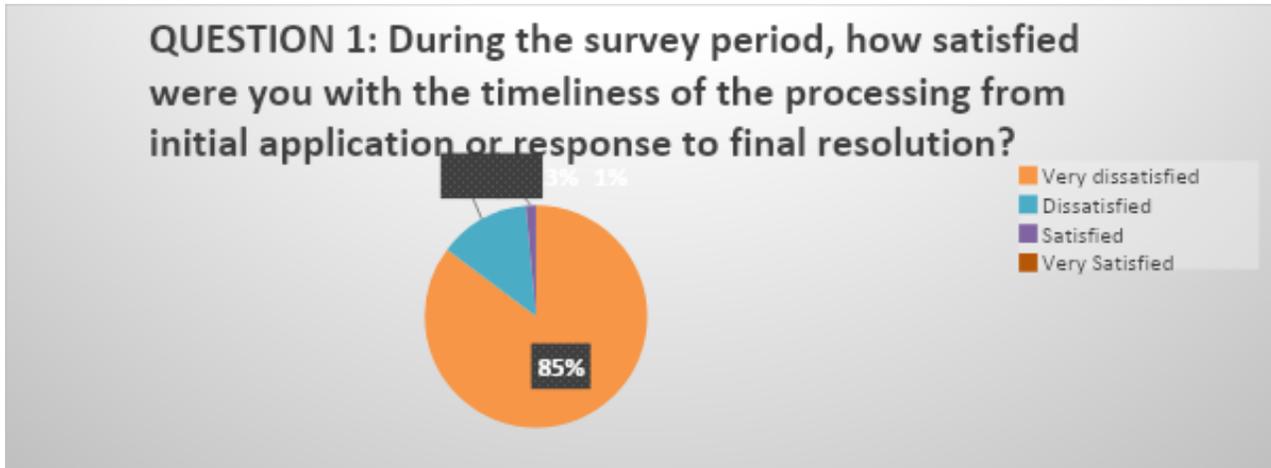
Since March 2020, the LTB moved to an electronic hearing process and parties are expected to participate by video, phone or in writing. In November 2020, the LTB announced as part of a new "digital-first" policy that it will not be returning to in-person hearings once the pandemic is over. The move to electronic hearings has been criticized by legal clinics, many tenants and landlords, housing advocates, and members of the administrative justice bar. They argue that all these electronic options can create a digital wall that prevents low-income renters from accessing adjudication, mediation and duty counsel services because they lack the technology, have insufficient minutes or data plans, have limited or unstable internet connections, or no internet at all, and/or have language, literacy, numeracy or mental health challenges.

SURVEY RESULTS: What's working? What's not working?

This survey was conducted between May and October 2021 and asked respondents to consider their interaction with the LTB between April 1, 2019 and March 31, 2021. There were 68 responses pertaining specifically to the LTB.

The general theme of all the responses was one of dissatisfaction and there were three main areas of discontent: (1) the timeliness of the processes involved, including delays in proceedings; (2) the apparent lack of competence among mediators and adjudicators, including the inability to offer fair processes, a lack of knowledge or expertise in a given tribunal's subject matter, and manifest instances of bias; and (3) issues with technology and the effects of the pandemic.

The following is a look at the responses relating to the LTB. Note that the LTB only began offering mediation services at their electronic hearing blocks in the spring of 2021. Prior to that, parties were not being offered mediation at electronic hearing blocks, notwithstanding the longstanding practice of offering mediation at in-person hearings prior to the pandemic.



“It took me 9 months to get a hearing. My expedited application was denied even though my son has [a] medical condition.” [Anonymous respondent]

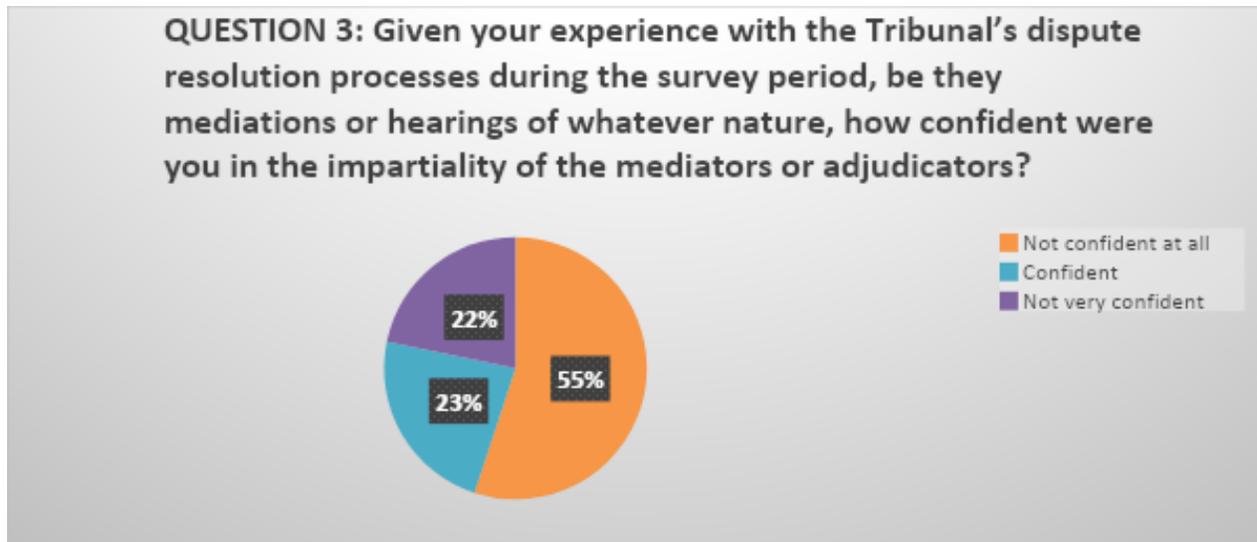
“The LTB is broken. From Application to judgment 441 days and still counting. Incompetency at many levels.” [Anonymous respondent]

The fact that only 2% of respondents indicated any satisfaction with the process is very problematic. Respondents repeatedly cited understaffing, lack of quality adjudicators and COVID-19 as the reason(s) for extensive delays. Problems with timeliness preceded the pandemic. The delays affected not only scheduling of hearings but also issuing decisions.



“The telephone help line is useless they are unable to answer most questions. The questions they do attempt to answer are incorrect. E-mailing about hearings is only marginally better. Incorrect paperwork was returned, withdrawals [sic] were not logged, receiving responses requires second or third emails 75% of the time.” [Anonymous respondent]

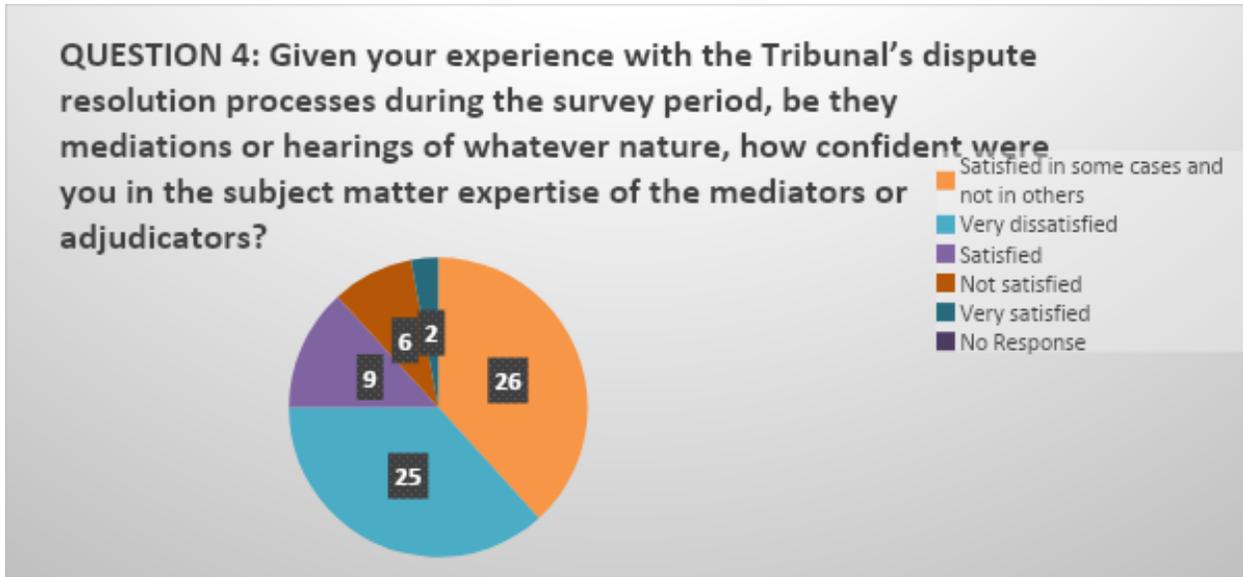
“It is almost impossible for me to say anything positive about my experience with an adjudicator or with a representative from the LTB.” [Anonymous respondent]



“Hearing before LTB because tenant breached and LTB issued order multiple times....no repercussions. Made written errors on the order making tenant feel superior and creating very toxic and dangerous relationship between landlord/tenant.” [Anonymous respondent]

“With our experience we were confident in the impartiality. The timeline was our major issue.” [Anonymous respondent]

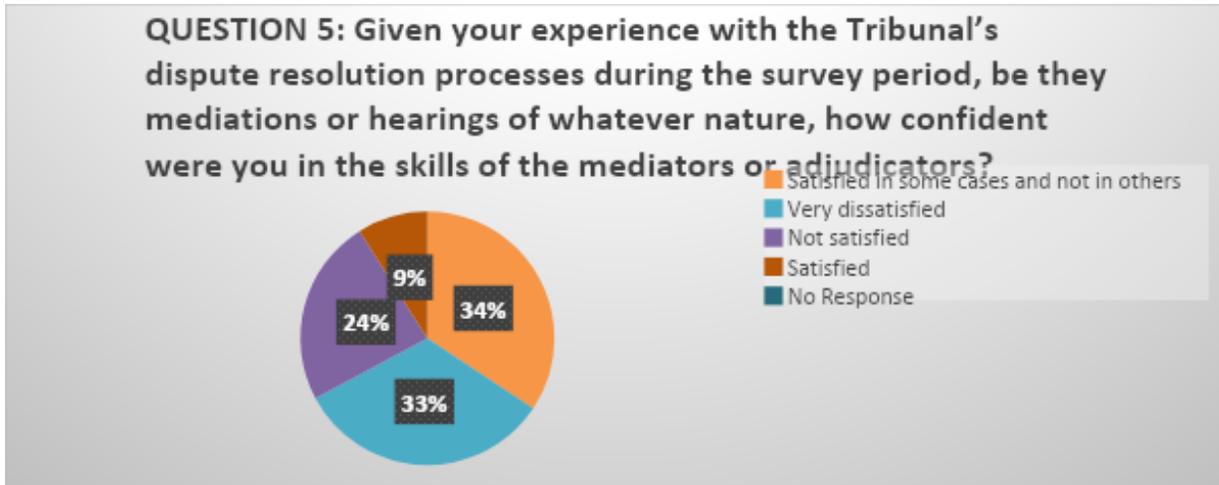
A similar number of tenants and landlords responded to the survey. Many landlords expressed the view that adjudicators and/or mediators were “biased” in favour of tenants, while others claimed the exact opposite noting “[i]f you are a landlord hold complete confidence you will win” [sic]. Whether confident in the impartiality of the process or not, the majority qualified their comment by noting dissatisfaction with “timeliness”. (See Question 1.)



“Most mediators and adjudicators had sufficient expertise. However, I found mediators more likely to lack expertise. For example, one mediator was not aware of the extension of limitation periods due to covid-19 and would have convinced a tenant to withdraw their timely application, if Tenant Duty Counsel (TDC) had not been present to remind them that the application was timely because of the extension. On another occasion, a different mediator was not aware of the changes to N12s brought about by Bill 184. TDC had to guide the mediator to the applicable legislation.” [Anonymous respondent]

“Some adjudicators and mediators don't even appear to know the law with respect to the RTA or the SPPA. The lack of training and experience is evident.” [Anonymous respondent]

The responses to this question were at best ambiguous. On the one hand, 38.2% of respondents (26 of 68) reported they were sometimes satisfied with the subject matter expertise of the tribunal’s mediators and adjudicators (these respondents evidently had more than one encounter with the LTB). On the other hand, an almost equal percentage—36.7% (25 of 68)—stated they were very dissatisfied with the level of expertise. Only 2.9% of the respondents (2 of 68) expressed positive satisfaction with the LTB’s expertise.



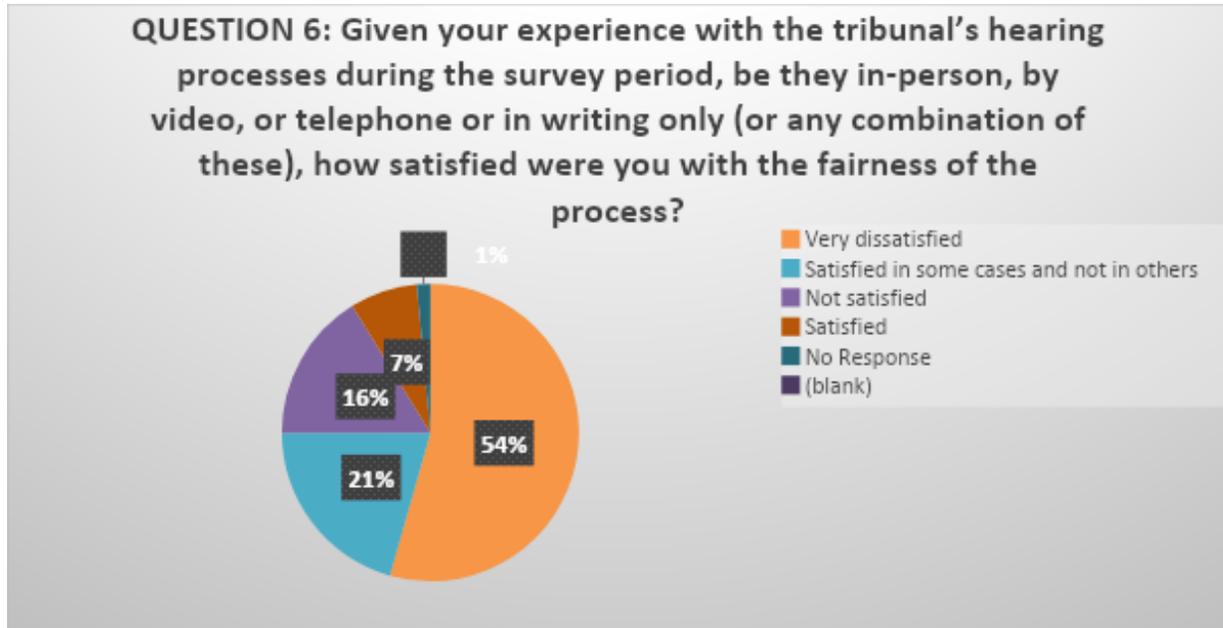
“Relatively few qualified, thoughtful adjudicators. Increasing number of woefully under trained time managers adverse to clear thinking and or judicial weighting of evidence according to legal principles.” [Anonymous respondent]

“Tribunal members have struggled with use of technology following the move to remote hearings. The Board has generally been poor at ensuring that documents submitted to the tribunal make their way to adjudicators.” [Anonymous respondent]

Only 14 respondents said they were “confident” in the impartiality of the mediators or adjudicators in various dispute resolution processes, while the other 54 respondents expressed lack of confidence, stating that they were “not very confident”, or “not confident at all.” No respondents were “very confident”.

Lack of confidence was based on a variety of reasons, including perception of bias (e.g., the mediator was not aware of the suspension of limitation periods during COVID; the mediator incorrectly gave legal advice), lack of procedural fairness (e.g., because mediators were not available online; because adjudicator problems with online technology impaired participation by a party/their counsel; because duty counsel were given very limited time (e.g., 10 minutes) to interact with a client; because a hearing lasted only a few minutes and the adjudicator did not make any meaningful enquiry into why a tenant was not present for the hearing); unreasonable extensions of timelines for receiving written decisions (in once instance, as long as 6 months.)

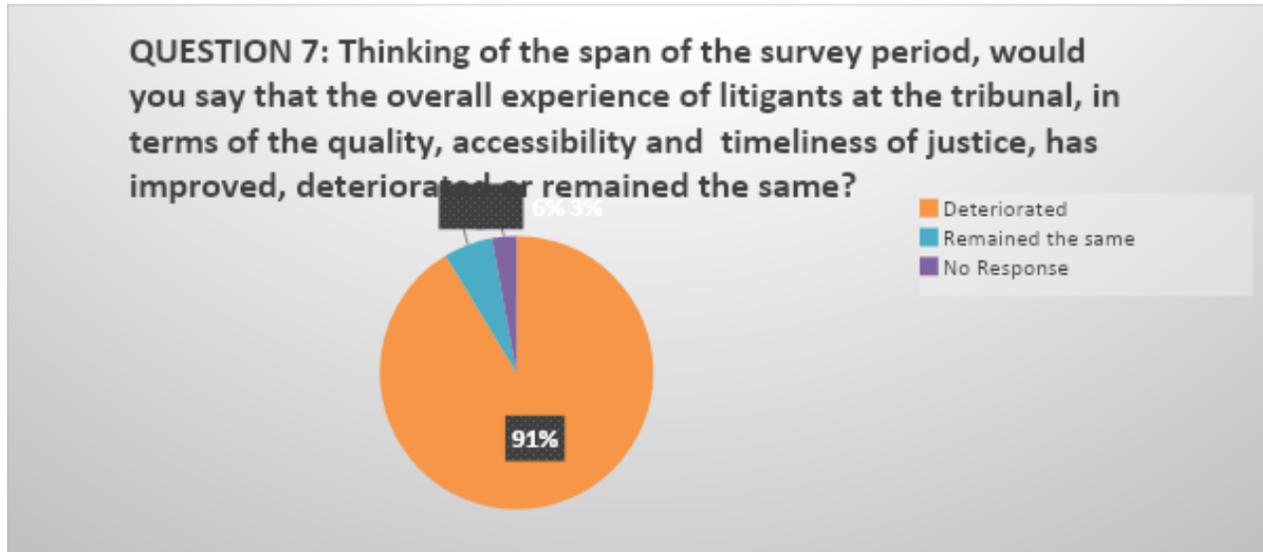
Even among the generally “confident” respondents, answers were sometimes qualified by expressions of dissatisfaction, including time constraints (hearings that would have lasted 30 minutes in the past being conducted in 5 minutes) and related effects on fairness (e.g., the impact of time constraints on tenants with mental health issues.)



“I represent tenants who are low income, some of whom live in rural areas. Tenants have struggled to participate. In rural areas especially, phone calls and Internet connections dropped often during hearings. Some tenants did not have computer, phone, or Internet access to participate. One tenant had no cell reception for a phone hearing, and so had to drive to find reception, participating in the hearing in their car.” [Anonymous respondent]

“Video hearings were more convenient than in-person. They appeared fair for tenants in that it was easier for them to attend if they didn't have easy access to transportation.” [Anonymous respondent]

In assessing the fairness of the LTB’s hearing processes over the course of the survey period (“hearings” include in-person, video and telephone), more than half of respondents (54%) stated they were “very dissatisfied.” Another 21% were “not satisfied.” Only 16% said they were somewhat satisfied in some of their proceedings (again implying that they attended before the tribunal on more than one occasion or file).



“The quality of justice at the LTB was not high before the pandemic. Now, it is a disgrace.”
[Anonymous respondent]

Many respondents noted that quality, timeliness and accessibility to the Board were poor even before the pandemic. Looking at successive Annual Reports from Tribunals Ontario, it is apparent that timeliness has been a growing issue for several years. In 2017/2018, the LTB managed to schedule a hearing within its goal of 25 business days in 54% of applications. That number decreased over time and in 2020/2021, with the pandemic in full swing, only 1% of applications were scheduled for hearing within 25 days. It is also important to add that there was some use of video and telephone hearings prior to the survey period, but the digital option was never by default imposed by the LTB. Clearly, the circumstances created by COVID 19 have further negatively impacted the experience of parties. No respondents stated that their experiences improved over the surveyed period compared to pre-COVID-19.

Only four respondents stated that the quality, accessibility and timeliness of justice had “remained the same”, with one respondent qualifying their answer by noting, “[a]s useless as always.” The remaining respondents stated that justice had “deteriorated.” No respondents selected “improved.”

Respondents who noted deterioration in terms of timeliness mentioned delays for both hearings (6 to 12 months, or more) as well as decisions (90 day to six months). E.g., “What used to take 2-3 months, now is 14 months and counting.” Those noting deterioration in terms of access often mentioned the limitations imposed on parties because of technology—e.g., parties not having reliable access to virtual hearings. Overall, the switch away from face-to-face hearings has created greater inefficiencies, e.g., resulting in short or rushed hearings.

QUESTION 8: If you responded “deteriorated” in the previous question, which of the following reflects your assessment of the prospects for improvement in the post-pandemic period?

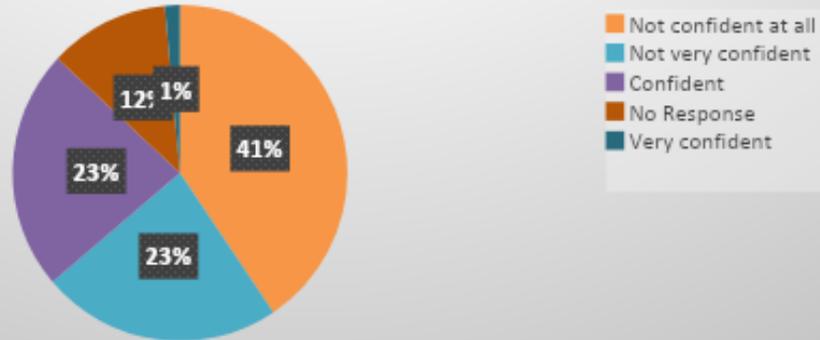


“It is imperative that we return to an in-person format where tenants are able to submit their evidence in person. Many tenants are unsophisticated with respect to the use of technology and they are being left behind.” [Anonymous respondent]

Each of the respondents except three (92%) selected: *“I am worried that the Tribunal will maintain changes made during the pandemic with a continuing negative impact on the experience of litigants.”*

Some respondents are concerned with uneven access to the technology as between parties. Some have no bandwidth, insufficient access to equipment, sporadic connectivity. Others find it more comfortable to be able to tell their stories in person. Certainly, there are advantages in savings and other accommodative pluses when a party does not have to travel to the tribunal’s hearing locations and can access the processes from their home (or other local venue where available), but there are also barriers to running a fair hearing when parties are not able to participate on an equal digital footing. As well, there are ongoing challenges to managing remote hearings in a smooth and coherent manner.

QUESTION 9: In your most recent matter before the Board, how confident were you in the impartiality of the mediators or adjudicators?

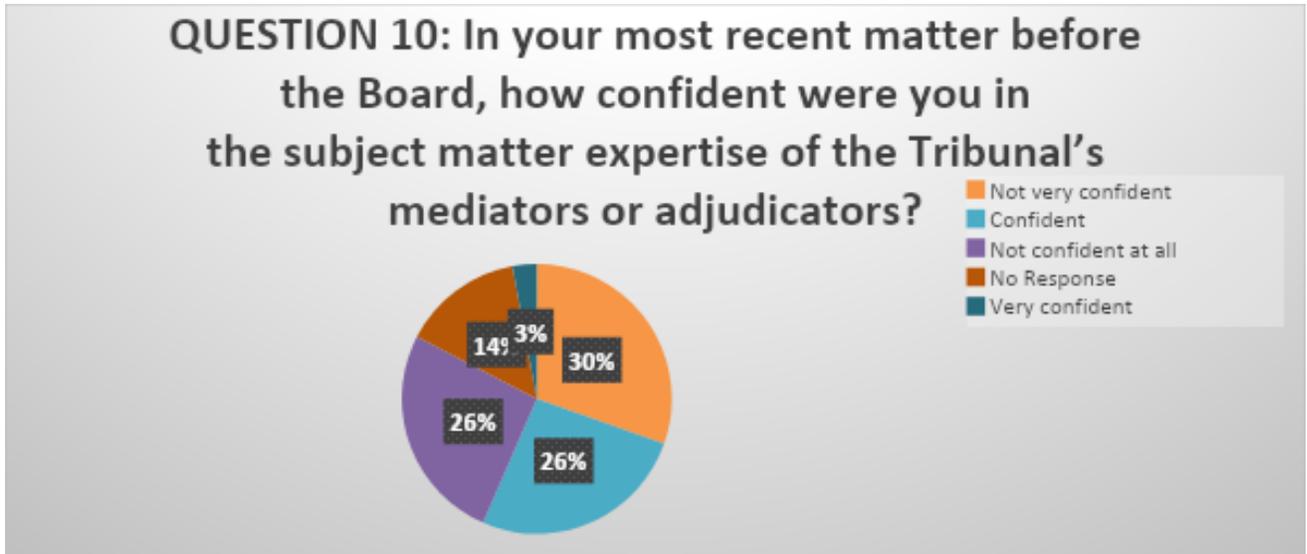


“Mediators tend to be mostly impartial; however, there is some concern that adjudicators appointed under the current government may be chosen because their values align with the government, which will benefit landlords, but not tenants.” [Anonymous respondent]

“The adjudicator's reasons showed a fairness to the Tenant's position and a balancing of the limited prejudice to the Landlord in granting the Request to Set Aside. A de novo hearing is now waiting to be scheduled.” [Anonymous respondent]

Sixty-four percent of respondents had little or no confidence in the impartiality of the professional with whom they were dealing during their most recent experience before the Board.

Only 1% selected a “very confident” response.



"The Tribunal member was aware of the law with respect to making a decision to adjourn."
[Anonymous respondent]

"Most of the adjudicators have very little experience. This case is complex with a lot of evidence. I am concerned that the adjudicator may not have the ability to understand all of the issues. During the survey period they have been dealing with more simple and straightforward matters." [Anonymous respondent]

Again, looking at only the respondents' most recent encounter with the Landlord and Tenant Board, more than half (56%) recorded that they had little or no confidence in the subject matter expertise of the mediators and adjudicators. The most positive aspect here is that 29% of respondents did report confidence in the personnel with whom they dealt.

QUESTION 11: In your most recent matter before the Board, how confident were you in the skills of the tribunal’s mediators or adjudicators to administer the process?



The majority of respondents (67%) were not confident in the adjudicators’ skills to administer the process.

“Adjudicators have had difficulty with ensuring the most basic things like the certificate of service being filed or whether the Board has sent the tenant a notice of a hearing. Dealing with voluminous evidence and complex facts will be very difficult especially given they do not schedule sufficient time for hearings.” [Anonymous respondent]

“The length of time needed to address the Request to Set Aside, given the adjudicator's years of service & legal awareness was unreasonable. The evidence was not complex and the delay time caused significant issues between the two parties involved.” [Anonymous respondent]

Additional Comments section

“The Landlord and Tenant Board's digital first strategy is not working. There are too many hearing blocks scheduled simultaneously, making it impossible for Tenant Duty Counsel to attend every hearing block. This means that tenants are being denied their right to speak to counsel prior to their hearings. The LTB has tried to replicate the in-person hearing by creating mega-blocks, however, it takes the moderators 2-3 hours to complete attendance in these blocks, further hindering Tenant Duty Counsel’s ability to cover simultaneous blocks. The way the LTB is conducting hearings has made it very clear that all they are concerned with is processing as many eviction applications as possible and do not care whether tenants are able to participate in their hearings or not.” [Anonymous respondent]

Conclusion

The survey results outlined above paint a stark picture. The LTB is failing to address a crisis in timeliness; it suffers from a lack of competence and expertise among its mediators and adjudicators; and it abounds in deficiencies in procedural fairness due to a failure to acknowledge disparities in technology, the effects of the pandemic and a perceived inability among staff and adjudicators to offer unbiased processes.

Delays in proceedings, attributable to inadequate funding and staffing shortages, were key issues of concern among survey respondents. Moreover, it is evident that the COVID-19 pandemic has negatively impacted the experiences of litigants before the tribunal. Many respondents note that the quality, timeliness and accessibility of justice were sorely lacking even before the onset of the pandemic.

Tribunal Watch Ontario remains committed to monitoring this manifest crisis and to advocating for dispute resolution processes that are fair, expert, timely and accessible.