

# Access to Justice in Crisis: *Tribunals Ontario* in 2022

## Statement of Concern

[tribunalwatch.ca](http://tribunalwatch.ca)

Imagine if you will:

- You are severely injured in a car accident and your insurer denied your claim for compensation.
- You were fired from your job for discriminatory reasons in breach of the Human Rights Code and you have been unable to find other work.
- You have acquired a serious mental health disorder and you have been denied provincial disability benefits.
- You are a tenant or landlord in a dispute over rent or repairs.

If you applied to Tribunals Ontario for a remedy in any of these situations, you can now expect to wait months or even years for a hearing and final decision. In many cases, you will wait months for your tribunal to take even basic preliminary steps to move your application forward. Access to justice at Tribunals Ontario and several other Ontario tribunals has deteriorated significantly under the current Government.

As Tribunal Watch Ontario has reported in the [past](#), the current Ontario Government declined to renew and retain experienced adjudicators shortly after being elected in 2018 and then failed over the next three years to appoint a sufficient number of new adjudicators to fill the vacancies. Lately, the government has been filling these positions, but many new appointees have little or no adjudication experience and lack recognized expertise in the law relating to matters they will adjudicate. The crisis persists.

At *Tribunals Ontario* in particular (notably the Licence Appeal Tribunal, the Human Rights Tribunal of Ontario, the Social Benefits Tribunal, and the Landlord and Tenant Board), this has resulted in unprecedented delays and an alarming drop in the number of hearings held to determine the merits of applications. But the impact of the loss of experienced adjudicators has been felt across all of Ontario's tribunals. Tribunal Watch Ontario has issued a series of Statements of Concern highlighting the deteriorating quality of justice now being delivered at our adjudicative tribunals. In 2021, Tribunal Watch Ontario conducted a survey of tribunal users; the results, although limited, were overwhelmingly negative in terms of confidence in the timeliness and fairness of tribunal processes, as well as in the expertise and independence of tribunal adjudicators.

Here are some indicators of the growing crisis at Tribunals Ontario:

In the Automobile Accident Benefits Service division of the **LICENCE APPEAL TRIBUNAL**, where applicants can dispute their insurer's compensation decisions, there is a growing volume of applications and a significant increase in time required to

process cases. The Tribunal's Annual Reports document a backlog of active cases that has grown from 2,097 five years ago to 15,206 as of December 2021.

At the **HUMAN RIGHTS TRIBUNAL OF ONTARIO**, delays have increased dramatically. The number of final decisions on the merits has dropped from a historical average of 110 per year to 37 in 2021. In 31 of those cases, people waited between 3 and 8 years for a final decision. New applications are often left unprocessed for months, causing hardship and unfairness for both applicants and respondents. At mediations, parties are told that they will have to wait for two years to have a hearing scheduled, causing potentially unfair pressure to settle the case. Applications that raise human rights issues are being dismissed without an oral hearing in violation of the Tribunal's statutory mandate.

People appearing before the **LANDLORD AND TENANT BOARD** report a myriad of problems since the Tribunal pivoted to digital proceedings on a permanent basis, including uneven access to hearings, technological failures, dropped hearings (sometimes in mid-adjudication), and cancelled proceedings for lack of adjudicative staff. The chaos that has regularly occurred during hearings has caused significant delays, resulting in tenants not being able to obtain repair orders or relief from rent hikes and landlords being unable to evict tenants who are breaching their responsibilities under the law. The Board is Ontario's busiest tribunal, with over 80,000 applications annually. Tenant representatives report that many tenants in low-income households or in rural or remote communities lack the means to connect to video conference hearings and must participate at a disadvantage, by telephone. This digital divide is compounded for those who have language or literacy barriers or have mental health challenges. Since March 2020, the Board has reportedly refused every request for an in-person hearing.

At the **SOCIAL BENEFITS TRIBUNAL**, the latest Annual Report documents a 50% drop in the number of completed appeals and in decisions issued in 2020/21 as compared to 2017/18. Over 90% of appeals are for denial of disability benefits. This means that people with disabilities are left struggling to survive on the much lower Ontario Works (welfare) benefits of \$733/month while they wait up to two years for an appeal hearing. Only 2% of appeals are scheduled for a hearing within 6 months, as compared to 87% meeting this target in 2017/18. Moreover, even applicants who get to a hearing are now worse off: the cancellation of in-person hearings means that most can only participate by telephone because they cannot afford computers and internet access. Appellants are expected to testify about the impact of the disability on their lives two years earlier, putting them at a significant disadvantage.

## **CONCLUSION**

Our adjudicative tribunal system deals with many important disputes that would otherwise be handled by the courts. Adjudicative tribunals carry out judicial functions like the courts, and governments must avoid any politicization of appointments and

reappointments of adjudicators. While there are many dedicated adjudicators and staff doing the best they can, the integrity of the adjudicative tribunal system in Ontario has been eroded in just a few years. We call on all political parties to commit to the reform of the system to ensure that the people of Ontario can have their cases dealt with by tribunals that are independent, expert, inclusive and able to provide dispute resolution processes that are fair, timely and accessible.

**To this end, we are seeking a commitment to:**

- 1. Ensure a truly competitive, merit-based process for appointments and reappointments.**
  - 2. Establish a new [Adjudicative Tribunal Justice Council](#) to provide independent oversight of the adjudicative system to lead the recruitment and selection of new adjudicators, ensuring a competitive and depoliticized process.**
  - 3. Re-establish in-person hearings as an accessible option for all parties.**
  - 4. Ensure that there is a full complement of expert adjudicators, to provide timely dispute resolution services, including in both official languages.**
  - 5. Require tribunals to meaningfully engage with stakeholders in the design of tribunal processes including needed improvements to the rules and policies governing the administration of justice at our tribunals.**
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